Qwest
Spirit of Service

Qwest
310 SW Park Ave.
11th Floor
Portland, Oregon 97204
Telephone: 503-242-5420
Facsimile: 503-242-8589
e-mail: carla.butler@qwest.com

Carla M. Butler
Lead Paralegal

January 25, 2011

Annette Taylor
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM-1484

Dear Ms. Taylor:

Enclosed for filing in the above entitled matter please find an original and five (5) copies of CenturyLink's and Qwest's Opening Post Hearing Brief, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Carla M. Butler

Enclosures
cc: Certificate of Service

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1484

In the Matter of CENTURYLINK, INC. Application for an Order to Approve the Indirect Transfer of Control of QWEST CORPORATION	**CENTURYLINK'S AND QWEST'S OPENING POST-HEARING BRIEF**

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Pursuant to Administrative Law Judge Allan Arlow's December 17, 2010 Ruling, as modified on January 7, 2011 and January 14, 2011, applicant CenturyLink, Inc. ("CenturyLink")[1] and intervenor Qwest Communications International, Inc. ("QCII," or, where appropriate, "Qwest") (collectively, "the Merging Companies" or "Companies," and post-merger, the "Merged Company") hereby file their opening post-hearing brief.

INTRODUCTION

On May 24, 2010, CenturyLink filed an application requesting the approval of the indirect transfer of control of QCII's operating subsidiaries, Qwest Corporation ("Qwest Corporation" or "QC"), Qwest LD Corp. ("QLDC") and Qwest Communications Company, LLC ("QCC") (Qwest Corporation, QLDC and QCC referred to as "Qwest Operating Companies," all Qwest entities referred to collectively as "Qwest") to CenturyLink (the "Application"). CenturyLink also filed, coincident with its application, the Direct Testimonies of John Jones, Todd Schafer and Clay Bailey. QCII also filed a petition to intervene on the same day, along with the Direct Testimony of Judy Peppler.[2] The record in this case demonstrates that this transaction ("the Transaction") meets the public interest "no harm" standard, which this Commission established for telecommunications mergers in Dockets UM 1416 (CenturyTel/Embarq) and UM 1431 (Frontier/Verizon). The record further shows that the Transaction will result in a combined company with greater network and financial resources to provide high-quality voice, broadband data, and other advanced communications services to Oregon customers. The combination will result in a company that will have the national breadth and local depth to provide a compelling array of products and services to its customers.

[1] CenturyLink was formerly known as CenturyTel, Inc., and changed its name to CenturyLink, Inc. with shareholder approval on May 20, 2010.

[2] Qwest did not join as a formal applicant for the transaction because neither ORS 759.375 nor ORS 759.380 apply to Qwest due to the Commission's approval of QC's price plan in Order No. 08-408 in docket UM 1354, which included the waiver of those statutes as to QC. Nevertheless, Qwest sought intervenor status so that it could become a full party to the docket. The Merging Companies subsequently agreed to certain modifications of the QC exemptions under the Price Plan in their Stipulation with Staff and CUB, discussed *infra*, at section IV.B.3.

CenturyLink and Qwest believe that the record supports approval of the Transaction with no conditions. Nevertheless, in the interests of resolving disputes and providing assurance to the Commission that the merger is indisputably in the public interest, the Merging Companies have entered into several settlements and stipulations containing a wide array of commitments that will benefit retail and wholesale customers in Oregon. The Companies have reached settlements in this proceeding with Integra Telecom, Inc. ("Integra"), 360networks (USA), Inc. ("360networks"), and, more recently, the Commission Staff and the Citizens' Utilities Board ("CUB") (collectively "Settlements" and "Settling Parties"). In addition, they have reached agreements with numerous other parties in other state merger proceedings, including the Communications Workers of America, Cox Communications, Inc. and various state commission staffs, agencies and consumer advocates. The record in this matter shows that the terms and conditions in these settlement agreements go well beyond what is required to meet the Commission's standard of review. Therefore, no additional conditions to the transaction are necessary.

Moreover, the support for approval of the Transaction by the Settling Parties, including Staff, CUB and Integra,[3] is strong evidence that the Transaction will do no harm and is in the public interest, and thus that the Commission should approve the Application.[4] The Settlements on wholesale issues (the Integra and 360networks settlements, and Conditions 27-41 of the Stipulation with Staff and CUB) provide more than sufficient protection for wholesale customers.

However, despite the fact the stipulation with Staff and CUB ("Staff/CUB Stipulation") and the settlement with Integra ("Integra Settlement") squarely address every reasonable and legally-cognizable concern that a CLEC could raise in this merger proceeding, a number of

[3] Staff is vested with the duty to protect the public interest for all telecommunications customers, CUB is vested with the duty to protect the public interest of residential and small business customers, and Integra was the most vigorous advocate of the group of competitors known as the "Joint CLECs."

[4] Although the Communications Workers of America ("CWA"), the labor union for Qwest occupational employees, was not a formal intervenor in this docket, as it was in other states such as Minnesota and Arizona, the Merging Companies also settled with the CWA, and the CWA supports the merger based on the settlement. See e.g., Supplemental Rebuttal Testimony of Todd Schafer, Ex. CTL/1000, Schafer/7.

remaining CLECs ("the Non-Settling CLECs") demand more. The Non-Settling CLECs' arguments opposing the merger are flawed for many reasons. These reasons include that the Non-Settling CLECs (1) rely on certain other transactions that are very different from this Transaction in order to question the prudence of the merger; (2) fail to recognize that the Transaction involves the acquisition of an entire company and its systems, employees and expertise, not just exchanges or a customer bases; (3) assume that the substantial existing regulations applicable to the Merging Companies' wholesale businesses are not enough; (4) completely ignore the numerous and substantial commitments the Merging Companies have made in various stipulations; (5) insist on additional conditions for which there is no legal basis; and (6) fail their burden to show that those additional conditions are the proper subject of a merger review by this Commission.

The bottom line is that the remaining competitive providers opposing the Transaction are seeking to "have their cake and eat it too." The terms of the Staff/CUB Stipulation and the Integra Settlement are available to all CLECs on a non-discriminatory basis. The Non-Settling CLECs therefore have every incentive, at little additional cost, to see it through to the end to try to extract even more benefits out of the Joint Applicants. And they have this incentive even though the additional conditions they seek are far beyond what is required to meet the Commission's standard for approval. Therefore, the Commission should reject all of the additional conditions that the remaining, non-settling CLECs continue to seek. In addition, many other states have already approved the Transaction.[5] Notably, of the nine states that require approval in the 14-state Qwest ILEC region, Iowa, Nebraska, Montana, Colorado and Utah have approved the Transaction, and a recommended order of approval was issued in Minnesota.[6]

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[5] In addition, the Transaction has been cleared by a United States Department of Justice review under the Pre-Merger Notification Act.

[6] In Qwest Corporation's 14-state ILEC region, merger approval has been applied for in the following states: Oregon, Arizona, Colorado, Iowa, Minnesota, Montana, Nebraska, Utah and Washington. Of those states, approval is still pending in Oregon, Arizona, Minnesota and Washington. A complete list of the 18 states in the country which have approved the Transaction to date appears in Attachment A.

However, none of these approval orders, including the Minnesota recommended order, adopted any of the additional conditions that the Non-Settling CLECs continue to propose in Oregon.

BACKGROUND

On April 21, 2010, Qwest Communications International, Inc., CenturyTel, Inc., and SB44 Acquisition Company ("Acquisition Company") entered into an Agreement and Plan of Merger ("Merger Agreement") which describes the Transaction.[7]

Under the terms of the Merger Agreement, QCII will become a wholly-owned, first-tier subsidiary of CenturyLink. Exhibit A to the Application depicts the pre- and post-Transaction corporate structure. As shown, there will be no change in corporate structure for the respective CenturyLink and Qwest operating entities as a result of the Transaction. QCII's operating subsidiaries, QC, QCC, and QLDC, will remain subsidiaries of QCII. Further, because this Transaction is at the parent company level, no local exchanges or assets are being sold, combined or transferred to a new provider.[8]

STANDARD OF REVIEW

The Application seeks Commission approval of the Transaction pursuant to ORS 759.375 and 759.380. In reviewing a merger like this one, the Commission applies the public interest standard enunciated in other transactions involving telecommunications utilities under ORS Chapter 759 and OAR 860-027-0025, such as the CenturyTel/Embarq, Verizon/Frontier and Qwest/Malheur transactions.[9] That standard is whether the transaction will do "no harm," and

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[7] A copy of the Merger Agreement is available at http://www.centurylinkqwestmerger.com/downloads/sec-filings/Qwest-8K%204-22-10.pdf, and was incorporated in the Application. Thereafter, CenturyTel, Inc. changed its legal name to CenturyLink, Inc.

[8] A more detailed summary of the Transaction can be found in the Application (pp. 3-6), as well as in the Direct Testimonies of John Jones (Exhibit CTL/100, Jones/6-9) and Clay Bailey (CTL/300, Bailey/5-8).

[9] See e.g., *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and their Subsidiaries*, Docket No. UM 1416; *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and their Subsidiaries*, Docket No. UM 1416, Order No. 09-169 (2009); see also *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction*

thus is in the public interest. Under this standard, the Transaction need not specifically benefit the public, but must simply cause no harm.

ARGUMENT

I. THE MERGER DOES NO HARM, AND IN FACT BENEFITS OREGON, AND THUS IS IN THE PUBLIC INTEREST

The record in this case clearly demonstrates that the Transaction will do no harm. And it further shows that the Transaction confers substantially benefits Oregon retail and wholesale customers, especially in light of the state and national trends associated with access line loss, wireless and cable competition, and customer demand for increased broadband capacity due to higher bandwidth content. See Direct Testimony of John Jones, Exhibit ("Ex.") CTL/100, Jones/9-11; Direct Testimony of Judy Peppler, Ex. Qwest/1, Peppler/10.[10] The Transaction will exceed the public interest, no harm standard because the Merged Company will (a) have financial, technical, and managerial resources to continue, without question, to meet its regulatory and financial obligations, (b) continue to provide high-quality service to retail customers, and (c) continue to provide high-quality service to wholesale customers.

The merger will create a financially-strong and stable provider with an enhanced ability to invest in local and national networks and deploy broadband and other advanced services.

Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc., Docket No. UM 1431, Order No 10-067 (2009); *In the Matter of Malheur Home Telephone Company Application for an Order Approving Transaction, and Request for Expedited Consideration*, Docket No. UM 1451, Order No. 09-483 (2009).

[10] As stated in Ms. Peppler's testimony, Qwest faces a significant level of competition in Oregon today. This includes competition from cable companies (especially Comcast), wireless providers, wireline CLECs and Voice over Internet Protocol ("VoIP") providers, such as Vonage and Google. This also includes competition in the broadband market, where Qwest competes against cable companies like Comcast, as well as wireless broadband companies like AT&T, Verizon and Clearwire. Qwest/1, Peppler/15-21. As Ms. Peppler further stated, according to the FCC's Local Competition Report, as of June 2008 there were 3.0 million wireless subscribers in Oregon, while there were only 1.7 million wirelines (both ILEC and CLEC). In fact, wireless lines have increased more than 140%, from only 1.3 million in June 2001. The FCC data show that the wireless share of the total access line market has grown significantly over this timeframe, and wireline access lines now account for less than 40% of all wireline/wireless connections in Oregon. Qwest/1, Peppler/18.

Importantly, Staff and CUB agree.[11] See Stipulation filed December 3, 2010 ("Staff/CUB Stipulation"), attached as Attachment B. In the Staff/CUB Stipulation, CenturyLink agreed to numerous conditions that are designed to further ensure this Transaction causes no harm and is in the public interest. See [Errata] Joint Testimony of Staff, CUB, CenturyLink and Qwest ("Joint Testimony"), pp. 3-4, 8, 11, 18, 22-25.[12] That conclusion is only enhanced by the national settlement agreements the Merging Companies reached with CLECs, including intervenors Integra and 360networks. See Integra Settlement (without attachments), filed November 9, 2010, attached as Attachment C. Significantly, all of the commissions in the Qwest ILEC territory that have approved the Transaction have found it will do no harm and/or is in the public interest.[13]

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[11] While Staff and CUB propose two additional conditions, those conditions do not deal with the numerous additional, and unnecessary, conditions that the Non-Settling CLECs continue to advocate.

[12] The Merging Companies and Staff and CUB agreed to a total of 53 comprehensive conditions covering numerous issues, including general legal compliance, retail, broadband, financial, service quality, safety, Operational Support Systems ("OSS"), wholesale, OTAP and affiliated interests, and did not agree to only two of Staff's proposed conditions. See Stipulation, and Attachment 1 (list of conditions); see also Joint Testimony, pp. 2-3, 4, 7. These two proposed conditions pertain to certain broadband trouble reporting requirements (Staff's original proposed Condition 14, as set forth in Staff/100, Dougherty/49 and Staff/700, Dougherty/2-3) and the "most favored nation" or "most favored state" ("MFS") issue (Staff's original proposed Condition 57, as set forth in Staff/100, Dougherty/57-58 and Staff/700, Dougherty/3-4). The parties agreed to submit testimony (Joint Testimony, pp. 2-3, 4, 7), which they did on December 8, 2010 (with an errata filing on December 10, 2010). The parties also agreed to brief these two isolated issues (which the Merging Companies do in Section IV., *infra*).

The Merging Companies do not believe the two disputed conditions are necessary, and indeed, they believe that imposition of such conditions would be harmful, for the reasons set forth in the Testimony of John Jones in Opposition to Adoption of Additional Staff Conditions, Ex. CTL/1100. Moreover, although the parties reserved their rights to advocate for these two proposed conditions (Staff and CUB) or against these two proposed conditions (the Merging Companies), they agree, through the Stipulation and Joint Testimony, that the Staff/CUB Settlement is in the public interest, as is and without modifications, once the Commission has resolved the two disputed issues. That is, regardless how the Commission rules on these two issues, and despite their positions on these issues, Staff, CUB and the Merging Companies believe the Stipulation and Transaction do no harm and are in the public interest, and thus the Commission should approve both the Stipulation and the Transaction. See Joint Testimony, pp. 2-3, 4, 7; see also Section IV, *infra*.

[13] See e.g., Initial Commission Decision Granting Approval of Indirect Transfer of Control, *In the Matter of the Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC, and Qwest LD Corp.*, Colorado PUC, Docket NO. 10A-350T, Adopted Date: December 15, 2010; Mailed Date: January 3, 2011 ("Colorado Order"); ¶¶ 58-61, 71, 73, 76; Report and Order, *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation*, Utah PSC, Docket No. 10-049-16, January 4, 2011 ("Utah Order"), pp. 1, 3, 4-7, 16-18; Findings of Fact, Conclusions of Law, and Recommendation, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, State of Minnesota Office of Administrative Hearings for the Minnesota Public Service Commission, PUC Dkt. No. P-421, *et al.*/PA-10-456 (January 10, 2011) ("Minnesota ALJ Recommendation"), ¶¶ 97, 195, 207, 231, 257, 272; Order Approving Settlement Agreements, Granting Motions to

A. The Merged Company will Have the Financial, Technical, Operational and Managerial Resources to Ensure that the Transaction is in the Public Interest and Will Cause No Harm

The Merging Companies present essentially unrefuted testimony that they will have the financial, technical, operational and managerial resources necessary to meet its regulatory and legal obligations post-merger. Some CLECs speculate about various post-Transaction scenarios that they allege could pose a threat to wholesale services, but they produce no competent or persuasive evidence to contradict the Merging Companies' testimony regarding the financial, technical, operational and managerial fitness of the combined company, and the combined company's ability to meet the future needs of retail and wholesale customers. Moreover, CenturyLink has a long history of successfully completing mergers and the financial justifications for this Transaction are compelling. CTL/200, Schafer/7-12; Ex. CTL/201; CTL/500, Jones/15-16.

1. The Merged Company will have strong financial fitness

As Mr. Bailey states, "the proposed transaction will create a carrier with major scope and scale, and the financial resources and flexibility to provide high-quality communications services to customers and communities in Oregon and across the country." CTL/300, Bailey/6, see generally, CTL/300, Bailey/5-7, 11-16, 18-21, 23-29. The pro forma financial profile of the company, as of year-end 2009, would include pro forma revenues of $19.8 billion, EBITDA of approximately $8.2 billion and free cash, excluding any estimated synergies, of $3.4 billion. CTL/300, Bailey/5-6. As a result "the merged company is expected to have one of the strongest

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Withdraw, and Allowing Proposed Reorganization; Order, *In Re: Qwest Communications International, Inc., and CenturyTel, Inc.*, Iowa Utilities Board, Docket SPU 2010-0006, entered November 19, 2010 ("Iowa Order"); pp. 24, 52-53, 59; see also *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.*, Montana PSC, Order No. 7096e, Docket No. D2010.5.55 ("Montana Order"), p. 30, ¶ 106, and p. 32, Conclusion of Law No. 7; *In the Matter of the Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation and Qwest Communications Company, LLC, and Qwest LD Corp.*, Nebraska PSC, Application No. C-4280, entered January 4, 2011 ("Nebraska Order"), p. 16.

balance sheets in the U.S. telecommunications industry." CTL/300, Bailey/6. Anticipated synergies of $575 in annual operating expenses and $50 million in annual capital expenditures are conservative, because they represent only 8% of Qwest's 2009 cash operating costs. CTL/300, Bailey/6-7, 13-15. These synergies are "realistic when compared to other merger-related ILEC-transaction synergies that generally have been 20%+ of the target company's cash operating expenses in recent years." *Id.* And even without the synergies, the Merged Company is expected to realize $1.7 billion in remaining cash flow that could be used for additional investment, debt repayment, or other appropriate uses. CTL/300, Bailey/13. Because CenturyLink expects to be financially sound, the combined company "will not be unduly pressured to achieve financial synergies by investors or other stakeholders." CTL/600, Bailey/19-20. Clearly, the Merged Company will be financially capable of continuing to provide reliable, quality services to Oregon retail and wholesale customers.

The CLECs do not provide any evidence to directly refute the Merged Company's anticipated financial strength. More importantly, to the extent that any Staff witnesses had any concerns regarding financial issues, these concerns have been fully addressed by the financial conditions (Conditions 15-19) in the Staff/CUB Stipulation. See Joint Testimony, pp. 5, 10-11.

Moreover, several commissions in the Qwest ILEC region have found that the Merged Company will be a financially strong company after the merger. See e.g., Utah Order, p. 16; Iowa Order, pp. 27-30; Minnesota ALJ Recommendation, ¶ 148. Therefore, the Merging Companies have demonstrated that the Merged Company will be financially strong and will have the capability to continue to provide reliable, quality telecommunications services in Oregon.

2. The Merged Company will have significant technical and managerial resources

The Merging Companies' witnesses also describe in detail the strength of the technical and managerial resources available to the Merged Company as a result of the combination of these two industry-leading telecommunications companies. See e.g. CTL/100, Jones/14-15. Mr. Jones describes the deep managerial experience and quality of the management team that has already been named to manage the post-merger company, including CEO Glen Post, Chief Financial Officer R. Stewart Ewing, and Chief Operating Officer Karen A. Puckett. These executives bring a combined total of over 88 years experience in the telecommunications industry, including significant experience in successfully managing mergers and acquisitions. CTL/100, Jones/14-15. CenturyLink has also named numerous Qwest executives, including Christopher K. Ancell, who as President of the Business Market Group for the post-merger company will continue to lead the post-merger company's growing and successful enterprise segment. CTL/300, Jones/15. In addition, CenturyLink has named several other executives, drawing from the expertise of both CenturyLink and Qwest, all with significant experience and proven track records in the telecommunications industry. CTL/500, Jones/7-8; Rebuttal Testimony of Michael R. Hunsucker, Ex. CTL/800, Hunsucker/4-5.

CenturyLink will also benefit from the strong employee base for both companies. As Mr. Jones explains, it is anticipated that the majority of employees will be retained because they are necessary to carry out the local market focus that is the hallmark of CenturyLink's service provisioning model. CTL/500, Jones/5-6; see also Tr., 12/16/10, Vol. 1, p. 41. In addition, Mr. Hunsucker at the hearing explained that the combined company recently named the leaders for its wholesale organization, and 12 of these 21 leaders are current Qwest employees. This demonstrates the Merged Company will be staffed appropriately to continue to provide quality service to both Qwest and CenturyLink wholesale customers. As Mr. Hunsucker explains, the Companies are "trying to bring the best and the brightest to this wholesale organization so that

we maintain the institutional knowledge we need from both companies as well as creating a stronger group going forward." See Tr., 12/17/10, p. 36.[14]

Mr. Schafer discusses the operational strengths that CenturyLink brings to the Merged Company, including its substantial and successful experience with the integration process in past mergers. CTL/200, Schafer/7-12. These mergers include, most recently, the Embarq/CenturyTel merger, which closed in July 2009, and involved CenturyLink's integration of more than 5 million access lines in 18 states. This integration is well underway, with all of the human resources and financial systems successfully integrated shortly after closing, 50% of the billing system integration expected to be completed by year-end 2010, and full billing systems integration to be completed during the third quarter of 2011. CTL/200, Schafer/9-11.[15]

3. CenturyLink has a proven, successful process for integrating systems in mergers

Through CenturyLink's significant experience with successful integrations, it has developed a methodology for integration that is designed to maximize efficiency, minimize difficulties, and ensure this Transaction meets the no harm public interest standard. CTL/1000, Schaefer/1-6; see also Tr., 12/16/10, Vol. 1, pp. 119-126. In particular, CenturyLink has developed a staged process for converting systems that is proven to isolate issues so that the effect of problems is minimized and not repeated in later stages. See Tr., 12/16/10, Vol. 1, pp. 118-119.

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[14] In addition, through its settlement with the CWA, CenturyLink has made explicit commitments to retain experienced front-line workers. These commitments satisfy CWA's concerns. Although the CWA did not intervene in Oregon, these commitments result in CWA's support and its finding that the Transaction is in the public interest. CTL/100, Schafer/7.

[15] CenturyLink's past successful integration experiences demonstrate it is capable of performing the Qwest integration without customer harm. CTL/200, Schafer/7-12; CTL/500, Jones/3-9. Against this evidence, the Non-Settling CLECs offer nothing more than speculation about what "could" happen, without any evidence as to the probability of the supposed outcomes, and without examining the probability of whether such events are likely to occur. CTL/800, Hunsucker/4, 9-10, 15-16, 52; see also CTL/900, Hunsucker/2-10 (discussing Mr. Gates' numerous unfounded speculative opinions arising from his selective review of HSR documents); see also Rebuttal Testimony of Robert Brigham, Ex. Qwest/6, Brigham/4-9. CenturyLink's demonstrated history and proficiency in smoothly integrating operations of acquired companies demonstrates the *high probability* that this integration will be successful, and significantly outweighs the *possibilities* that these CLECs discuss.

Nevertheless, the Non-Settling CLECs still question CenturyLink's ability to successfully merge with Qwest. However, they were able to find only a single hiccup in the CenturyLink/ Embarq integration, and they resort to exaggerating that isolated operational problem. See e.g., Joint CLECs/19, Gates/25-31. Mr. Gates' speculation that the isolated problem in North Carolina somehow shows that CenturyLink will have trouble with this Transaction is simply wrong. While it is true that some issues occurred in North Carolina, the issues were minor in the context of the total scope of the systems conversions. As the record shows, there is no way to guarantee avoidance of all issues with any system cutover (including those made by the CLECs and other service providers), and CenturyLink took the necessary steps to address these issues, minimize any impacts to customers and to ensure they are resolved prior to any future conversions. CTL/1000, Schafer/1-6; see also Tr., 12/16/10, Vol. 1, pp. 119-126 (Mr. Schafer addressing the North Carolina conversion issues).[16] Moreover, the record shows that CenturyLink was able to rectify the issues in North Carolina and quickly modify the conversion process to avoid similar issues in other states.

In short, the Transaction will allow the post-merger company to draw on the network and operational strengths of both Qwest and CenturyLink, which is a key benefit of the merger. The evidence overwhelmingly shows that the Merged Company will have more than sufficient technical, operational and managerial resources to provide reliable and quality services to Oregon customers after the merger.[17]

[16] The service quality levels in North Carolina rebounded from the conversion issues by September 2010 and continue today to be at levels produced before conversion. CTL/1000, Schaefer/1-6; see also, Tr., 12/16/10, Vol. 1, pp. 119-126.

[17] Other state commissions approving the Transaction have likewise concluded that the Merged Company will have significant technical and managerial resources and experience to enable it to continue providing reliable, quality telecommunications services to its customers. See e.g., Utah Order, p. 7; see also Minnesota ALJ Recommendation, ¶ 148.

B. The Transaction is in the Public Interest for Retail Customers

1. The Company's operational and financial strength will benefit retail customers

The financial, operational, and managerial aspects of the merger, together with the commitments outlined in the Staff/CUB Stipulation, ensure that there will be no harm to Oregon customers and that the Transaction will, in addition, provide important benefits for retail customers. First, the merger will create a financially strong company that will benefit customers through stability, a more diverse product mix, and the enhanced ability to deploy advanced services, such as higher-speed broadband and IPTV. CTL/100, Jones/9-14. Ms. Peppler echoes Mr. Jones' testimony stating that the Merged Company will be "stronger and more stable from a financial perspective than either entity would be on its own," which will allow the combined entity to "invest in a network capable of providing enhanced products and services." Qwest/1, Peppler/10-11. Further, the Merged Companies can optimize their network capacity, which will help the Merged Company to deploy "additional bandwidth-intensive services such as broadband service and advanced business products." Qwest/1, Peppler/12.

2. Retail commitments in the Staff/CUB Stipulation benefit customers

The Staff/CUB Stipulation further ensures no harm and identifiable benefits for Oregon residential and business retail customers through the Merging Companies' substantial broadband commitments, as well as the financial, service quality, safety, OSS, OTAP and affiliated interest commitments in the Stipulation.

a. Broadband commitment in the Staff/CUB Stipulation

CenturyLink is committing to spend $45 million on broadband deployment in CenturyLink and Qwest areas in Oregon over a five (5)-year period, beginning January 1, 2011. The Merged Company will spend twenty-five (25%) of this amount by December 31, 2012.

Staff/CUB Stipulation, Condition 13; see also Joint Testimony, p. 8. In addition, the Merged Companies have committed to provide a detailed broadband deployment plan, a report that identifies the previous calendar year's progress in broadband deployment, and other broadband reports. *Id.*, Condition 13; see also Joint Testimony, p. 9-10. Both Staff and CUB believe that the Merged Companies' broadband commitment ensures that CenturyLink will commit sufficient capital to maintain and enhance its Oregon network, to the benefit of Oregon consumers. *Id.* This broadband commitment alleviates any concerns that Staff previously had about the Merged Companies' financial capacity to invest in the Oregon telecommunications network and the sufficiency of funds dedicated to Oregon-specific investment. *Id.*, p. 9. Staff and CUB also believe that the Merging Companies' commitment to file comprehensive semi-annual reports detailing its broadband deployment progress will permit the Commission, Staff and CUB to monitor its progress in fulfilling its broadband commitment. *Id.*, p. 10.

The Merging Companies' *guarantee* of a minimum broadband investment level is an important public interest benefit that would not occur but for the commitment in the Stipulation, because the Merged Company is not required by law to provide any such commitment. See Tr., 12/16/10, Vol. 3, p. 210.[18] Moreover, other state commissions have looked favorably on the broadband commitments that the Merging Companies have made, recognizing that such commitments are substantial and provide benefits to their states and to customers in their states. See e.g., Utah Order, pp. 16-17; Iowa Order, pp. 56-57; Minnesota ALJ Recommendation, ¶¶ 99-101, 151; Colorado Order, ¶ 71; Montana Order, p. 32. The Utah Commission noted that, given the lack of state commission jurisdiction over broadband, the Merging Companies' broadband investment commitment is significant, especially because of the increased customer demand for

[18] Sprint argues that the $45 million broadband commitment was a "sleeves out of the vest" commitment. Sprint's Objections to [Staff/CUB] Stipulation, p. 3. See also Tr., 12/17/10, pp. 176-180 (Sprint cross-examination of Staff witness Michael Dougherty regarding the broadband commitment). However, as Mr. Dougherty testifies, the $45 million commitment was a "robust" new commitment, and, based on a per access line basis, no state comes close to what Oregon is receiving in terms of guaranteed investment. Tr., 12/17/10, pp. 176-180.

higher broadband capacity and higher bandwidth content, and the trend moving toward wireless lines and away from wirelines. Utah Order, p. 17.

b. Financial commitments in the Staff/CUB Stipulation

CenturyLink also commits to file quarterly financial reports for three years allowing the Commission to review the financial health of the company, and CenturyLink will provide post-merger EBITDA and credit rating agency reports. Staff/CUB Stipulation, Condition 19; Joint Testimony, p. 10-11. Further, CenturyLink will not seek recovery of any acquisition premium through Oregon intrastate regulated rates, nor will the company include in wholesale or retail rates any Transaction related costs. Staff/CUB Stipulation, Condition 17; Joint Testimony, pp. 10-11. This financial condition provides further assurances to the Commission that Oregon customers will not be impacted by merger Transaction costs in any relevant rate proceedings. Joint Testimony, pp. 10-11. Staff and CUB agree that these financial commitments are substantial, and that when viewed in light of the comprehensive nature of all of the commitments in the Stipulation, there will be adequate assurance the Transaction meets the public interest, no harm standard. Joint Testimony, p. 11.

c. Other retail commitments in the Staff/CUB Stipulation

The Merging Companies have made additional retail commitments that lead Staff and CUB to conclude the Stipulation causes no harm and thus is in the public interest, including:[19]

- General compliance with law or Oregon rules- Numerous conditions cover general compliance with law or Oregon rules in addition to providing consumer protection in the event of tariff, service or rate changes that may occur after the close of the Transaction.[20] These conditions confirm that the Commission will have ongoing

[19] This description is intended to give only a general description of the Staff/CUB Stipulation, and does not modify the terms of the stipulation in any way.

[20] For example, CenturyLink commits that it will not discontinue any Commission-regulated intrastate service offered by Qwest for *three years*; it will honor all promotional discount offers made by the pre-merger Qwest; it will not advocate for a higher cost of capital in rates as a result of the Transaction; and that no retail or wholesale rates will include any Transaction-related costs. Conditions 6, 14, 8, 9-10. In addition, customers will be notified of the merger and change of parent company, with OTAP customers receiving notice that there will be no impact to their OTAP credits. Condition 5. Further still, CenturyLink has agreed to follow the terms and conditions

access to documents, data, records, and information about material changes to the transaction, as well as other general matters, in order to allow the Commission and Staff to effectively monitor the performance and financial condition of CenturyLink. These conditions also provide an assurance that Oregon customers will not be impacted by changes in rates or services resulting from the Transaction. (Conditions 1-12, and 14, and Joint Testimony, pp. 5, 7-8, 24)

- Service quality- Several conditions address service quality standards. These include CenturyLink's commitments to (1) report retail service quality results (even though it is currently exempt from such requirements), (2) maintain current Commission minimum retail service quality standards, and be subject to potential penalties for failure to do so, (3) provide a status report on its switching infrastructure and any switch replacements, upgrades or retirements, as well as annual reports detailing Oregon regulated capital expenditures, and detailing comparisons of such expenditures to total system expenditures and to CenturyLink system-wide expenditures, and (4) provide Staff with detailed Form-477 data for all four Operating Companies for their service areas. (Conditions 20-23, and Joint Testimony, pp. 5, 11-12)

- Safety- Three conditions relate to safety, including compliance with all applicable federal and Oregon standards and requirements, commitments to honor CenturyLink's previous safety-related obligations, and a commitment to construct a physical communication link between Lincoln City and Newport. (Conditions 24-26, and Joint Testimony, pp. 6, 12-13)

- OSS- Condition 27 addresses Operating Support Systems ("OSS"), including commitments for the transition of retail operating systems, and specific sharing of information with the Commission and CLECs regarding the software and systems transitions. (Joint Testimony, pp. 6, 13-14)[21]

- Long distance- Condition 42 preserves rights that consumers have regarding notification of long distance carrier changes and provides a period of time for waiver of change charges. (Joint Testimony, pp. 6, 19)

- OTAP- Several conditions address Oregon Telephone Assistance Plan ("OTAP") reporting and communication commitments to ensure the preservation of the exchange of data. In addition, the conditions require continued CenturyLink participation on the OTAP advisory board to retain the current working relationship between the company and the OTAP staff. (Conditions 43-50, and Joint Testimony, pp. 6, 19)

- Affiliated Interests- Three conditions address affiliated interests, which assure the Commission that CenturyLink will comply with all applicable affiliated interest reporting requirements. (Conditions 51-53, and Joint Testimony, pp. 7, 19-20)

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of Qwest's Price Plan, and to give up certain rights in that Price Plan. Conditions 7, 11, 16, 18. Finally, CenturyLink has agreed to enhanced reporting of integration activities, expected cost savings, and anticipated impacts on Oregon operations and customers. Conditions 11-12. This set of conditions will provide adequate assurances to the Commission that Oregon customers will not be harmed by Transaction-related rate or service impacts, and that the Commission will have the information necessary to properly monitor and regulate CenturyLink after the Transaction is completed. See Joint Testimony, pp. 7-8.

[21] The commitments regarding Qwest wholesale OSS, as well as other wholesale conditions, are addressed in section I.C., below.

Accordingly, the numerous retail commitments by the Merging Companies ensure, beyond any doubt, that the Transaction will cause no harm, and is therefore in the public interest.

C. The Staff/CUB Stipulation and Integra and 360networks Settlements Ensure that the Transaction will Result in No Harm to Wholesale Customers

The Joint CLECs make numerous unsubstantiated allegations that the Merged Company will not be able to maintain wholesale services at the same level that CLECs currently receive from Qwest. See e.g., Joint CLECs/1, Ankum/23-36; Joint CLECs/8, Gates/24-29, 30-88; Joint CLECs/19, Gates/5-14; Joint CLECs/23, Gates/11-21.[22] These CLECs propose 30 detailed and wide-ranging conditions (Joint CLECs/8, Gates/110-105, and Ex. TG-8 (Ex. Joint CLECs/15)),[23] many to which the Merging Companies have agreed in the various stipulations in this case with other parties; commitments which the Merging Companies made even though they believe they are not necessary to meet the no harm standard. CTL/800, Hunsucker/3-4; generally, CTL/800, Hunsucker/7-12, 25-62, CTL/900, Hunsucker/10-14; see also Tr., 12/16/10, Vol. 3, pp. 232-234.

The Merging Companies made substantial efforts to address CLEC wholesale service concerns through numerous settlement conferences and other negotiations, each of which involved all parties to the case, including Staff, CUB and the CLECs. See Joint Testimony, p. 4; see also Tr., 12/16/10, Vol. 3, pp. 234, 262-263. As a result, since the Application was filed in May 2010 (and since the CLECs filed their testimony in August 2010), the Merging Companies have entered into three settlements that address CLEC issues and substantially strengthen protections for wholesale customers. Specifically, the Merging Companies settled with Integra

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[22] The CLECs originally comprising "the Joint CLECs" were tw telecom of oregon, llc ("tw telecom"), Integra Telecom of Oregon, Inc. ("Integra"), Advanced TelCom, Inc. ("ATI"), Electric Lightwave, LLC ("ELI"), Eschelon Telecom of Oregon, Inc. ("Eschelon"), Oregon Telecom, Inc. ("OTI"), and United Telecommunications Inc. d/b/a Unicom ("Unicom"), Covad Communications Company ("Covad"), Level 3 Communications, LLC ("Level 3"), and Charter Fiberlink OR–CCVII, LLC ("Charter"). As set forth above, Integra and its affiliates ATI, ELI, Eschelon, OTI and Unicom (collectively "Integra"), as well as 360networks, have settled with the Merging Companies and thus are no longer part of the Joint CLECs. See also Tr., 12/17/10, pp. 108-109.

[23] The original Joint CLECs' 30 proposed conditions encompassed a variety of issues, including operations support systems, wholesale service quality, wholesale customer support, wholesale service availability, wholesale rate stability and compliance. See Ex. Joint CLECs/16.

360networks and Staff and CUB. The Staff/CUB Stipulation includes 14 comprehensive wholesale commitments. Staff/CUB Stipulation, Conditions 27 (wholesale OSS), 28-41; Joint Testimony, pp. 6, 14-18. These settlement conditions exceed the Commission's no harm standard, and thus no further conditions should be ordered.[24]

1. The Staff, CUB, Integra and 360networks settlements address numerous wholesale issues, including those raised by the Joint CLECs

The Integra Settlement, the 360networks Settlement, and the wholesale commitments in the Staff/CUB Stipulation (Conditions 27-41) provide benefits and protections to CLECs and to the public interest generally. The stipulations provide wholesale protections regarding Operational Support Systems ("OSS"), interconnection agreement ("ICA") negotiations, ICA extensions and opt-ins, rates and tariff changes, the continuation of the Qwest Performance Assurance Plan ("PAP" or "QPAP"), the Change Management Process ("CMP"), rate and service stability, and the continued applicability of FCC obligations and Qwest's status as a Bell Operating Company ("BOC"). Conditions 27, 28-41.

Specifically, the stipulations on wholesale issues address the following:[25]

- **OSS** – The Merging Companies have agreed to retain the Qwest wholesale OSS in the Qwest service territory for ***two years*** from the date of merger close, or until *July 1, 2013*, whichever is later, and thereafter provide wholesale customers with OSS wholesale service quality that is not less than, and is functionally equivalent to, the OSS wholesale service quality provided by Qwest prior to the merger close. Further, the stipulations provide numerous protections for CLECs and CMRS carriers in the event the Merged Company does decide to replace or integrate the Qwest wholesale OSS, including a *270-day notice period*, the submission of a detailed plan, and continued applicability of the Qwest Change Management Process. If any Qwest OSS interface is retired or replaced, CLEC and CMRS carriers are assured of *joint testing* for operational acceptance of any new interface, and detailed provisions governing this joint testing and acceptance process are set forth in the Stipulation. (Attachment B, Condition 27 (OSS) and Attachment C [Integra Settlement], Condition ¶ B.12) (addresses Joint CLEC Condition 12 and 16).

[24] It should also be noted that no other state that has approved the merger has adopted the additional conditions sought by the Non-Settling CLECs. See e.g., Minnesota ALJ Recommendation, ¶¶ 173, 195, 206, 230, 245, 251, 257, 263, 272, 278, 282, 284, 287, 290, 293, 302, 305, 309, 313, 316; Utah Order, pp. 3-4, 9-10; Colorado Order, ¶¶ 58, 60, 74-78.

[25] As stated previously, this description is intended to give only a general description of the Staff/CUB Stipulation, and the Integra settlement, and does not modify the terms of the stipulation or settlement in any way.

- **Contractual agreements** – The Merging Companies have agreed to not terminate any existing Qwest ICAs for ***three years***, ensuring a consistent operational relationship between Qwest Corporation and all CLECs and CMRS carriers in Oregon for that time period with respect to interconnection and the mutual exchange of traffic. The Merging Companies have made a similar guarantee for a period of ***18 months*** for Qwest Wholesale and Commercial agreements, and ***12 months*** for Qwest intrastate wholesale tariffs. Further, CLECs or CMRS carriers may use their existing Oregon ICA as the basis for negotiating the initial successor ICA with Qwest. This condition also allows a CLEC or CMRS carrier to adopt any existing Oregon Qwest ICA whose initial term has expired and is in "extended" status, and also assures any CLEC or CMRS carrier that is currently negotiating an ICA that the Merged Company will not seek to restart negotiations based on a new template ICA. The Integra Settlement also extends wholesale agreements, including interconnection, commercial, other wholesale agreements over the Merging Companies contend the Commission does not have jurisdiction, and term and voume discount plans contained in existing tariffs and individual case basis contracts. (Attachment B, Condition 28 and Attachment C, Condition ¶ B.2) (addresses Joint CLEC Conditions 1, 6, 10, and 21).

- **Rate and service stability** – The Merging Companies have agreed to not increase the rates in the Qwest ICAs for a *three-year period* and to not assess fees for certain functions that are not currently assessed in the Qwest ILEC service territory without Commission approval. The Merging Companies will continue to provide intrastate transit service in the Qwest ILEC service territory subject to the same rates, terms and conditions for a *three-year period.* (Attachment B, Conditions 29-30 and Attachment C, Condition ¶ B.4) (addresses Joint CLEC Conditions 7 and 24)

- **Wholesale service quality** – In the legacy Qwest ILEC service territory, the Merging Companies have agreed to comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services. The Merging Companies also agree to maintain the Qwest Performance Assurance Plan ("QPAP") and Performance Indicator Definition ("PID") without reduction or modification for *18 months*, and will not seek to eliminate or withdraw the QPAP for at least *three years*. In addition, the Merging Companies will provide measurement standards to compare pre- and post-merger performance, and will conduct root cause analysis on service performance deficiencies and develop proposals to remedy such deficiencies. The Merging Companies have also committed to continue to provide monthly wholesale performance reports to Staff, and to provide the Staff with comparison data for both the legacy Qwest ILEC service territory and the legacy Embarq ILEC service territory. (Attachment B, Conditions 34-35 and Attachment C, Condition ¶ B.1) (addresses Joint CLECs' Conditions 2 and 3)

- **Merger costs** – The Merging Companies will not seek to recover through wholesale service rates or other fees paid by CLECs the costs associated with the merger. (Attachment B, Condition 10 and Attachment C, Condition ¶ B.1) (addresses Joint CLEC Conditions 2 and 3)

- **Service provisioning intervals** – The Merging Companies agree to maintain service provisioning intervals in Qwest ILEC service territory, even where a contract is silent on the issues. (Attachment B, Condition 33 and Attachment C, Condition ¶ B.5) (addresses Joint CLEC Condition 11)

- **Sections 251/252 and rural exemptions** – All ILEC affiliates of the Merging Companies will comply with the requirements of Sections 251 and 252, and in the legacy Qwest ILEC service territory, the Merging Companies will not seek to avoid any obligations based on rural exemption provisions. (Attachment B, Condition 31 and Attachment C, Condition ¶ B.6) (addresses Joint CLEC Condition 12, 21, and 22)

- **BOC status and §§ 271/272** – Qwest will continue to be classified as a BOC and subject to BOC requirements, including Sections 271 and 272 (Attachment B, Condition 32 and Attachment C, Condition ¶ B.7) (addresses Joint CLEC Condition 13)

- **Wholesale resources** – The Merged Company will make available to each wholesale carrier in the legacy Qwest ILEC service territory the types and level of data, information, and assistance that Qwest currently makes available concerning Qwest's wholesale OSS functions and wholesale business practices and procedures. The Merged Companies also commit to wholesale Staff levels. (Attachment B, Condition 36 and Attachment C, ¶ B.11) (addresses Joint CLEC Condition 18)

- **Escalation and contact information** – The Merged Company will provide to wholesale carriers up-to-date escalation information, contact lists, and account manager information, and will ensure that wholesale and CLEC operations are sufficiently staffed and supported by employees who are trained on Qwest and CenturyLink systems and processes. (Attachment B, Conditions 37 and 38 and Attachment C, Condition ¶ B.9) (addresses Joint CLEC Condition 15)

- **Non-impairment** – Qwest will not seek to reclassify as "non-impaired" any Qwest wire centers for before June 1, 2012. (Attachment B, Condition 39 and Attachment C, Condition ¶ B.8) (addresses Joint CLEC Condition 14)

- **Line conditioning** – Subject to Commission approval of the settlement agreement between CenturyLink, Qwest and Integra, the line conditioning amendment (including all rates, terms and conditions related to Condition 14 of the Integra Settlement) will be made available to any CLEC requesting the line conditioning amendment in the legacy Qwest ILEC service territory. (Attachment B, Condition 40; see Attachment C, Condition ¶ B.14) (addresses Joint CLEC Condition 27)

- **Network engineering and compliance** – The Merged Company will engineer and maintain its network in compliance with federal and state law and applicable ICAs. (Attachment B, Condition 41 and Attachment C, Condition ¶ B.13) (addresses Joint CLEC Condition 26)

- The Integra Settlement will be made available to any requesting carrier. (Attachment C., ¶ B.15)

2. The Staff/CUB Stipulation assures that CLECs will not be harmed, and is therefore in the public interest

As noted by Mr. Dougherty, the Staff/CUB Stipulation is a "strong document" and is clearly in the public interest. Tr., 12/17/10, pp. 170-175, 184-188, 197-198; see also Tr., 12/16/10, Vol. 3, pp. 232-233 (Mr. Hunsucker discussing the benefits of the Staff/CUB Stipulation to wholesale customers). In addition, as Staff and CUB conclude, the wholesale service commitments in the Staff/CUB Stipulation, coupled with CenturyLink's commitments related to the transition of wholesale systems, will assure the Commission that Oregon wholesale customers will not be harmed as a result of the Transaction. These wholesale conditions and commitments adequately address Staff's previous wholesale concerns regarding the Transaction. Joint Testimony, pp. 14-15, 18, 23, 24. Accordingly, the Staff/CUB Stipulation does no harm,and, in fact benefits wholesale customers, and is in the public interest. See also Tr., 12/17/10, pp. 170-175, 184-187, 197-198 (Mr. Dougherty testifying about the Staff/CUB Stipulation on wholesale issues being in the public interest).

3. The Integra and 360network settlements are also in the public interest

The Merging Companies settled with Integra, an original member of the Joint CLECs and the most vocal CLEC opponent of this merger, a month before the hearing.[26] This settlement (Attachment C) covers a broad range of issues, as detailed above addressing Integra's concerns and resulting in Integra's support for approval of the merger without the remaining Joint CLECs' proposed conditions. See also Tr., 12/17/10, pp. 68-69, 83 (testimony of Douglas Denney of Integra). The Integra Settlement is a comprehensive settlement on wholesale issues and was reached with a large, sophisticated CLEC with operations across the country. The Minnesota

[26] Integra was the first intervenor in this proceeding. As part of the Joint CLECs, Integra filed almost 400 pages of testimony, and about 70 pages of its own separate testimony (not part of the Joint CLECs), including more than 30 exhibits. This was more than any other CLEC intervenor. In addition, Integra propounded more than 180 data requests, not including subparts, more than all other CLECs combined.

ALJ agreed, finding that "the terms of the Integra Settlement address a large number of concerns expressed by the Intervenors in this matter and will provide competing carriers with significant levels of certainty and stability." Minnesota ALJ Recommendation, ¶ 173; see also ¶¶ 230, 263, 272, 309. See also Colorado Order, ¶ 76 (finding that that the Integra Settlement provides a reasonable level of protections to the CLECs, and thus declining to adopt additional conditions); Utah Order, p. 9 (noting, in rejecting the requests for additional conditions, that the settlements give sufficient certainty to CLECs). Moreover, the Integra Settlement provides that its terms will be made available to any requesting carrier. Integra now supports the Transaction, stating "that [with the terms of its Settlement Agreement] the Transaction is in the public interest and should be approved by the FCC and state commissions." Integra Settlement, Attachment C, ¶ C.[27] The Integra Settlement, coupled with the 360networks Settlement[28] (and the Staff/CUB Stipulation on wholesale issues), fully address any reasonable concerns any party (including the Non-Settling CLECs) may have regarding wholesale matters, and ensures that wholesale customers will not be harmed as a result of the Transaction. The Merging Companies therefore respectfully request that the Commission approve the Integra and 360networks settlements.

4. Any distinctions among CLECs do not justify additional conditions

In their second supplemental testimony, the Non-Settling CLECs attempts to argue that the Integra Settlement is not sufficient, and "does not go far enough," because these CLECs allegedly have different "business plans" or "business models" than Integra. Thus, they argue the Commission should adopt additional conditions beyond those in the Staff/CUB Stipulation and the Integra and 360networks settlements. Testimony regarding Stipulation of Timothy J. Gates, Ex.

[27] The Integra Settlement was reached and executed on November 6, 2010. CenturyLink filed it with the Commission on November 9, 2010. Supporting testimony for the Integra Settlement was provided by Integra witness Douglas Denney. Tr., 12/17/10, pp. 68-69.

[28] The 360networks Settlement addresses how 360networks' interconnection agreements with Qwest will be handled after the merger.

Joint CLECs/23, Gates/8-11. However, regardless whether there is any convincing evidence distinguishing the various CLECs' operations (which there is not), the additional conditions that the Non-Settling CLECs continue to advocate are simply unreasonable and unnecessary.

D. Comparisons to Prior Telecommunications Transactions are Flawed

Some intervenor witnesses attempted to compare the Transaction to certain "troubled" telecommunications transactions such as the Fairpoint and Hawaiian Telecom transactions, alleging that these transactions provide evidence that implementation of this merger might possibly create service problems.[29] Importantly, however, no witness offered any evidence demonstrating that service quality problems will occur in *this* Transaction. Instead, all attempts to compare the Transaction to the "troubled" transactions are based on pure speculation and conjecture, and they fail to take into consideration the very different structure and financing of this transaction compared to the other transactions they cite.

Furthermore, the Merging Companies effectively distinguished this Transaction from the troubled transactions. The differences include, most notably, that (1) CenturyLink has extensive experience through its acquisition and integration of numerous other companies' operations, (2) the other troubled transactions largely involved one company acquiring access lines of another company, instead of acquiring the entire company, its systems, its employees, and knowledge base, as here, (3) the companies involved in the troubled transactions had to build back-office software from scratch (i.e., OSS) that managed key operational functions, and (4) there is no pressure for CenturyLink to "flash cut" to a new OSS. Rebuttal Testimony of John Jones, Ex. CTL/500, Jones/13-21; see also Rebuttal Testimony of Michael R. Hunsucker, Ex. CTL/800, Hunsucker/10-12. In addition, unlike the troubled transactions, the Transaction is a stock-for-stock merger with no incremental debt, and does not involve complex financial

engineering. Rebuttal Testimony of Clay Bailey, Ex. CTL/600, Bailey/6-13; CTL/500, Jones/15-16. Finally, as discussed *infra*, at section II., the Merging Companies have made numerous financial and wholesale commitments in their stipulations and settlements with Staff, CUB, Integra, and other settling parties to allay any concerns raised regarding any financial or wholesale service quality issues.

II. THERE IS NO BASIS FOR THE CLECs' "ADDITIONAL" CONDITIONS

The Merging Companies have managed to reach a settlement with either the state utility commission Staff or relevant consumer counsel (or both, where applicable) in every Qwest-region state that is reviewing this merger.[30] Indeed, in no state have any of the Non-Settling CLECs' remaining proposed additional conditions been included in those settlement agreements.

A. The CLECs Continue to Seek "Additional" Unnecessary Conditions

The Non-Settling CLECs' argue that the Staff/CUB Stipulation is not sufficient. Ex. Joint CLECs/23; Testimony of Billy H. Pruitt regarding Staff's Stipulation, Ex. Charter/14.[31] However, the Staff/CUB Stipulation, coupled with the Integra and 360networks Settlements, are more than sufficient to address any CLEC concerns related to the merger, and any further conditions would be unreasonable and inappropriate. See e.g., Joint Testimony, pp. 14-15, 18, 23, 24; see also, pp. 13-14, 23 (discussing OSS commitment), 15 (discussing ICA/contractual commitments), 16 (discussing rate and service stability commitment), 16-17 (wholesale service quality commitments); see also Tr., 12/16/10, Vol. 3, pp. 232-235, 264-265 (hearing testimony of Michael R. Hunsucker); Tr., 12/17/10, pp. 170-175, 184-188, 197-198 (hearing testimony of

[30] The only exception is Nebraska, where the merger review process could be characterized as involving more of a "legislative" hearing process. In any event, as noted above, the Nebraska Commission approved the merger without any of the additional conditions that the Non-Settling CLECs request.

[31] Sprint did not file testimony on the Staff/CUB Stipulation, but instead filed "objections" to it, and raised many of these same issues. See Sprint Objections, p. 2 (summary). The only discrete conditions that Sprint proposed that the Joint CLECs or Charter had not already addressed were its continued advocacy about "access rates" (*id.*, pp. 8-10) and that the Staff/CUB Stipulation did not have a condition "on enforcement of the merger conditions" (*id.*, pp. 10-11).

Michael Dougherty); Tr., 12/17/10, p. 149 (Mr. Gates admitting that Staff has no economic self-interests). In short, the CLECs completely failed to demonstrate that additional conditions, beyond those in the Staff/CUB Stipulation and the Integra Settlement, are necessary.

For example, the Non-Settling CLECs argue for the following conditions: (1) increasing the length of time the Merging Companies should commit to use Qwest's existing OSS from two to three years (Joint CLECs/23, Gates/11-17), (2) third-party testing for OSS (Joint CLECs/23, Gates/17-20), (3) increasing the length of time the Merging Companies have committed to extend non-Section 251 commercial agreements, wholesale agreements and tariffs (including interstate tariffs) to three years after the close of the merger, but also to include any non-UNE agreements and tariffs that were in place as of the May 2010 merger filing (Joint CLECs/23, Gates/21-40), (4) the inclusion of the "Additional" Performance Assurance Plan ("APAP"), even though such a proposal tailored for Oregon was not supported by the APAP's author, Douglas Denney of Integra (Joint CLECs/23, Gates/40-45), (5) a longer moratorium for Qwest seeking "non-impairment" for wire centers (Joint CLECs/23, Gates/45-46), and (6) the adoption of a "most favored state" ("MFS") provision (Joint CLECs/23, Gates/46-50).[32]

In addition, Charter argues for (1) additional OSS requirements (Charter/14, Pruitt/8-9), (2) "porting" of interconnection agreements ("ICAs") across state lines, or across operating companies (Charter/14, Pruitt/10-12), (3) a requirement for a single point of interconnection per LATA for CenturyLink operating companies (Charter/14, Pruitt/12-13), (4) a requirement that CenturyLink "waive" its federal "rural exemption" (Charter/14, Pruitt/14-16), and (5) certain commitments regarding directory listings and directory assistance (Charter/14, Pruitt/16-17).

Finally, although Level 3 did not file testimony regarding the Staff/CUB Stipulation, it raised numerous additional proposed conditions, including conditions related to intercarrier

[32] The Merging Companies discuss the MFS issue at Section IV., *infra*.

compensation issues such as ISP-bound traffic and Virtual NXX ("VNXX") traffic, interconnection configuration issues, Qwest's Statement of Generally Available Terms and Conditions ("SGAT"), affiliate contracts, billing disputes, and "8YY" homing issues. Level 3/100.

However, for the reasons set forth below, none of these proposed additional conditions have merit, or belong in this merger approval proceeding. The Commission should therefore reject each of these "additional" proposed conditions.

B. There is No Need for the CLECs' Additional Proposed Conditions

The Utah Commission's reasons for rejecting additional conditions such as the ones proposed by the Non-Settling CLECs in this case are compelling:

> Based on the evidence submitted to the Commission, and based on the proposed settlements- especially the Division and Integra settlements, the Commission finds the merger is in the public interest. The Commission declines to impose any of the conditions recommended by McLeodUSA and Level 3 for reasons explained below. While McLeodUSA and Level 3 understandably defend their interests, they minimize many of the concessions made by the Joint Applicants, and also the significant benefits gained by the individual settlements for various stakeholders. The Commission's duty is to protect all the public interest, and "the ultimate criterion against which all relevant factors are to be evaluated is the 'public good and convenience' not the existing carriers' convenience and necessity." [Citations omitted.] The Commission finds the settlement agreements strike an appropriate balance between the interests of the Joint Applicants, the interests of their wholesale customers (CLECs), and the interests of retail customers in Utah. Therefore, no other conditions other than those contained in the individual settlements will be imposed. Utah Order, pp. 3-4.

See also Colorado Order, ¶¶ 74-76 (declining to adopt any additional conditions and noting that the additional proposed conditions are ICA-related terms and conditions that have been the subject of disputes between CLECs and Qwest and are more appropriate for ICA arbitrations or complaints and not in a merger docket, and that the Integra settlement provides sufficient protections). The Merging Companies also note that they have obtained approval of the Transaction from the Iowa Utilities Board and the Nebraska and Montana Commissions, and none of those commissions adopted any of the Non-Settling CLECs' proposed conditions either.

The following discussion addresses the specific additional conditions that the Non-Settling CLECs seek, and the reasons why the Commission should reject them.

1. The OSS commitments are sufficient to ensure no harm to wholesale customers

The Non-Settling CLECs speculate a great deal about potential post-merger harms to OSS; however, the major premise underlying those allegations is the unsupported assertion that CenturyLink plans to promptly uproot Qwest's OSS in Qwest territories and replace it with a CenturyLink OSS. But the Staff/CUB Stipulation, as well as the Integra Settlement, belie the Non-Settling CLECs' concerns – the Merging Companies have committed to (a) maintain the existing Qwest OSS for at least two years; (b) provide detailed notification 270 days in advance of replacing or integrating any OSS Systems; (c) follow the Qwest Change Management Process ("CMP") in connection with any such change; (d) provide notification, joint testing, and training before replacing an OSS interface; and (e) ensure that any changes to billing systems comply with interconnection agreements and are compliant with Ordering and Billing Forum requirements. Attachment B, Staff Condition 27; Attachment C, Integra Settlement, ¶ B.12.[33]

The Non-Settling CLECs' conjecture about potential OSS degradation in Qwest service areas also ignores the key fact that CenturyLink is not simply acquiring access lines from Qwest, but rather, is acquiring the *entire company*. CTL/800, Hunsucker/10. CenturyLink is acquiring Qwest's existing systems, personnel, documented policies, experiences, and processes, and thus it is not under any immediate pressure to make alterations to OSS in Qwest areas. CTL/800, Hunsucker/11. In addition, Qwest's OSS experience and knowledge will reside in the post-merger company, especially given that the Merged Company has appointed a Qwest employee as Vice

[33] Further, beyond these contractual commitments, CenturyLink has repeatedly stated that: (1) it has made no decisions on what OSS it will employ in the long term, (2) it will make a careful, structured examination of both companies' systems and features and draw on the best of both companies' capabilities in order to employ industry leading OSS for the long term, (3) it is committed to giving CLEC customers ample notice of any changes, and (4) it will involve CLEC customers in testing of OSS changes. See e.g., CTL/800, Hunsucker/4, 12, 15-16, 23-24, 50-51.

President of Wholesale Operations, and has named other key Qwest Wholesale Department employees in recent "Tier 3" announcements. CTL/800, Hunsucker/3-4; see also Tr., 12/16/10. Vol. 1, p. 41 (Mr. Jones' testimony that the Merging companies will use both Qwest and CenturyLink employees to staff the company properly). CenturyLink has also repeatedly acknowledged that Qwest's OSS will continue to be subject to Section 271 obligations applicable in Qwest territories. CTL/400, Hunsucker/12-13; CTL/800, Hunsucker/3.[34]

Furthermore, while no decisions have been made regarding the OSS to be employed in the future, even if the Merged Company were to adopt all or portions of CenturyLink's OSS at some later date, there is nothing in the record demonstrating that the quality of service would degrade. Indeed, CenturyLink has committed to provide CLECs with "a level of wholesale service quality that is not materially less than that provided by Qwest prior to the Merger Closing date, including support, data, functionality, performance, electronic flow through, and electronic bonding." Attachment C, Integra Settlement, ¶ B.12. In fact, contrary to CLECs' assertions, CenturyLink's OSS is a robust, well-tested system that serves both rural and urban areas. As Mr. Viveros testified, CenturyLink processed approximately one-million LSRs and ASRs in 2010, compared to Qwest's 1.8 million. See Tr., 12/17/10, p. 88. The record simply does not support the Non-Settling CLECs' speculation about degradation of OSS *if* the Qwest OSS is changed.

The Non-Settling CLECs also argue that the Merged Company should retain the existing Qwest OSS for at least three years, compared to the minimum two years agreed in the Integra Settlement and Staff/CUB Stipulation. This is simply not reasonable, goes far beyond what CLECs with vested commercial interests (Integra and 360networks) and parties with the duty to protect the public interest (like Staff), have found to be sufficient and reasonable, and exceeds

[34] And, in fact, CenturyLink has specifically made this commitment in the Integra Settlement, Condition ¶ B.7.

the Commission standard for approval.[35] As noted, none of the commissions that have addressed this proposed condition have imposed an OSS extension beyond the two-year commitment that is part of the Integra and Staff/CUB settlements.

2. The commitments for non-§ 251 agreements and tariffs are sufficient

The Non-Settling CLECs also have sought conditions to ensure not only that Qwest's current ICAs will remain in place for three years, but also that, other wholesale and commercial agreements, and tariffs will remain in place for three years. Joint CLECs/23, Gates/21-40; Joint CLECs/1, Ankum/63-73. This condition is reflected in the Non-Settling CLECs' proposed Condition 6. There is no evidentiary basis for extension of commercial agreements, wholesale agreements, or tariffs beyond the timeframe outlined in the Integra and Staff/CUB settlements. Although the language of the Integra Settlement is not identical to the Non-Settling CLECs' proposed condition, these settlement provisions show that the Applicants made substantial concessions to address CLEC concerns. The Merging Companies have agreed to extend the term of all Qwest ICAs for a period of 36 months. See Staff/CUB Stipulation, Condition 28.a; Integra Settlement, ¶ B.3a. They have agreed to extend the terms for all Qwest wholesale and commercial agreements (which involve services that are not necessarily governed by the Act or that this Commission does not regulate) for 18 months. Condition 28.b. and c.; ¶ B.3.b. and c. And, finally, the Merging Companies have agreed not to change the terms of Qwest's wholesale tariffs for at least 12 months. Condition 28.b. and c.; ¶ B.3.d. In making these commitments, the Merging Companies have agreed to forego substantial rights that would remain in place

[35] Likewise, any argument that CenturyLink lacks experience with wholesale orders at commercial volumes similar to Qwest wholesale order volume would be utterly without merit. As Mr. Hunsucker testified, CenturyLink has almost 2,000 interconnection and resale agreements in place today and, like Qwest, its wholesale operations are on a national basis and across a national scale. Indeed, CenturyLink's wholesale department is on pace to process one million orders through its OSS, compared to 1.8 million Qwest orders. Thus, the Merging Companies have shown that CenturyLink already has commercial wholesale volumes and thus will be able to integrate wholesale operations with Qwest wholesale operations. See e.g., Tr., 12/16/10, Vol. 3, p. 260.

notwithstanding the merger. Additional or greater commitments would go far beyond what is required under the no harm standard and should not be required.

The Non-Settling CLECs argue that the Merging Companies' commitment to not make changes to applicable commercial agreements for 18 months does not go far enough, especially based on their "business models." Thus, they argue for a three-year extension for commercial agreements and wholesale tariff terms, including inter*state tariffs, and argue that not providing the same 36-month extension as for ICAs is somehow "discriminatory." Joint CLECs/23, Gates/28-31. However, there is no credible evidence to support additional extensions.

The Merging Companies' commitment regarding non-Section 251 commercial agreements in the Staff/CUB Stipulation (Condition 28b. and c.) and the Integra Settlement (¶ 3b.) is more than reasonable, particularly given that such agreements are not required under the Telecommunications Act and are not within the Commission's jurisdiction.[36] The FCC determined that when CLECs are not impaired without access to an element, it need not be provided based on Section 251 at Total Element Long Run Incremental Cost ("TELRIC")-based rates pursuant to an interconnection agreement. The FCC does not require ILECs to provide these network elements and services, recognizing that CLECs have the ability to either self-provision or obtain these elements from alternative sources or other providers. As Mr. Brigham noted, by delisting these services and elements as "UNEs," the FCC in the *TRRO* relied on its finding that for such services and elements, CLECs have competitive alternatives. See e.g., *TRRO*, ¶ 2; Qwest/3, Brigham/26-28, and fn. 60. Thus, under the law, carriers' reliance on Qwest commercial agreements is a matter of choice, and any "discrimination" argument necessarily fails. Tr.,

[36] Many (if not most) commercial agreements are not even legally required under Section 271 of the Telecommunications Act. They are certainly not required under Sections 251 or 252; otherwise, they would be interconnection agreements subject to those sections.

12/16/10, Vol. 3, p. 234 (Mr. Hunsucker testifying that a CLEC makes a "choice" to enter the market and use non-regulated non-UNE contracts).[37]

In short, although the Non-Settling CLECs may assert that the commitments in the Staff/CUB Stipulation and Integra Settlement may "not go far enough," these Settlements represent more than a reasonable compromise. All other commissions that have addressed this issue agree. See e.g., Minnesota ALJ Recommendation, ¶ 195 (finding that non-Section 251 agreements arise under Section 271 or because Qwest has voluntarily offered them, and that most relate to Section 251(c) but have been found by the FCC to not meet the impairment standard, and thus providing different treatment for ICAs and for commercial agreements comports with the differing regulatory standards governing such agreements).

3. The Commission should reject Condition 4 regarding the APAP

The Non-Settling CLECs continue to advocate for Condition 4, regarding the Alternative Performance Assurance Plan ("APAP"). Joint CLECs/23, Gates/40-45. However, the APAP

[37] Likewise, Non-Settling CLEC witness Mr. Gates clearly mischaracterized the applicability of the FCC's Phoenix Forbearance Order ("Phoenix Order") in the CLECs' attempts to support their position that non-Section 251 wholesale service arrangements should be extended for 36 months. See e.g., *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113 (rel. June 22, 2010). However, as Qwest witness Robert Brigham explained in detail at the December 16, 2010 hearing, Mr. Gates erroneously argued that the Phoenix Order found that Qwest was the sole provider of those non-Section 251 (non-UNE) services. Tr., 12/16/10, Vol. 1, pp. 139-146. Mr. Gates' testimony mischaracterizes the scope of the findings in the Phoenix Order and conflates the loop and transport UNEs that were at issue with (apparently) all wholesale services used by CLECs. As Mr. Brigham explained at the hearing, Qwest filed a petition at the FCC specifically seeking relief from the unbundling obligations of Section 251(c)(3) of the Act, under Section 160(c) of the Act, which permits the FCC to forbear from imposing any regulation or provision of the Act. *Id.*

However, Mr. Gates' testimony uses loose and imprecise language to assert that the Phoenix Order somehow addressed the competitive landscape (in the Phoenix, Arizona metropolitan area) for the entire range of wholesale services relied on by CLECs, such as "QLSP, dark fiber, special access, etc." Joint CLECs/23, Gates/21-22, 25-26, 34. This kind of extrapolation, in support of the Non-Settling CLECs' demand for a 36-month extension for all non-Section 251 wholesale service arrangements, is simply wrong. Although the Phoenix Order made passing references to other carriers' reliance on Qwest's wholesale services (¶¶ 68, 87), these references are legally *dicta* and are irrelevant for the purposes of this proceeding. This is especially so because the analysis and findings in that FCC order are limited to the issue of whether there is sufficient actual or potential competition in the Phoenix area to grant Qwest forbearance from *Section 251(c)(3) loop and transport unbundling obligations*. The Phoenix Order, however, contains no analysis of *the degree* to which CLECs rely on *non-Section 251 wholesale services*, nor any analysis of the potential affect on competition if access to *non-Section 251 wholesale services* were limited, reduced or eliminated. Quite simply, the Phoenix Order does not provide support for the Non-Settling CLECs' argument for an extension of 36 months for all non-Section 251 wholesale service arrangements. Tr., 12/16/10, Vol. 1, pp. 139-146.

warrants no consideration in this proceeding. This is especially so because, although Mr. Gates briefly mentioned the APAP (Joint CLECs/8, Gates/130-132), it was developed, presented and supported by *Integra*, and its witness Douglas Denney, who no longer supports the APAP. See e.g., Tr., 12/16/10, Vol. 3, pp. 278-286; Tr., 12/17/10, pp. 68-69. Indeed, Integra has settled, and neither its Oregon testimony nor its Oregon APAP proposal were offered or entered into the record of this case. See Integra Settlement, ¶ B.2; see also Tr., 12/17/10, pp. 68-69 (Mr. Denney's testimony at the hearing, and discussions regarding the APAP). Because the APAP is no longer supported by its sponsor, the Commission should not even consider it.

Nevertheless, after substantial discussion and argument during the hearing, the parties compromised and agreed that the testimonies from Mr. Denney and Qwest witness Michael Williams from the Utah merger hearing could be submitted in the record. See Tr., 12/17/10, pp. 10-16, 205.[38] However, the Utah hearing testimony exposed fatal flaws in the APAP, including the fact that the Utah APAP does not measure service quality performance according to the only standard allowed under the Act, which is the nondiscrimination standard. Instead, the Utah APAP addresses "performance degradation" or "deterioration," which is irrelevant to the Merging Companies' statutory obligations. See Rebuttal Testimony of Michael Williams, Ex. Qwest/5, Williams/9; see also Utah Tr., pp. 184-187, 395-396, 582-583.[39] Even if performance degradation were an appropriate standard, Mr. Williams demonstrated in Utah that the APAP is unnecessary, inappropriate and unreasonable for numerous reasons, including that the APAP does not require any proof of ***merger-related*** harm to invoke penalties. Qwest/5, Williams/16-

[38] Accordingly, on January 7, 2011, the parties filed the pertinent pages of the transcripts of October 26, 2010 (testimony of Mr. Williams), October 27, 2010 (testimony of Mr. Denney) and December 4, 2010 (testimony of Mr. Williams) in the Utah hearing, as well as the prefiled testimony in Utah regarding the APAP. The Merging Companies also filed the Affidavit of Michael Williams, by the parties' agreement, in lieu of his live testimony. Mr. Williams' affidavit provided Oregon-specific data that showed that Qwest would be severely penalized under the APAP even if its post-merger service performance was exactly the same as its pre-merger service performance.

[39] No party chose to cross-examine Mr. Williams, and thus he was not present at the hearing. Tr., 12/17/10, pp. 10-16.

21; Utah Tr., pp. 184-189, 582-583.[40] Mr. Williams also showed, in pre-filed testimony and at two different sessions of the Utah hearing (October 26th and November 4th), and in his January 7, 2011 affidavit in this proceeding, that the APAP design is flawed and does not accurately measure performance degradation or tie payments to merger-related conduct. See Affidavit of Michael Williams of January 7, 2011 ("Williams Affidavit"), ¶¶ 4-8.[41]

Indeed, the APAP would result in a *windfall* to CLECs and does not accurately measure or penalize deterioration. As Mr. Williams testified, under Integra's APAP, the post-merger company would be liable for additional payments far beyond the current Oregon PAP, even if Qwest's service levels post-merger were ***exactly the same*** as pre-merger performance. In fact, if the APAP were implemented in Oregon, Qwest would be penalized about $1.4 million, or roughly **20 times** the amount that it would be assessed under the QPAP (about $70,000 in 2009) even if post-merger performance was *exactly the same* as pre-merger performance. Williams Affidavit, ¶¶ 4-8; see also Utah Tr., pp. 576-581, 582-583 (a seven-fold increase in Utah); see also Utah Tr., pp. 184-189 (same). This real-world example demonstrates the fundamental flaw in the APAP--that it is not tied to any sort of service quality performance degradation, much less *merger-related* degradation. As the Minnesota ALJ found regarding the APAP proposed there:

> The Joint Petitioners provided convincing evidence that the APAP has serious flaws and should not be adopted. Most significantly, they demonstrated that substantial payments would be due under the proposed APAP even if service levels remained exactly the same, resulting in a windfall to CLECs." Minnesota ALJ Recommendation, ¶ 271.

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[40] The CLECs' attempt to cram several years' worth of work on the original PAP into an APAP as part of this merger approval docket also raises very significant due process concerns. Qwest/5, Williams/9-23. These due process concerns are enhanced by the fact the APAP plan that was proposed in Oregon (Exhibit Integra/2) is not in the record, and there is no testimony in the record that describes it, or how it is supposed to work. See Tr., 12/17/10, pp. 10-16; see also Tr., 12/16/10, Vol. 3, pp. 278-286. Further, while certain Utah testimony regarding the APAP was admitted, this Commission was not present during the hearing in Utah on these issues.

[41] It was agreed at the December 17th session of the hearing that the Merging Companies could submit a brief affidavit by Mr. Williams with Oregon-specific data regarding the APAP proposal and the current Oregon QPAP in rebuttal to Mr. Gates' December 14th supplemental testimony. See Tr., 12/17/10, pp. 10-16, 76, 157-161, 206. The Merging Companies did so on January 7, 2011.

Moreover, the Non-Settling CLECs' concerns are already addressed by the QPAP, which was implemented to satisfy the objectives and governing legal standards of the Act. The Integra Settlement provides additional service quality protection by comparing post closing performance to the performance during the 12 months preceding closing. The Merging Companies agree that they will "meet or exceed the average wholesale performance provide by Qwest to CLEC" for at least three years after the closing date. If the post closing performance levels do not measure up under the methodology specified, then the merged company must conduct a root cause analysis and develop a proposal to remedy each deficiency, for CLEC review and comment. Unresolved performance deficiencies may be brought before the Commission for resolution. Integra Settlement, Attachment C, ¶ B.2.a.

The Minnesota ALJ recognized that the Integra Settlement provided such protections:

> The Administrative Law Judge also finds that the Integra Settlement Agreement provides an adequate mechanism to discourage any decline in wholesale service quality and is consistent with the public interest. The Integra Settlement provides for a comparison of service quality before and after the Transaction; requires the Merged Company to meet or exceed the average wholesale performance provided by Qwest to the CLEC for at least three years after the transaction closing date; and requires the Merged Company to conduct a root cause analysis if service deteriorates and develop proposals to remedy deficiencies within thirty days. A CLEC may also invoke the root cause procedure if the CLEC determines that the performance it received for a PID, product, or disaggregation is materially different post-merger. Minnesota ALJ Recommendation, ¶ 272.

Further, as the transcript of the Utah hearing makes clear, the APAP's author and original proponent, Integra's Mr. Denney, struggled to defend or justify the APAP, conceding:

- It took years and hundreds of people to come up with the original PAP (Utah Tr., pp. 379-386), unlike the cursory process applied to the APAP.
- The PAP is based on nondiscrimination standards under the Telecommunications Act, whereas the APAP concept is based on a different standard, "performance degradation," that is not in the Act. Utah Tr., pp. 386-387.
- Mr. Denney did not know of any state commission that had ever ordered a PAP based on a performance degradation standard. Utah Tr., pp. 387-390.
- Mr. Denney did not know of any state commission that had required a carrier to involuntarily accept a PAP with self-executing penalties. Utah Tr., pp. 391-392.

- The standard "performance degradation" is not even defined in the APAP itself. Utah Tr., pp. 395-396.
- There could be post-merger performance degradation that was *not the result of the merger*, but the APAP has no way to quantitatively or qualitatively measure only performance degradation that is the result of the merger. Utah Tr., pp. 396-401.
- Mr. Denney believed the APAP would have served its essential purpose even if Qwest had to pay penalties despite no post-merger performance degradation (i.e., post-merger performance stayed exactly the same as pre-merger performance). Utah Tr., pp. 401-405.
- Mr. Denney was not aware that the Utah PAP does not have a provision allowing a comparison of monthly service performance with average performance over multiple months. Utah Tr., pp. 407-411.
- The APAP measures a month's performance versus a year's performance, which can admittedly lead to wild fluctuations. Utah Tr., pp. 411-413.
- Only after APAP penalties exceed $3 million to one CLEC can Qwest seek to cap its liability, but even then, payments are not suspended. Utah Tr., pp. 419-422.
- Mr. Denney did not conduct any statistical analysis to determine whether Qwest would have to pay penalties under the APAP even if post-merger performance stayed the same as pre-merger performance. Utah Tr., pp. 424-427.
- APAP payments are in addition to PAP payments. Utah Tr., pp. 422-423, 428.

In short, Mr. Williams' testimony and Mr. Denney's significant admissions on cross-examination in Utah establish without a doubt that the APAP is a fatally flawed plan that is beyond repair, and has no place as a condition in a merger. Utah Tr., p. 583. It is no wonder that the Utah Commission, which had the entire APAP record entered as evidence of its proceeding, also rejected the APAP proposal.

Finally, forcing an additional penalty plan upon the Merged Companies amounts to an amendment of the existing QPAP, which was put into effect by a Commission order. Under ORS 756.568, an existing order may only be amended "upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610." This proceeding has not met those fundamental procedural requirements. Finally, the Commission's QPAP order, in Docket UM 823 (Qwest's Section 271 docket), and the APAP itself (Section 16), provides a periodic review mechanism that any CLEC could use to request

changes, if desired. See e.g., *Final Recommendation Report of the Commission*, Docket UM 823 (August 19, 2002), pp. 14-15; *Workshop 4, Part 2 Findings and Recommendation Report of the Commission and Procedural Ruling*, Docket UM 823 (June 3, 2002), pp. 78-80.

Accordingly, the Merging Companies respectfully submit that there is simply no basis, evidentiary or otherwise, for the adoption of Integra's now-abandoned APAP. The Commission should therefore reject this proposed condition out of hand.

4. The Commission should again reject Sprint's access rate arguments

Sprint continues to raise issues about access rates. However, the Commission has ruled at least three times that access charge issues and rates are not relevant to the merger. For example, in denying Sprint's motion to compel data requests on access rates, Judge Arlow ruled:

> Historically, this issue [access rates] has been addressed and was resolved many years ago by the requirement that ILECs place their competitive operations in fully separated subsidiaries with separate management, technical and financial staffs and operations, so that the access charges which they pay to their ILEC affiliate will have the same economic impact upon their operations as they would to an unaffiliated CLEC competitor. Evidence regarding the amount of these special and interstate access charges that the [Merging Companies'] ILECs charge each others' CLEC affiliates is therefore not "reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding. *Ruling, Motion Dismissed as Moot in Part and Denied in Part*, September 7, 2010, p. 4.

Judge Arlow later denied Sprint's motion to certify the denial of its motion to compel, again noting that "the requested data is unlikely to lead to admissible evidence because the level of access charges is not an appropriate issue to be considered within the scope of this proceeding." *Ruling, Motion to Certify Questions Denied*, November 3, 2010, p. 3. Judge Arlow thereafter reiterated that "the issue of access charges is beyond the scope of the instant proceeding," and therefore struck portions of Sprint's direct testimony because it "is outside the scope of this proceeding." *Conference Report and Ruling*, November 23, 2010, pp. 2-3. See also Tr., 12/16/10, Vol. 1, pp. 94-95.

The Commission should therefore reject any proposed condition regarding access rates, just as all other commissions reviewing this transaction and addressing these issues have done. See e.g., Minnesota ALJ Recommendation, ¶ 302 (finding that access rates are complex and industry-wide issues that are more appropriately considered in other dockets).

5. The Commission should reject all other non-settling CLEC conditions that are outside the scope of this docket

The Non-Settling CLECs also raise various substantive issues related to individual carrier disputes regarding rates or terms or conditions under which the parties interconnect. However, these issues are not affected by the proposed merger and are not appropriate for consideration here; rather, they are appropriately addressed through separate arbitration or complaint proceedings before the Commission. See e.g., CTL/800, Hunsucker/19, 28, 34-35, 40-41, 45, 47, 54-55, 60-61; Rebuttal Testimony of Christopher Viveros, Ex. Qwest/4, Viveros/7-8, 21-22, 28-31. Indeed, many of these issues, such as the requested "porting" of ICAs across states, the concerns about the federal "rural exemption," and Qwest's right to seek reclassification of wire centers as non-impaired pursuant to the *Triennial Review Remand Order* ("*TRRO*"), are federal issues for which this Commission does not have jurisdiction. Other issues, such as the treatment of VNXX traffic, have already been decided by this Commission. Qwest/4, Viveros/28-31. The remaining issues, if valid, can (and should) be appropriately decided in more-focused proceedings, based on full evidentiary records, and not in a merger approval proceeding. See Qwest/4, Viveros/7-8, 21-22.

Staff itself concluded that in order to find that the merger is in the public interest, it is not necessary for the Commission to address individual carrier issues, such as access charges, intercarrier compensation (e.g., VNXX and 8YY traffic, wholesale "surcharges," porting, directory listings, billing issues) and universal service support. See Reply Testimony of John Reynolds, Ex. Staff/300, Reynolds/12-13. This is especially so because issues like intercarrier

compensation and access charges are extremely broad and complex, and should not be addressed simply as a condition for approval of the Transaction. *Id.*[42]

More importantly, as Judge Arlow noted (in the context of Sprint access rate arguments, but not necessarily tied to such issues), there are innumerable facets to a large ILEC's operations that have competitive consequences (citing the Commission's Docket UM 823 docket Section 271 of the Act). *Ruling, Motion to Certify Questions Denied*, November 3, 2010, p. 4. Judge Arlow stated: "To try to examine each of them in the context of the merger proceeding would *unduly delay the proceedings, burden the record and prevent timely conclusion of the review* within the practical time limits such a transaction naturally imposes. *Id.* (Emphasis added.)[43]

In addition, under the Commission's interpretation of a 2003 Ninth Circuit Court of Appeals decision, any Commission order imposing generic interconnection requirements, at least with respect to interstate services, would exceed its authority. See *In the Matter of the Investigation into the Use of Virtual NPA/NXX Calling Patterns*, Docket No. UM 1058, Order No. 03-552, *citing Pacific Bell v. Pac-West Telecom, Inc.*, 325 F.3d 1114 (2003). The Commission found in that case that it did not need to reach a "local" versus "non-local" distinction, but the fact that the matter requested was a generic proceeding, rather an arbitration brought by a carrier, was dispositive of the Commission's inability to act. *Id*, at pp. 2-3. Thus, any decision in this case involving interconnection rights generically would appear to run afoul of the Order No. 03-352.

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[42] Mr. Reynolds describes in great detail why the Commission should not reduce CenturyLink's access rates as a condition for approval. Staff/300, Reynolds/11-13. He points out that attempting to do so here would likely have serious undesirable consequences. These serious undesirable consequences include a potentially large increase in the Oregon Exchange Carrier Association (OECA) pool access charges and a significant reduction in CenturyLink's rates could price them below costs. Staff/300, Reynolds/11-12. Mr. Reynolds continues that issues like Universal Service Support, intercarrier compensation, and access charges are extremely complex, and a solution that focuses only on the carriers involved in this Transaction is not appropriate. Staff/300, Reynolds/11, 13.

[43] Even a CLEC like Integra, by virtue of its settlement with the Merging Companies, has determined that conditions related to these issues are not necessary to satisfy its public interest concerns.

The Colorado and Utah Commissions and the Minnesota ALJ likewise agreed that these issues were not appropriate or necessary in those merger proceedings. See e.g., Minnesota ALJ Recommendation, ¶¶ 173, 195, 206, 230, 245, 251, 257, 263, 272, 278, 282, 284, 287, 290, 293, 302, 305, 309, 313, 316; Colorado Order, ¶¶ 74-75; Utah Order, pp. 9-10. Accordingly, these commissions rejected outright the Non-Settling CLECs' requests for additional conditions.

The following provides more detail regarding some of these additional issues:

a. <u>A longer moratorium on non-impairment filings is unnecessary</u>

One of the additional conditions that the Non-Settling CLECs propose involves additional restrictions in Qwest's right to make "non-impairment" filings under the FCC's *TRRO*. Joint CLECs/23, Gates/45-46. However, *TRRO* non-impairment filings are under federal, not state jurisdiction. The Commission has jurisdiction only to conduct the factual inquiry as delineated by the FCC, and does not have the jurisdiction to prohibit an ILEC from obtaining relief if the TRRO criteria are satisfied. The rules and guidelines that the FCC established in the *TRRO* are not subject to change simply because of an ILEC merger proceeding. Filings for non-impaired status are based on FCC-determined criteria that reflect the level of competition and the alternatives that are available to CLECs in a particular wire center, including purchasing services from another or self-provisioning facilities. Qwest/4, Viveros/11-13. The Merging Companies have already committed in the settlements not to seek non-impairment, pursuant to the *TRRO,* or forbearance under Section 160(c) of the Communications Act, before June 1, 2012. See Staff/CUB Stipulation, Condition 39. See also Minnesota ALJ Recommendation, ¶ 263 (finding this condition should not be required in this proceeding, that specific procedures were developed, with CLEC input, to govern the process for determining impairment of a wire center, and that the non-impairment moratorium until June 1, 2012 in the Integra Settlement provides CLECs with a reasonable

period of certainty). The Commission should reject the Non-Settling CLECs unreasonable request for a longer time period.

b. <u>There can be no "porting" of ICAs across states, or companies</u>

Several CLECs continue to argue that the Commission should require the Merged Company to allow the "porting" of ICAs across state lines, which would permit the CLECs to opt into an interconnection agreement that currently applies only to another state, or across operating companies (i.e., allowing a CLEC to "port" a Qwest ICA to a CenturyLink operating company). See e.g., Charter/14, Pruitt/10-12; Level 3/100, Thayer/3, 5, 6-7; Sprint/1, Frentrup/28-20. However, no CLEC cited to any legal authority for the Commission's jurisdiction to so impose such a condition and as a practical matter, this proposed condition does not make sense.

As Mr. Hunsucker pointed out, not all negotiated terms can be applied in all jurisdictions, or to Oregon specifically. If such a condition were imposed, many questions would arise regarding how state-specific terms from another jurisdiction would apply in Oregon. For example, other state commissions have made differing substantive rulings to address competitive conditions and intercarrier compensation requirements specific to those states. Importing terms from another state could allow CLECs to effectively ignore or inappropriately modify Oregon rulings on specific issues, such as VNXX. It is simply unreasonable and unnecessary to take terms directed to operations in another state and impose them on CenturyLink's ILEC operations in Oregon. CTL/800, Hunsucker/36-37.

Nor would it be rational, reasonable, or authorized by Section 251 for the Commission to order the Merged Company to allow competitors to cherry-pick the best ICA terms for themselves outside of the standard negotiation process merely because CenturyLink and Qwest are engaging in a merger. Conditions negotiated and agreed to in other states result from a myriad of different circumstances and considerations, and interconnection agreements are

negotiated by the respective parties and approved by the commissions with the expectation that such terms would apply only to those states. For example, the ICA terms of a rural Louisiana CenturyLink affiliate were negotiated with an understanding of Louisiana issues, not with any expectation that they would govern the provision of services by a post-merger Qwest affiliate as it operates as a BOC in Oregon.

Likewise, there is no basis to "port" an ICA from one operating company to another. After all, the Qwest operating companies have different operations and systems, as well as different regulatory requirements and a different legacy (e.g., BOC) status, than the existing CenturyLink operating companies. One good example would be a CLEC porting a Qwest agreement with Section 271 obligations (e.g., performance penalty plans and change management process) to a current CenturyLink company. Such a condition would allow a CLEC to place Section 271 obligations on CenturyLink's territories which are not required by law. CTL/800, Hunsucker/36, fn. 25.

Finally, even assuming some of the legal, logistical and practical questions of which ICA conditions could theoretically be applied to CenturyLink's ILECs in Oregon, there would still remain the fundamental problem of the lack of fairness in simply imposing such a broad condition under the facts of this particular Transaction and under the statutory standard of review. CTL/800, Hunsucker/36. The Commission should reject this proposed condition, as all other commissions have done. The Minnesota ALJ's reasoning is compelling:

> There are a number of practical, operational, and legal issues that would arise if this condition were imposed. Because CenturyLink and Qwest ICAs have been negotiated with the particular network and facilities in mind, it would be contrary to the expectations of the parties that an ICA could be imposed upon another entity's network and facilities. As a technical or logical matter, not all negotiated terms can be applied to all companies or in all jurisdictions. For example, Minnesota has a list of required unique terms that must be included in ICAs in order to obtain state approval. Many of those terms are not required in contracts from other states, and commissions in those states may have made differing substantive rulings. Following such an approach would also be contrary to the review and approval process conducted by the Commission. Moreover, importing terms

from another state could allow CLECs to effectively ignore or inappropriately modify Minnesota rulings on particular issues.

Minnesota ALJ Recommendation, ¶ 206; see also ¶ 207. The same holds true for Oregon. The Commission should reject this product condition.

c. No single point of interconnection requirement is necessary

Charter continues to seek a condition requiring the Merged Company to establish single points of interconnection per LATA. Charter/14, Pruitt/12, and CLEC Condition 28. However, this is a complex issue that has been addressed in a lengthy and complicated body of decisions. This proposed condition is merely an attempt to circumvent the Act's prescribed process for resolving the issue by having the Commission use this merger review as a vehicle to grant the CLECs a competitive advantage. Indeed, this is an issue that Charter has previously lost, yet it still seeks to impose this requirement in a docket having nothing to do with this issue. CTL/800, Hunsucker/45-46. CenturyLink is not a BOC and therefore does not have any such obligations. *Id.* Moreover, there are many technical reasons why even if CenturyLink were not exempt from such a requirement, there would be technically feasibility issues. CTL/800, Hunsucker/45-47. In short, this is not the appropriate forum in which to address an interconnection dispute. See Minnesota ALJ Recommendation, ¶ 251.

d. The "rural exemption" waiver condition is without merit

Another condition that some Non-Settling CLECs seek is for the Commission to require CenturyLink to "waive" the federal "rural exemption" defined in Section 251(f)(1) of the Act. Charter/1, Pruitt/35-40; Charter/14, Pruitt/15-16. However, that is clearly a federal issue under the Act, and the Commission does not have jurisdiction to require such a waiver absent the required findings under federal law. CTL/800, Hunsucker/39. Moreover, a finding to eliminate the rural exemption would require a bona fide request for interconnection, petitions to the Commission, a Commission review of all pertinent facts and mitigating factors, and a subsequent

finding that terminating the exemption is not unduly economically burdensome, is technically feasible, and is consistent with 47 USC 254. Those legal processes should not be circumvented. This proceeding is simply not the proper forum to address these issues. *Id*; Minnesota ALJ Recommendation, ¶ 245.

e. A directory listings/directory assistance condition is not needed

Yet another additional condition that Charter seeks is with respect to directory listings and directory assistance. Charter/1, Pruitt/27-31; Charter/14, Pruitt/16-17. However, as Mr. Hunsucker testified, this is really an issue where Charter is seeking to use CenturyLink's services without cost. Charter has an option to submit directory listings directly to the same third-party directory publishers and directory assistance providers that CenturyLink uses, without CenturyLink's involvement in the process or a CenturyLink assessed charge. Like other rate issues for specific services, this issue is best left to the Act's Section 251 negotiations and arbitration process that is specifically established for precisely this type of obligation. CTL/800, Hunsucker/45-46. A merger proceeding is not the appropriate forum in which to address such issues. Minnesota ALJ Recommendation, ¶ 257.

f. The Commission should reject all of Level 3's conditions

Finally, the Commission should reject all of Level 3's additional proposed conditions, relating to ISP-bound traffic (the Virtual NXX or VNXX issue), "8YY" homing, and billing disputes that have already been resolved (see Tr., 12/17/10, p. 87). See e.g., Minnesota ALJ Recommendation, ¶¶ 278-293 (rejecting all of Level 3's proposed conditions).

There is an entire body of VNXX precedent in Oregon from cases in which Level 3 was thoroughly involved. See Order Nos. 07-098 and 07-275 in Docket ARB 665 (arbitration involving Level 3 and Qwest, which Level 3 recently appealed, after more than three years, to federal court); see also Docket IC 14 (Level 3 filing and dismissing an interconnection

enforcement complaint against Qwest for compensation for VNXX traffic), Docket IC 15 (Qwest's pending complaint against Level 3 regarding compensation for VNXX traffic); see also Order No. 06-190 and 06-484 in Docket ARB 671 (Qwest/Universal arbitration). It is not appropriate to address such intercarrier compensation issues here, for the reasons that Mr. Hunsucker and Mr. Reynolds of Staff have outlined. See CTL/800, Hunsucker/60-61; Staff/300, Reynolds/12-13. Level 3 is simply trying to use this merger docket as a vehicle for the Commission to reverse its previous orders on VNXX traffic that are adverse to Level 3. See also Qwest/3, Viveros/28-31.

On the 8YY issue, CenturyLink's actions are not unlawful 8YY arbitrage. To the contrary, there are no laws or rules that require a carrier to use the closest tandem, without consideration of tandem ownership, for required database dips, as Level 3 asserts.[44] Moreover, given that this issue predates the CenturyTel acquisition of Embarq, it is instructive to note that Level 3 never raised the issue in that merger. CTL/800, Hunsucker/61-62. Finally, the 90-day billing issue dispute has been resolved. Tr., 12/17/10, p. 87.

Importantly, the Colorado and Utah Commissions and the Minnesota ALJ all explicitly rejected Level 3's requests for these additional conditions. For example, the Colorado Commission specifically found that "the additional conditions requested by Level 3 are ICA-related terms and conditions that previously have been the subject of disputes between the CLECs and Qwest," and found "that Level 3 may be attempting to use the merger docket to overturn previous Commission decisions in CLEC ICA arbitration cases." Colorado Order, ¶ 74.

[44] As Mr. Hunsucker points out, the genesis of this issue dates back to when Embarq was not a standalone ILEC but was a division of Sprint Corporation. When a Sprint wireless subscriber made a call to an 800 number, Sprint's management wanted the call to be dipped in the database owned by Sprint's Local entities. Some limited transport charges do apply to this transited traffic, but Level 3 is incorrect in asserting that Embarq charges for "all the transport from the point of picking up the call...and back..." Level 3/100, Thayer/22. This is traffic that is sent to Embarq for handling and, like all carriers, Embarq does charge for its services. Level 3 merely seeks to use Embarq to collect this traffic, but then have Embarq "pass it on" to a lower cost provider for further handling so that Level 3 can optimize its costs. CTL/800, Hunsucker/61.

Likewise, the Utah Commission found:

> The Commission declines to impose Level 3's conditions as they deal with underlying issues related to billing disputes, so-called traffic pumping or arbitrage, potential access to interconnection routes, certain traffic routing practices, compensation for transportation, etc. These issues are either currently pending or may arise in various jurisdictions where the Joint Applicants and Level 3 interact. However, they are not properly addressed in these proceedings as they have little or no direct bearing on whether the public interest is served by the proposed merger. Those are issues that are outside of the scope of these merger proceedings. Not only are they outside the scope of these proceedings, but the Commission lacks an evidentiary basis (even assuming it has jurisdiction to address each of the specific disputes) to address these matters. Level 3 and other CLECs have adequate remedies for any such issues by raising them in individual arbitration or complaint proceedings before an appropriate adjudicative body.

Utah Order, p. 10. See also Minnesota ALJ Recommendation, ¶¶ 273-293.

In short, the Commission should reject any non-settling CLEC assertions that resolution of these issues is appropriate for this proceeding, or necessary to determine that the Transaction does no harm and thus is in the public interest. The Commission should find that the Staff/CUB Stipulation and the Integra Settlement are more than sufficient to address public interest concerns related to the effects of the Transaction on wholesale customers.

III. THE COASTAL INTERVENORS CONDITIONS SHOULD BE REJECTED

Parker Telecommunications, the City of Lincoln City, Lincoln County, and Tillamook County ("the Coastal Intervenors") are attempting to have the Commission impose conditions they claim are necessary because of alleged service and area-specific issues, issues that are not properly raised in this case. While CenturyLink generally denies these allegations, even if they were true, this case is an inappropriate forum to address the resolution of them.

The Coastal Intervenors issues first arose during the Commission's review of the merger between CenturyTel, Inc. and Embarq Corporation, Docket UM 1416. In that case, and less than two years ago, the Commission rejected essentially the same claims as inappropriate in a merger proceeding. The Commission limited Lincoln City's intervention to general financial issues, recognizing that the only appropriate interest the City had was "in seeing that the proposed

merger will not harm the financial ability of Embarq to serve its customers." That order further rejected the inclusion of issues related to the provision of E-911 services and infrastructure as contrary to the Commission's intervention rule, stating:

> However, questions regarding the specific direction of resources or managerial decisions to be made by either Embarq *or the merged company* with respect to the provision of particular services to a particular area, do not relate to the overall financial condition of the merged entities are beyond the scope of this docket.

ALJ Ruling on City of Lincoln City's Petition to Intervene, Docket UM 1416, at p. 2 (March 12, 2009) (emphasis added). In fact, the Commission declined to impose any conditions related to the claims that Lincoln City made in Docket UM 1416.

Just as in Docket UM 1416, the relief that the Coastal Intervenors seek here is not appropriate in this application for approval of a merger under ORS 759.375 and ORS 759.380. Indeed, Judge Arlow firmly rejected in this case the Coastal Intervenors' attempts to seek relief related to their service specific allegations, stating that "including [the Coastal Intervenors'] allegations in this case...would do precisely what OAR 860-012-0001(2) was designed to prevent." *ALJ Ruling on Intervenors' Petition to Intervene*, at p. 5 (August 26, 2010). In addition, Judge Arlow, in rejecting the Coastal Intervenors' petition to certify questions regarding the very same issues, stated:

> Intervenors had over two years to file a complaint or petition the Commission to open an investigation on Embarq's [alleged] service problems and have declined to do so. The Commission is fully capable of immediately commencing a proceeding addressing such complaint or petition on the merits as soon as Intervenors file.

ALJ Ruling on Intervenors Motion to Certify, at p. 3 (September 23, 2010).

Consistent with the limitations to the Coastal Intervenors' intervention, individual complaints about service quality are not the appropriate subjects for merger proceedings and must be addressed, if at all, in a complaint or other similar case where a proper factual record can be fully developed on that issue. Otherwise, merger cases before this Commission would

become mired with interested persons seeking relief for any and all kinds of disputes they might have with a merging company, no matter how unrelated to the merger. The Coastal Intervenors, sophisticated parties represented by counsel, no doubt chose this proceeding to advance their interests as a means of gaining undue leverage as they seek to achieve their ends. But as Judge Arlow has explained, "[t]he tactic of seeking the application of 'leverage' in an unrelated proceeding, rather than involving one of the potential defendants in an as-yet-to-be-filed complaint, is contrary to the direct intent of OAR 860-012-0001..."

Furthermore, even if this were an appropriate forum to raise the issues, Staff and CUB concur that the conditions the Coastal Intervenors propose are unnecessary. According to Staff, "Safety Staff who act as a liaison to OEM (Office of Emergency Management) believe that the Staff recommended condition is adequate to ensure network redundancy." Staff/100, Dougherty 32. In addition, the Merging Companies' stipulation with Staff and CUB contains conditions that address retail service quality and safety generally. See Staff/CUB Stipulation, Conditions 20, 21 and 24. More significantly as to the Coastal Intervenors, the Merging Companies have agreed to construct a physical communication link between Lincoln City and Newport within 24 months of the merger close. See Staff/CUB Stipulation, Condition 26. They have even made a voluntary commitment that specifically provides for a collaborative process during the engineering phase to make certain that the facility is sized adequately to handle the expected demand. *Id.* Nothing more should be required, and thus, the Commission should reject any additional conditions that the Coastal Intervenors propose.

IV. THE TWO STAFF DISPUTED CONDITIONS SHOULD NOT BE ADOPTED

Two issues remain in dispute between Staff/CUB and the merging companies. The first is a proposed condition to impose broadband trouble reporting requirements as set forth in Staff's original proposed Condition 14. Staff/100, Dougherty/49; Staff/700, Dougherty/2-3. The

second is the so-called "most favored nation" or "most favored state" ("MFS") condition, which was set forth in Staff's original proposed Condition 57. Staff/100, Dougherty/57-58; Staff/700, Dougherty/3-4. Neither of these proposed conditions should be imposed in this merger; they are not necessary for the Transaction to do no harm and thus be in the public interest, and they are unduly burdensome and harmful.

A. The Commission Should Not Adopt a Broadband Reporting Condition

Staff's proposed condition for broadband reporting would require detailed annual reporting for five (5) years to include DSL trouble report complaint data and DSL subscription data. See Staff/700, Dougherty/2-3. This proposed broadband reporting condition exceeds the Commission's jurisdiction. It also is not competitively neutral, is not designed to address an identified harm, and is not necessary for the Commission to effectively monitor CenturyLink's commitment to increase broadband availability in Oregon. See Testimony of John Jones in Opposition to Adoption of Additional Staff Conditions, Ex. CTL/1100, Jones/1. Moreover, Staff and CUB admit that this proposed condition is not required or necessary to ensure that the Transaction is in the public interest and does no harm. See Joint Testimony, pp. 2-4, 7.[45]

As a foundational matter, the Commission does not regulate broadband. As such, the Merging Companies respectfully submit that the Commission lacks jurisdiction to require detailed reporting of trouble report data associated with broadband, or data on the combined company's broadband subscriptions. Moreover, competition for broadband customers in Oregon is intense, and CenturyLink has every incentive to deploy high-quality broadband service at

[45] Specifically, all parties to the Staff/CUB Stipulation agree that the Stipulation, and therefore, the Transaction, is in the public interest *upon resolution* of the two disputed conditions. See Joint Testimony, pp. 2-3, 4, 7. This is significant because, while the Companies do not believe this proposed condition is necessary, and while Staff and CUB believe the Commission should adopt it, the determination of whether the Stipulation does no harm and is in the public interest is ***not*** dependent on the Commission either adopting it or rejecting it. The same holds true regarding the MFS provision. The Commission could adopt neither proposal, or both, or only one of them, and yet the parties to the Stipulation all agree that the Stipulation, and thus the Transaction, does no harm and are in the public interest, and thus should be approved.

competitive rates in order to effectively compete in the market. The imposition on the Merged Company of costly and burdensome reporting requirements that are not also imposed upon its competitors places the post-merger company at a competitive disadvantage. In addition, the resources consumed to implement these unnecessary reports will detract from investments. CTL/1100, Jones/2.

Staff's sole justification for this condition is that the Commission imposed similar broadband reporting requirements on Frontier in Docket UM 1431 (Frontier's acquisition of Verizon Northwest). See Staff/700, Dougherty/3. Staff's testimony, however, is devoid of any mention of issues with the broadband service that CenturyLink or Qwest provide or that there is any potential harm that justifies such a condition. Thus, Staff has not provided any evidence to support this condition which would exceed the scope of the Commission's jurisdiction. CTL/1100, Jones/2-3.[46]

Further still, the condition is unnecessary because the Commission has other sources of information available to monitor the Merged Company's progress towards increasing broadband availability in its service area. For example, as part of the Merged Companies' very significant commitment to expend $45 million in broadband deployment in CenturyLink and Qwest areas over five years (Condition 13), they have committed to providing Staff with detailed reports of broadband deployment plans and progress towards achieving those plans. CTL/1100, Jones/3-4. Specifically, they have committed to the following reporting:

[46] CUB echoes Staff's position. Further, while CUB does not argue that the Commission has jurisdiction to impose such a condition, it seems to argue that the Commission may do so anyway to "ensure that unregulated services .... are maintained in a manner that is in the public interest and causes no harm." CUB/200, Feighner/200. CUB seems to be implying, without any citation to authority, that the Commission has the authority to get around its lack of jurisdiction by merely couching such a condition as being in the "public interest." That argument exalts form over substance, especially because such a pretext could then be used on any issue for which the Commission does not have jurisdiction by simply labeling it to be in the "public interest." CUB also argues that such a requirement "is not unduly burdensome" (*id.*), but without any evidence in support of such argument.

- An annual broadband deployment plan that details the planned investments for the year, including the geographic areas targeted for investment and the estimated number of customers that would benefit.
- An annual report that identifies the previous calendar year's progress in broadband deployment including:
  - A list of all wire centers and broadband speeds currently available in each wire center by speed and number of lines capable showing wire centers where broadband investment was made.
  - The additional number of households receiving broadband;
  - The prior year's cumulative amounts expended towards the $45 million broadband commitment.
- A semi-annual update to the broadband deployment plan outlining progress made and identifying any impediments that may prevent the completion of the planned projects.

If the Commission's focus is truly to monitor the Merged Company's progress towards achieving its commitment for increased availability of broadband, the extensive reporting requirements included in the Merged Compnies' broadband commitment provide the substantial information the Commission needs to accomplish this objective. As such, the additional information on broadband troubles or broadband subscriptions contained in the proposed Staff condition is unnecessary for the Commission to evaluate CenturyLink's progress in increasing broadband availability. CTL/1100, Jones/4.

Finally, Stipulation Condition 23 requires the Oregon Operating Companies' to provide copies of their FCC Form-477 filings. This will provide the Commission with additional broadband information, including certain subscribership and availability information. There is clearly no need for the Commission to impose Staff's proposed broadband reporting condition. CTL/1100, Jones/4.

B. The Commission should Not Impose an MFS Condition

Staff's second proposed condition would allow the Commission to expand or modify any conditions imposed in Oregon as a result of regulatory decisions in other states and at the FCC.

Staff/100, Dougherty/43; Staff/700, Dougherty/3-4. The Merging Companies respectfully submit that the Commission should not adopt this proposed condition.

First, this proposed condition is not required or necessary to ensure the Transaction is in the public interest and does no harm. As with the broadband reporting proposal, although Staff and CUB believe that the Commission should adopt this condition, they also agree that it is not necessary for the Transaction to do no harm and be in the public interest. See fn. 45.

In addition, the 53 conditions in the Staff/CUB Stipulation are the result of extensive good faith negotiations carried out over a four-month period, involving at least seven formal settlement conferences. The Merging Companies agreed to the conditions in the carefully-considered Stipulation based on a desire to eliminate any controversy among the parties in Oregon and to ensure that the Transaction is in the public interest and the no harm standard has been satisfied. Like any such agreement, the resulting compromises reflect a process of give and take. CTL/1100, Jones/5. Here, given the 57 conditions Staff initially proposed (see Staff/100, Dougherty/45-58), and the 53 conditions the Merging Companies ultimately agreed to, it is clear the Merging Companies did much more giving than taking, and were extremely reasonable and accommodating of most of the Staff's initial proposed conditions. The MFS condition, however, is not a reasonable one.

Moreover, if different considerations are presented in different states or at the FCC, where priorities are or may be different, different compromises will result. A condition or commitment in one jurisdiction may not be a necessary or even appropriate condition for adoption in Oregon. Thus, there will almost always be uncertainty regarding whether and how a condition of approval in one state or at the FCC would apply in Oregon. The Commission should not unravel trade-offs that the Merging Companies and Staff and CUB or other parties have made that result in satisfying the public interest by importing a condition from a different

state or from the FCC. Indeed, MFS conditions effectively serve as disincentives to negotiating a settlement, especially since the merging entities could never be certain what additional conditions might be adopted from other jurisdictions. The Commission's decision here should be premised upon the public interest in Oregon, and not on issues or provisions from another state or the FCC. CTL/1100, Jones/5-6; see also Tr., 12/16/10, Vol. 3, pp. 264-265 (Mr. Hunsucker's hearing testimony on MFS issues).

Nor is the proposed MFS provision equitable. First, contrary to the proposal here, the MFS conditions in the Frontier/Verizon proceeding did not include a provision for imposing FCC conditions. Indeed, adoption of FCC conditions, which are focused on issues that are subject to the FCC's jurisdiction and that reflect consideration of facts, circumstances and issues that are applicable to the Merged Company's *entire* operations, would go well beyond this Commission's jurisdiction. At a minimum, and in the interest of fairness, the Commission should not expand an MFS provision to encompass FCC conditions when it has not done so in a previous transaction. CTL/1100, Jones/6-7; see Tr., 12/16/10, Vol. 3, pp. 264-265.

The MFS proposal is also not equitable in application. This proposed condition is one-sided in its application in that it *includes* additional conditions that may be made in another jurisdiction, but does not *eliminate* conditions the Merging Companies have agreed to in Oregon as part of the negotiation process but not ordered elsewhere. For example, if a different jurisdiction were to impose *fewer or less onerous* obligations on some issues than the parties agreed to here in Oregon, the Merged Company would not gain any benefit. However, if a different jurisdiction were to impose more onerous conditions on some issues, the Merged Company would be penalized. Such a result would undermine the very premise of negotiations. The adoption of such a provision could only result in the unfair and one-sided alteration of the

Stipulation to the detriment of the Merging Companies. CTL/1100, Jones/7-8; see also Tr., 12/16/10, Vol. 3, pp. 264-265.

Staff and CUB argue that such a condition is necessary because this Commission has previously imposed such conditions, and because this Commission's order might be issued early relative to other state commission orders. They argue, therefore, that an MFS provision would allow the Commission to impose a condition that Staff may not have thought of, or a "better-crafted" condition. Essentially, they argue that without the ability to impose conditions from other states, this Commission would be unable to benefit from the reviews that these other commissions had completed. Staff/700, Dougherty/5-6. CUB echoes this argument, and talks about incentives for states to not have "gone first," or to "go last." CUB/200, 2-4.

In this Transaction, however, most states have either approved the Transaction, or are nearing completion of their reviews. There are only three other states, and the FCC, that have thus far not yet approved the Transaction. See fn. 6 and CenturyLink/1100, Jones/8. Further, there was extensive discovery and testimony in Oregon and other states where the Transaction is subject to commission reviews and approvals. In addition, the Merging Companies reached numerous settlement agreements reflecting numerous conditions, many of which are very similar to the conditions included in the Staff/CUB Stipulation, in a number of states (*id.*), and these settlements are publicly available to the Commission. Moreover, these settlements have already been vetted to address issues in all CenturyLink and Qwest states and therefore already address the underlying intent of an MFS condition by virtue of the fact that the settling parties necessarily contemplated the impact of the agreements in the states where they operate. This is especially true for the settlements that address wholesale issues, like the agreements with Integra and 360networks. Thus, neither Staff nor CUB is without information about conditions in other

states. This information was certainly available for Staff's and CUB's consideration when the parties agreed to the Stipulation in early December. CTL/1100, Jones/8.

Finally, no other commissions reviewing this Transaction have adopted an MFS provision. Indeed, the Colorado Commission specifically found that such a provision is inappropriate. The Commission found that the Merged Company may be subject to a variety of requirements in other jurisdictions and the circumstances in other jurisdictions may be different. It further found that that Commission review of particular requirements and conditions is necessary before imposing them on the company. Colorado Order, ¶ 69.

A most favored state commitment is simply not necessary to protect Oregon from missing out on a condition approved in another state, especially at this late stage, with most approvals having already been granted, and such a condition would serve as a disincentive to settlements. CTL/1100, Jones/8. Thus, the Merging Companies respectfully submit that the Commission should deny this proposed condition.

CONCLUSION

The Application for approval has been fully and fairly considered through lengthy proceedings and a fully-developed evidentiary record. That record clearly shows that the Merging Companies have demonstrated the Transaction does no harm and is in the public interest in Oregon. To the extent that some parties raised concerns regarding potential benefits and the avoidance of potential harm to Qwest's Oregon customers, these concerns are fully addressed in the settlements reached with Staff and CUB, Integra and 360networks, and no further conditions or commitments are necessary or appropriate. The Commission should find

that the Transaction does no harm and is in the public interest, and thus should approve the Transaction without any further conditions.

DATED: January 25, 2011

CENTURYLINK

William Hendricks, III
CenturyLink
805 Broadway Street
Vancouver, WA 98660
(360) 905-5949 (office)
(541) 387-9439 (secondary office)
Tre.Hendricks@CenturyLink.com

Attorney for CenturyLink, Inc.

Respectfully submitted,

QWEST

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
503-242-5623
503-242-8589 (fax)
Alex.Duarte@qwest.com

Attorney for Qwest Communications International, Inc.

ATTACHMENT A

UM 1484
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(as of January 25, 2011)

California – Advice Letter 172, June 24, 2010

Colorado – Docket No. 10A-350 T, Decision No. C11-0001, January 3, 2011: https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=93645&p_session_id=

Colorado – Erratta, Docket No. 10A-350 T, Decision No. C11-0001-E, January 5, 2011: https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=93855&p_session_id =

District of Columbia – Docket No. FC892-T-4033. Order Not Applicable: http://www.dcpsc.org/edocket/docketsheets.asp?chkTelco=on&cbofctype=FC&CaseNumber=892&ItemNumber=4033&orderno=&PartyFiling=&FilingType=&yr_filing=&Keywords=&FromDate=&ToDate=&toggle_text=Full+Text&show_result=Y&hdn_orderNumber=&hdn_chk_whole_search=&hdn_AssesmentType=

Georgia - Docket Numbers 6543, 10664, 5043, and 6094: No further action, order not required: ftp://www.psc.state.ga.us/Dockets/6543/130041.doc

Hawaii – Docket No. 2010-0110, Decision Issued June 15, 2010: http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A10F16B02348B5840018+A10F16B02348B584001+14+1960

Iowa – Docket No. SPU-2010-0006, November 19, 2010: https://efs.iowa.gov/efiling/groups/external/documents/docket/054758.pdf

Louisiana – Docket No. U-31379, Order No. U-31379, September 17, 2010: http://lpscstar.louisiana.gov/star/ViewFile.aspx?Id=804cb80a-488c-4b3b-80f3-9d87f33d0ac3

Maryland – Maillog # 123575, July 7, 2010: http://webapp.psc.state.md.us/Intranet/Content.cfm?ServerFilePath=\\Coldfusion\LetterOrder%5CPosted%5C4902.doc

Mississippi – Docket No. 2010-UA-218, September 14, 2010: http://www.insite.psc.state.ms.us/publicinsiteweb/cts_wv/VUDocViewFS.aspx?VU_ViewDef=CTSVIEW&VU_SearchDef=CTS_ARCHIVEQ

Montana – Docket No. D2010.5.55, Order No. 7096e, December 14, 2010: http://www.psc.mt.gov/eDocs/eDocuments/pdfFiles/D2010-5-55_7096e.pdf

ATTACHMENT A

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Nebraska – Application No. C-4280, January 4, 2011:
http://www.psc.state.ne.us/home/NPSC/communication/orders/Misc/C4280110104.pdf

New Jersey – BPU Docket No. TM10050343, December 16, 2010

New York – Docket No. 10-C-0345, August 24, 2010
http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={1263CA4D-C79C-4CDA-ACBC-FD15B6F26B20}

Ohio – Case No. 10-0717-TP-ACO, Approved by Operation of Law, June 29, 2010:
http://dis.puc.state.oh.us/TiffToPDf/A1001001A10G01A84432B67150.pdf

Pennsylvania - Docket Number A-2010-2176733, October 14, 2010
http://www.puc.state.pa.us//pcdocs/1097935.docx

Utah – Docket No. 10-049-16, January 4, 2011:
http://psc.utah.gov/utilities/telecom/telecomindx/2010/documents/703411004916RO.pdf

Virginia – Case No. PUC-2010-00023, September 24, 2010:
http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=105304&lib=CASEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native

West Virginia – Case No. 10-0825-T-PC, August 3, 2010:
http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=301698

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1484

In the Matter of CENTURYLINK, INC. Application for an Order to Approve the Indirect Transfer of Control of QWEST CORPORATION	**STIPULATION**

PARTIES

1. The parties to this Stipulation, which includes the attached conditions, ("Stipulation") are CenturyLink, Inc. ("CenturyLink"), Qwest Communications International, Inc. ("Qwest"), the Staff of the Public Utility Commission of Oregon ("Staff") and the Citizens' Utility Board of Oregon ("CUB") (together "the Parties" and individually "Party").

2. The Parties by signing this Stipulation agree that the Commission should approve the Application in this case subject to the attached conditions and the Commission's resolution of the two remaining disputed issues discussed in paragraph 6 below.

3. The Parties further agree to support approval of the Application under the terms of this Stipulation and pursuant to the resolution of the two remaining disputed issues. This Stipulation will be offered into the record of this proceeding as evidence, pursuant to OAR 860-014-0085. The Parties agree to

support this Stipulation at the hearing scheduled for December 16 and 17, 2010 and to recommend that the Commission issue an order adopting the Stipulation and resolving the two remaining disputed issues. If any other party to this proceeding challenges this Stipulation, the Parties agree to cooperate in cross-examination and put on such a case as they deem appropriate to respond fully to the issues presented.

BACKGROUND

4. On May 24, 2010, CenturyLink filed an Application for Approval of Merger and supporting testimony. On the same day, Qwest filed an intervention in the docket and testimony supporting the Application. In addition, the Parties filed additional rounds of testimony and conducted extensive discovery.

5. Since August 3, 2010, the Parties have engaged in substantial negotiations, including at least five scheduled settlement conferences. All parties to the docket were notified of all settlement conferences and most participated, including CenturyLink, Qwest, various CLEC intervenors, the Staff, CUB, TRACER, and the City of Lincoln City, Lincoln County and Tillamook County.

AGREEMENT

6. The Parties agree that the Stipulation, including the conditions in Attachment 1, will result in a transaction that meets the public interest standard the Commission employs under ORS 759.375 and .380, with one proviso; the

Parties acknowledge that there are two remaining disputed issues that they will present to the Commission in testimony, which will be filed on December 8, 2010. Those issues include the imposition of a "most-favored-state" condition and a condition imposing trouble report complaint reporting for broadband services. The Staff and CUB reserve the right to advocate that the Commission impose those two conditions. CenturyLink and Qwest believe the conditions are inappropriate and reserve the right to challenge them.

7. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein (with the exception of the two mentioned conditions in paragraph 6 above), and it supersedes any and all prior oral and written understandings or agreements, on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

8. The Parties recommend that the Commission approve this Stipulation with no material changes. The Parties have agreed to this Stipulation as an integrated document. If the Commission rejects all or any part of this Stipulation or imposes additional conditions, any Party affected by such action

shall have the right, upon 15 days written notice to the Commission and the Parties, to withdraw from this Stipulation, to pursue their rights under OAR 860-014-0085 or seek reconsideration or appeal of the Commission's order, or both. No Party withdrawing shall be bound to any position, commitment, or condition of this Stipulation.

9. The Parties waive cross examination of one another at the hearing scheduled for December 16 and 17, 2010 in this docket, except with respect to the two disputed issues mentioned above.

10. The Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

RESERVATION OF RIGHTS

11. The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding unless independently discoverable or offered for other purposes allowed under ORS 40.190. By entering into this Stipulation, no Party shall be deemed to have approved, admitted or consented to facts, principles, methods, theories, or any other advocacy employed by any other party to this proceeding. No Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.

12. If any Party reaches a settlement with any other party to this proceeding not signing this Stipulation that is filed with the Commission, other Parties may file comments to the Commission on that settlement as provided in OAR 860-014-0085.

This Stipulation is entered into by each Party as of December 2, 2010:

CENTURYLINK

William E. Hendricks III
CenturyLink
805 Broadway Street
Vancouver, WA 98660
(360) 905-5949 (office)
(360) 905-5953 (fax)
Tre.Hendricks@CenturyLink.com

Attorney for CenturyLink

QWEST

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
(503) 242-5623 (office)
(503) 242-8589 (fax)
alex.duarte@qwest.com

Attorney for Qwest

CITIZENS' UTILITY BOARD OF OREGON (CUB)

G. Catriona McCracken
Attorney #933587
Citizens' Utility Board of Oregon (CUB)
610 SW Broadway, Suite 400
Portland, OR 97205
503-227-1984
Catriona@oregoncub.org

Legal Counsel for CUB

PUBLIC UTILITY COMMISSION OF OREGON

Jason W. Jones
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4520 (office)
(503) 378-6829 (fax)
jason.w.jones@doj.state.or.us

Attorney for Staff of the Public Utility Commission of Oregon

provision of this Stipulation is appropriate for resolving issues in any other proceeding.

12. If any Party reaches a settlement with any other party to this proceeding not signing this Stipulation that is filed with the Commission, other Parties may file comments to the Commission on that settlement as provided in OAR 860-014-0085.

This Stipulation is entered into by each Party as of December 1, 2010.

CENTURYLINK

William Hendricks, III
CenturyLink
805 Broadway Street
Vancouver, WA 98660
(360) 905-5949 (office)
(541) 387-9439 (secondary office)
Tre.Hendricks@CenturyLink.com

Attorney for CenturyLink, Inc.

QWEST

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
503-242-5623
503-242-8589 (fax)
Alex.Duarte@qwest.com

Attorney for Qwest Communications International, Inc.

Respectfully Submitted,

G. Catriona McCracken, Attorney #933587
Citizens' Utility Board of Oregon (CUB)
610 SW Broadway, Suite 400
Portland, OR 97205
503-227-1984
Catriona@oregoncub.org

Legal Counsel for CUB

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This Stipulation is entered into by each Party as of December 2, 2010:

CENTURYLINK

William E. Hendricks III
CenturyLink
805 Broadway Street
Vancouver, WA 98660
(360) 905-5949 (office)
(360) 905-5953 (fax)
Tre.Hendricks@CenturyLink.com

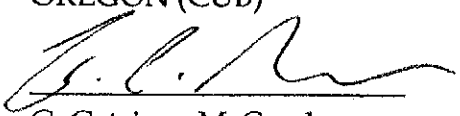
Attorney for CenturyLink

QWEST

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
(503) 242-5623 (office)
(503) 242-8589 (fax)
alex.duarte@qwest.com

Attorney for Qwest

CITIZENS' UTILITY BOARD OF OREGON (CUB)



G. Catriona McCracken
Attorney #933587
Citizens' Utility Board of Oregon (CUB)
610 SW Broadway, Suite 400
Portland, OR 97205
503-227-1984
Catriona@oregoncub.org

Legal Counsel for CUB

PUBLIC UTILITY COMMISSION OF OREGON

Jason W. Jones
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4520 (office)
(503) 378-6829 (fax)
jason.w.jones@doj.state.or.us

Attorney for Staff of the Public Utility Commission of Oregon

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CENTURYLINK

William E. Hendricks III
CenturyLink
805 Broadway Street
Vancouver, WA 98660
(360) 905-5949 (office)
(360) 905-5953 (fax)
Tre.Hendricks@CenturyLink.com

Attorney for CenturyLink

QWEST

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
(503) 242-5623 (office)
(503) 242-8589 (fax)
alex.duarte@qwest.com

Attorney for Qwest

CITIZENS' UTILITY BOARD OF OREGON (CUB)

G. Catriona McCracken
Attorney #933587
Citizens' Utility Board of Oregon (CUB)
610 SW Broadway, Suite 400
Portland, OR 97205
503-227-1984
Catriona@oregoncub.org

Legal Counsel for CUB

PUBLIC UTILITY COMMISSION OF OREGON

Paul A. Graham for J.W.J.

Jason W. Jones
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4520 (office)
(503) 378-6829 (fax)
jason.w.jones@doj.state.or.us

Attorney for Staff of the Public Utility Commission of Oregon

ATTACHMENT 1

UM 1484
SETTLEMENT CONDITIONS

RETAIL CONDITIONS

1. CenturyLink Inc. (CenturyLink) shall provide the Public Utility Commission of Oregon (Commission) access to all books of account, as well as, all documents, data, and records that pertain to the transaction.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or earnings review under an alternative form of regulation.
3. The Applicants shall immediately notify the Commission of any substantive material changes to the transaction terms and conditions from those set forth in their Application that: (1) occur while a Commission order approving the transaction is pending, or (2) occur before the transaction is closed, but after the Commission issues its order approving the transaction. The Applicants must also submit a supplemental application for an amended Commission order in this docket if the substantive transaction conditions and terms affecting Commission regulated services change as set forth in this condition.
4. Except as authorized by this Commission, CenturyLink (referring to the parent company at the conclusion of this transaction) will maintain an organizational structure that includes the four separate ILECs in Oregon (no change from current allocated areas) – CenturyTel of Oregon Inc., CenturyTel of Eastern Oregon, Inc., United Telephone Company of the Northwest, and Qwest Corporation (Qwest) (collectively, Operating Companies). CenturyLink (also referred to as "Company") agrees that an application must be filed with the Commission should it propose to merge or consolidate the operations of the Operating Companies, to the extent required by Oregon law.
5. Prior to the closing of the transaction, customer notification of the merger and change of parent company will be given to all local exchange and long distance customers and will comply with any Oregon and FCC rules and regulations. This notice will include notification to all existing and acquired OTAP/Lifeline customers that the acquisition will not affect their OTAP/Lifeline credits and that there is no action required on their part. Prior to the notification, CenturyLink will submit a draft of the OTAP/Lifeline portion to the OTAP Manager for review.
6. No Commission-regulated intrastate service currently offered by Qwest in Exchange and Network Services Tariff No. 33 and Private Line Transport Services Tariff No. 31 will be discontinued for a period of at least three years following the Closing Date, except as approved by the Commission.
7. CenturyLink shall follow the terms and conditions of Qwest's UM 1354 price plan (Order Nos. 08-408, 08-544, and 10-215). Exceptions to this condition are noted in Conditions 11, 16 and 18 below. Any proposed changes to the approved price plan must receive Commission approval. Within 60 days following any branding or administrative changes to Qwest's Oregon rates, rules, and regulations, CenturyLink will file updated Qwest Oregon rates, rules, and regulations that show the branding change.
8. The Operating Companies will not advocate in any general rate case proceeding for a higher overall cost of capital as compared to what its cost of capital would have been absent the transaction, but the Operating Companies may seek a cost of capital under the then-existing capital market conditions.

9. Operating Companies will not seek recovery of one-time transition, branding or transaction costs in Oregon intrastate regulated rate proceedings. Operating Companies will not seek to recover through wholesale service rates one-time transaction, branding or transition costs.

10. The Merged Company will not recover, or seek to recover through wholesale or retail service rates or other fees paid by wholesale or retail customers any increases in overall management costs that result from the transaction, including those incurred by the operating companies. For purposes of this condition, "transaction-related costs" shall be construed to include all Merged Company costs related to or resulting from the transaction and any related transition, conversion, or migration costs and, for example, shall not be limited in time to costs incurred only through the Closing Date.

11. As a requirement for post merger financial reporting, each operating company will submit the Commission standard *Annual Report* Form O and Commission standard *Oregon Separated Results of Operations Report* Form I.

12. Within 60 days of the nearest calendar quarter following 12 months after close of the transaction, and for two subsequent 12-month periods, CenturyLink shall file with the Commission a report describing:

    a. Substantive activities undertaken relating to integrating Qwest operations with CenturyLink, as well as achieving synergies made available as a result of this transaction. CenturyLink synergies will be reported on a CenturyLink total company basis;

    b. Costs and projected savings of each such respective activity on a CenturyLink total company and Oregon-allocated basis;

    c. Organizational and staff force changes in Oregon operations; and,

    d. Impacts on Oregon operations and customers.

    The reporting requirement required by Condition 12 shall end with the submission of the third report unless otherwise directed by the Commission.

13. CenturyLink will commit to expend $45 million in broadband deployment in CenturyLink and Qwest areas in Oregon over a five (5) year period beginning January 1, 2011 and ending December 31, 2015. CenturyLink will commit to expend twenty-five (25%) of the $45 million broadband investment by December 31, 2012. The capital investment necessary to meet Condition 26 will count toward satisfying the $45 million commitment.

    Beginning on the date of the first anniversary of the close of the Transaction and continuing annually until the $45 million broadband commitment is completed, CenturyLink will submit to the Commission Staff: 1) a broadband deployment plan that details the planned investments for the year, including the geographic areas targeted for investment and the estimated number of customers that would benefit; and 2) a report that identifies the previous calendar year's progress in broadband deployment including: a) a list of all wire centers and broadband speeds currently available in each wire center by speed and number of lines capable showing wire centers where broadband investment was made, b) the additional number of households capable of receiving broadband; and c) the prior year's and cumulative amounts expended towards the $45 million broadband commitment.

    CenturyLink will provide a semi-annual update to the broadband deployment plan outlining progress made and identifying any impediments that may prevent the completion of the planned projects.

14. After the closing date, the Merged Company will honor any and all promotional discount offers made by pre-merger Qwest to its residence and small business customers, including those for local, long distance, and internet access services. The discounted prices will continue on an individual customer basis until the term to which Qwest committed expires.

15. Within 30 days after the close of the transaction, CenturyLink will notify Commission staff:

a. Post-merger CenturyLink's consolidated 2010 Net Debt/ trailing 12-month EBITDA.
b. Post-merger rating agency reports of CenturyLink
c. Pre-merger stand-alone CenturyLink's price per share as of the date of closing of the merger.
d. Pre-merger stand-alone Qwest's price per share as of the date of closing of the merger.

16. CenturyLink will not encumber the assets of the Oregon Operating Companies that are necessary or useful in the performance of their duties to the public without seeking Commission approval pursuant to ORS 759.375.

17. CenturyLink agrees that it will not seek to recover in Oregon intrastate regulated retail or wholesale rates any acquisition premium paid by CenturyLink for Qwest. Any acquisition premium will be recorded in the books at the parent level.

18. After the close of the merger, both CenturyLink and Qwest agree to the removal of the Qwest price plan exemption from the requirements of ORS 759.380 and ORS 759.375. However, the parties agree that for property sales where the sales price is less than $10 million the Qwest Price Plan exemption from ORS 759.375(1)(a) applies, except that the sale of any Qwest exchange will be subject to Commission approval under ORS 759.375.

19. After the closing of the transaction and for a period of not less than three years, CenturyLink must file with the Commission quarterly reports with:

a. CenturyLink's consolidated balance sheet.
b. Intercompany receivables and payables showing the beginning balance, the change for the quarterly and the ending balance of those accounts will be submitted to the Commission. This report shall be filed annually on April 1 of each year.
c. Dividend payment declared by CenturyLink to its shareholders (in total and per share) for the same time period.

These quarterly reports should be filed no more than 90 days following the close of each quarter. CenturyLink could waive this condition if its post transaction issuer credit rating is affirmed as investment grade by two of the following credit rating agencies (or successors): Moody's, Fitch Ratings, Standard and Poor's Services.

20. Immediately after the close of this transaction, the Operating Companies will report retail service quality results in accordance with OAR 860-023-0055. CenturyTel is currently exempt from service quality reporting, having met the conditions of OAR 860-023-0055 (16)(d), but is required to submit to the Commission the monthly CenturyTel retail service quality reports for two years after the close of this transaction.

21. CenturyLink will maintain current Commission minimum retail service quality standards (OAR 860-023-0055) as are currently being reported in the Qwest's monthly service quality reports to the Commission. If CenturyLink fails to maintain the current service quality levels for the Qwest Operating Company it will be subject to potential penalties as set forth in ORS 759.450.

22. CenturyLink will provide to the Commission the following:

a. CenturyLink will provide to the Commission on the first anniversary of the transaction close, a status report on its switching infrastructure in the state and any switch replacements, upgrades or retirements made in the prior calendar year as well as any that are known for the upcoming calendar year.
b. CenturyLink will provide the Commission on the first and second anniversary of the transaction close, a confidential report for the previous calendar year detailing Oregon regulated capital expenditures as a percentage of total system expenditures and a comparison of the amount of regulated capital expenditures per Oregon access line with the amount of regulated capital expenditures per CenturyLink system-wide access line.

23. CenturyLink will provide to Commission Staff, in electronic form, and subject to confidentiality, the detailed Form-477 data that the four Operating Companies are currently providing to the FCC for their service areas. This will be done annually for three years beginning with the year after the closing of the transaction, subject to the continuation of the requirement for filing with the FCC.

24. CenturyLink is committed to complying with all applicable federal and Oregon safety standards and requirements, and will commit to comply with the safety and reliability laws in Oregon per ORS 757.035, OAR 860 Division-024, and OAR 860 Division-028.

25. Within seven (7) days after close of the transaction, CenturyLink agrees to provide the Commission a listing of CenturyLink primary and secondary points of contact within its new organization for safety and pole attachment matters.

26. CenturyLink will construct a physical communication link between the Cities of Lincoln City and Newport, Oregon within 24 months following the close of the transaction. CenturyLink will meet with Staff and other interested parties during the engineering phase to make certain that Staff is satisfied that the facility is sized adequately to handle the expected demand.

27. Operations Support Systems

Retail

Prior to conversion of major Qwest/CenturyLink retail operations support systems that impact Oregon operations, CenturyLink will provide notice to the Commission 90 days in advance of the conversion. Notification will consist of a description of the systems involved, the action to be taken, the timelines associated with the system conversion and a description of customer impacts. Retail operations support systems are defined as ordering, provisioning, maintenance and repair, and billing systems.

Wholesale

In legacy Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Closing date with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:

a. *Detailed Plan*

The Merged Company will provide notice to the Commission and any affected parties at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Carriers will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed as well as in the Qwest Change Management Process.

b. *CMP*

The Merged Company will follow the procedures in the Qwest Change Management Process ("CMP") Document.

c. *Replacement or Retirement of a Qwest OSS Interface*

i. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLEC and CMRS carriers to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Closing Date (as described above). Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The Parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Sufficient acceptance of a replacement for a Qwest OSS Interface will be determined by a majority vote, no vote to be unreasonably withheld, of the CMP participants (Qwest and CLEC and CMRS carriers) in testing, subject to any party invoking the CMP's Dispute Resolution process. The requirements of this paragraph will remain in place only until completion of merger-related OSS integration and migration activity. If a dispute arises as to whether such merger-related OSS integration and migration activity is complete, the Commission will determine the completion date.

ii. The Merged Company will allow coordinated testing with CLEC and CMRS carriers, including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing, unless otherwise agreed to by the Company and CLEC and CMRS carriers. Testing described in this paragraph associated with merger-related system replacement or integration will be allowed for the time periods in the CMP Document, or for 120 days, whichever is longer, unless otherwise mutually agreed to by the Merged Company and CLEC and CMRS carriers engaged in the testing.

iii. The Merged Company will provide the CLECs and CMRS carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the CLEC and CMRS carrier.

d. *Billing Systems*

The Merged Company will not begin integration of Billing systems before the end of the minimum two year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLEC and CMRS carriers and their customers. Any changes by the Merged Company to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.

28. Notwithstanding any provision allowing one or both parties to Qwest interconnection agreements ("ICAs"), Commercial Agreements, and other Wholesale Agreements between Qwest Corporation or its successors and assigns and CLEC and CMRS carriers ("Extended Agreements") to terminate the Extended Agreement upon or after expiration of the term of the agreement, the Merged Company shall not terminate or grandparent, change the terms or conditions, or increase the rates of any Extended Agreements during the unexpired term or for at least the Applicable Time Period identified below, whichever occurs later (the "Extended Time Period"), unless required by a change of law, or a CLEC or CMRS carrier requests or agrees in writing to a change and any applicable procedure to effectuate that change is followed. In the event that the Extended Agreement expressly allows termination of the agreement in other circumstances, such as default due to non-payment, this Condition does not preclude termination of an Extended Agreement in those circumstances provided that the Merged Company follows both (1) the Extended Agreement's express provisions, and (2) any applicable procedures pertaining to such termination. Upon approval of the Transaction, these terms will be part of the order of approval and thus not trigger or require the filing of an ICA amendment, unless directed otherwise by the Commission.

a. *Interconnection Agreements*. The Applicable Time Period for Qwest's interconnection agreements (ICAs) is at least thirty-six months after the Closing Date. The Extended Time Period applies whether or not the initial or current term has expired or is in evergreen status.

   i. The Merged Company shall allow a CLEC or CMRS carrier to use its pre-existing interconnection agreement as the basis for negotiating an initial successor replacement interconnection agreement to the extended ICA. Where the parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor replacement interconnection agreement.

   ii. A CLEC or CMRS carrier may opt-in to an interconnection agreement in its initial term or the extended term.

   iii. If Qwest and a CLEC or CMRS carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the CLEC or CMRS carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

b. *Commercial Agreements*. The Applicable Time Period for Commercial agreements is at least eighteen months after the Closing Date for Qwest's Commercial agreements (*i.e.*, offerings made available after a UNE(s) becomes unavailable via ICA): Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, as well as any other Commercial agreement to which Qwest and CLEC or CMRS carrier were parties as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement:

   i. After the eighteen month period, Qwest reserves the right to modify rates.

   ii. If a Commercial agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC or CMRS carrier on a grandparented basis to serve CLEC or CMRS carrier's embedded base of customers already being served via services purchased under that Commercial agreement, subject to Qwest's right to modify rates, for at least eighteen months after Qwest has notified CLEC or CMRS carrier that the agreement is no longer available.

c. *Wholesale Agreements.* The Applicable Time Period for Wholesale agreements is at least eighteen months after the Closing Date for Qwest's Wholesale agreements (*i.e.*, offerings made available after a tariffed offering becomes unavailable via tariff): Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, Synchronous Service Transport), as well as any other Wholesale agreement to which Qwest and CLEC or CMRS carrier were parties as of the Closing Date. Notwithstanding any provisions to the contrary in this Agreement:

   i. After the eighteen month period, Qwest reserves the right to modify rates.

   ii. If a Wholesale agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC or CMRS carrier on a grandparented basis to serve CLEC or CMRS carrier's embedded base of customers already being served via

services purchased under that Wholesale agreement for at least eighteen months after Qwest has notified CLEC or CMRS carrier that the agreement is no longer available, subject to Qwest's right to modify rates.

d. *Intrastate Tariffs.* For at least twelve months after the Closing Date, the Merged Company will not seek to increase rates or modify terms and conditions for Qwest wholesale tariff offerings. Notwithstanding any provision to the contrary in this Agreement, Qwest may engage in Competitive Response pricing as set forth in its tariffs.

i. Regarding term and volume discount plans, such plans offered by Qwest as of the Closing Date will be extended by twelve months beyond the expiration of the then existing term, unless the wholesale customer indicates it opts out of this one-year extension.

ii. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.

29. The Merged Company agrees not to increase the rates in Qwest ICAs during the Extended Time Period defined in condition number 28 above. If, during the Extended Time Period, the Merged Company offers a Section 251 product or service that is not offered under an ICA (a "new" product or service), the Merged Company may establish a rate using normal procedures. A product, service, or functionality is not "new" for purposes of this paragraph if Qwest was already providing that product, service, or functionality at existing rates as of the Closing Date in the legacy Qwest ILEC serving territory.

a. Regarding rates changed via a Commission cost docket, the Merged Company may initiate a cost docket (or seek rate increases in a cost docket initiated by another party) before the expiration of the thirty-six month Extended Time Period for ICA terms only if (i) the rate elements, charges or functionalities are not already provided under rates as of the Closing Date as described in paragraph 4; or (ii) the cost docket is not initiated until at least eighteen months after the Closing Date and any rates approved in the cost docket will not become effective until after expiration of the thirty-six month Extended Time Period for extension of ICA terms.

b. After the Closing Date, in the legacy Qwest ILEC serving territory, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLEC or CMRS carriers for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the Commission and charged by Qwest in the legacy Qwest ILEC service territory before the Closing Date, unless Qwest first receives Commission approval. This condition prohibits the Merged Company from charging such fees, charges, surcharges or other assessments, including:

i. Service order charges assessed upon CLEC or CMRS carriers submitting local service requests ("LSRs") for number porting;

ii. Access or "use" fees or charges assessed upon CLEC or CMRS carriers that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and

iii. "Storage" or other related fees, rents or service order charges assessed upon a CLEC or CMRS carrier's subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.

30. In the legacy Qwest ILEC service territory, the Merged Company will continue to provide intrastate transit service subject to the same rates, terms, and conditions that were provided as of the Closing

Date for at least three years following the Closing Date, unless directed otherwise by the Commission.

31. CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. Sections 251 and 252. In the legacy Qwest ILEC service territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Communications Act.

32. In the legacy Qwest ILEC service territory, after the Closing Date, Qwest Corporation shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including Sections 271 and 272.

33. In the legacy Qwest ILEC service territory, to the extent that an ICA is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Closing Date. Either party to the ICA may request an amendment to the ICA to lengthen an interval after the thirty-six month Extended Time Period for extension of ICA terms.

34. In the legacy Qwest ILEC service territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services including those set forth in regulations, tariffs, Commercial Agreements defined above, and interconnection agreements applicable to legacy Qwest as of the Closing Date. In the legacy Qwest service territory, the Merged Company shall continue to provide to CLECs and CMRS carriers at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs and CMRS carriers and the Commission as of the Closing Date, or as subsequently modified or eliminated as permitted under these conditions or pursuant to any changes in law. After the execution of this settlement and prior to the Closing Date, Qwest agrees not to initiate any changes to wholesale performance requirements and associated remedy or penalty regimes, however, nothing prevents Qwest from responding to and participating in any docket initiated by another party or as otherwise required by law.

a. The Merged Company will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) that are offered, or provided via contract or Commission approved plan, as of the Closing Date for at least eighteen months after the Closing Date. After the eighteen month period, the Merged Company may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will be available to all requesting CLECs and CMRS carriers unless the Merged Company obtains approval from the Commission to eliminate or withdraw it.

    i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel merger, in the legacy Qwest ILEC service territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC or CMRS carrier, measured as follows:

        a. For the first three months after Closing Date, Qwest's performance will be compared to Qwest's performance for the twelve months prior to Closing Date.

        b. Thereafter, each successive month of Qwest's performance will be added to the three month period in 34.a.i.a. in determining Qwest's performance until twelve months after Closing Date.

        c. Beginning one year after Closing Date, Qwest's performance will be measured by a rolling twelve month average performance.

b. If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC or CMRS carrier and Commission staff for review and comment.

   i. A CLEC or CMRS carrier may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation included within a PID measure if the CLEC or CMRS carrier determines that the performance it received for that PID, product, or disaggregation is materially different and provides the basis for CLEC or CMRS carrier's determination.

   ii. If performance deficiencies are not resolved, the CLEC or CMRS carrier may request a resolution or wholesale service quality proceeding before the Commission. The Merged Company does not waive its right to oppose such a request.

35. For thirty-six months after the Closing Date, in the legacy Qwest ILEC service territory, the Merged Company will provide to Commission staff quarterly data for Oregon wholesale carriers that will enable monitoring of current performance compared to the performance for the 12 months prior to the Closing Date for the five metrics consistent with condition number 34 above in the manner described. For twelve months after the Closing Date, in the legacy Embarq ILEC service territory, the Merged Company will provide to the Commission staff quarterly data for Oregon wholesale carriers in the aggregate that enable monitoring of current performance compared to the performance for the 12 months prior to the Closing Date for the five metrics. Additionally, the Merged Company will grant Commission staff access to service quality data currently available to wholesale carriers on the companies' websites.

36. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information and will provide this information, when possible, thirty days prior to the Closing Date. If not possible, the Merged Company will provide the information within five business days, absent exigent circumstances. For changes to support center location, the Merged Company will provide at least thirty days advance written notice to wholesale carriers and Commission staff. For other changes, the Merged Company will provide reasonable notice, as circumstances permit, of the changes and will keep pertinent information timely updated. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.

37. The Merged Company will make available to each wholesale carrier in the legacy Qwest ILEC service territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).

38. The Merged Company shall ensure that wholesale and CLEC operations are sufficiently staffed and supported, relative to wholesale order volumes, by personnel, including IT personnel, adequately trained on the Qwest and CenturyLink systems and processes. With respect to the wholesale and CLEC operations, such personnel shall be dedicated exclusively to wholesale operations so as to provide a level of service that is not less than and is functionally equivalent to that which was provided by Qwest prior to the Merger Closing Date and to ensure that customer protected information is not used by the Merged Company's retail operations for marketing purposes. The Merged Company will employ people who are dedicated to the task of meeting the needs of wholesale customers.

39. Qwest will not seek to reclassify as "non-impaired" any Qwest Oregon wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest Oregon wire center before June 1, 2012.

40. In the legacy Qwest ILEC service territory, if the Commission acknowledges or approves the Settlement Agreement filed by CenturyLink, Qwest and Integra in this docket, the line conditioning amendment including all rates, terms and conditions related to condition 14 of that Settlement Agreement will be made available to any requesting carrier no later than 30 days after the transaction Closing Date.

41. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable ICAs.

a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop, as provided by 47 C.F.R. § 51.319(a)(8).

b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable ICAs and as required by a change of law.

42. If the Merged Company changes the carriers it uses to provide intrastate long distance service to customers in either the pre-merger CenturyLink or the pre-merger Qwest areas, the company will notify each of the affected Oregon intrastate long distance customers at least 30 days in advance of the change. For 90 days following the customer transfers, CenturyLink will waive any change charges, e.g., PICs, for customers choosing to change carriers.

43. CenturyLink will designate a representative to serve on the Commission's Oregon Telecommunications Industry Advisory Committee, which generally convenes on a quarterly basis, should the incumbents representing Qwest and CenturyLink, respectively, vacate their seats as a result of the merger.

44. Prior to any billing system consolidations or changes, CenturyLink will provide to the OTAP Manager and Administrative Specialist a description of how the OTAP credits are listed on customer bills. CenturyLink will also provide the OTAP Manager and Administrative Specialist a sample copy of a customer's bill that lists the OTAP/Lifeline credits. The OTAP Manager and Administrative Specialist will accept a redacted copy in which the customer's personal identifying information is protected.

45. CenturyLink will maintain sufficient staff levels to effectively address daily communications with Commission Staff regarding OTAP/Lifeline questions and concerns and OTAP/Lifeline reporting issues. Prior to any billing system consolidations or changes, CenturyLink will provide notice to the OTAP Manager of staffing changes that impact the established process for filing reports and addressing OTAP staff questions and concerns.

46. If Legacy Embarq or CenturyTel personnel identify an approved OTAP/Lifeline customer for the other's territory on a Commission approval report due to Staff error, legacy personnel must either:

a. Notify the OTAP Manager and Administrative Specialist of the discrepancy on the No Match report, or

b. Contact personnel (and the OTAP Manager and Administrative Specialist) of the customer's respective territory to apply the OTAP/Lifeline credit to their account.

47. Before the close of transaction, CenturyLink will designate at least one liaison for higher level discussions with the OTAP Manager should the incumbents representing Qwest and CenturyLink, respectively vacate their positions as a result of the merger.

48. Post merger, CenturyLink will advise the OTAP Manager of any impending OTAP/Lifeline marketing and outreach efforts (e.g. radio public service announcements). In addition, CenturyLink will provide the OTAP Manager electronic copies of its OTAP/Lifeline advertising collateral.

49. Prior to the merger, CenturyLink, including Embarq and Qwest, will have no outstanding debt to the Commission with respect to the RSPF surcharge collection, remittance, and reporting requirements.

50. CenturyLink will provide notice to and input from the OTAP Manager prior to making material changes to the existing Qwest mechanized OTAP reporting system.

51. CenturyLink agrees that the Operating Companies, including Qwest, will comply with all applicable Commission statutes and regulations regarding affiliated interest transactions, including timely filings of applications and reports, consistent with their respective forms of regulation, and terms of such regulation, as applicable to each respective Operating Company. To the extent affiliated interest changes do occur, the Company or its Operating Companies will make the appropriate affiliated interest filings pursuant to ORS 759.390 consistent with their respective forms of regulation.

52. Within 12 months after the close of this transaction, CenturyLink will file with the Commission affiliated interest agreements, including an updated Cost Allocation Manual for services that reflect as charges and credits to operating accounts in Operating Companies' Form O.

53. The certificates of all CenturyLink and Qwest entities certified as Competitive Providers in Oregon will remain in effect and unchanged as of the date of close of the transaction. Thereafter, CenturyLink and Qwest will report any changes affecting those certificates in compliance with applicable Commission statutes and regulations.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 6th day of November, 2010, by and among CenturyLink, Inc., a Louisiana Corporation ("CenturyLink"), and its affiliates, Qwest Communications International, Inc. ("QCI"), a Delaware Corporation, and its affiliates, including Qwest Corporation, Integra Telecom, Inc., an Oregon Corporation, and its affiliates (collectively "Integra" or "CLEC(s)") with operations in the state of Arizona, Colorado, Idaho, Minnesota, Montana, North Dakota, Oregon, Utah, and Washington, among others. To the extent that Integra becomes certified to do business or does business in Iowa, Nebraska, New Mexico, South Dakota, and Wyoming during the time periods covered by this Agreement, this Agreement will also apply. CenturyLink, QCI and Integra may be referred to collectively as the "Parties."

Whereas, CenturyLink and QCI have entered into an Agreement and Plan of Merger, dated April 21, 2010, which, upon completion, will result in QCI becoming a wholly owned subsidiary of CenturyLink ("Transaction").

Whereas, the Transaction requires the approval of the Federal Communications Commission ("FCC") and various state commissions in states where CenturyLink, QCI, or Integra operate, among other approvals.

Whereas, CenturyLink and QCI have filed applications for authorization to effectuate the Transaction at the FCC and in several states, including in the states of Arizona, Colorado, Iowa, Nebraska, Minnesota, Montana, Oregon, Utah, and Washington.

Whereas, Integra intervened in the state commission review proceedings in Arizona, Colorado, Minnesota, Montana, Oregon, Utah, and Washington, and filed or presented testimony expressing concerns related to the Transaction. Integra also made filings with the FCC raising similar concerns, objections, and proposed conditions and has presented its concerns regarding the Transaction to various Legislators.

Whereas, the Parties have reached a mutually agreeable settlement of Integra's concerns, objections, and proposed conditions regarding the Transaction such that Integra believes that with this Agreement, and without modification or addition to its terms, the Transaction is in the public interest from Integra's perspective and should be approved by the FCC and the state commissions.

In consideration of the mutual representations and covenants contained herein, the Parties hereby agree as follows:

A. Definitions:

"Closing Date" or "Merger Closing Date" refers to the closing date of the Transaction for which the Applicants have sought approval from the FCC and state commissions.[1]

"Merged Company" refers to the post-merger company (CenturyLink and its operating companies, collectively, after the Closing Date).

"Operational Support Systems" or "OSS" are as defined by 47 CFR 51.319(g) and as interpreted in the rules and orders of the FCC.

"OSS Interfaces" are defined as existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and billing capabilities for local services (local exchange services) provided by CLECs to their end users.

"Qwest Corporation" and "Qwest" refer to Qwest Corporation and its successors and assigns.

B. Terms:

1. The Merged Company will not recover, or seek to recover through wholesale service rates or other fees paid by CLECs: a) one-time transition, branding, or any other transaction-related costs; b) any acquisition premium paid by CenturyLink for QCI; and c) any increases in overall management costs that result from the transaction, including those incurred by the operating companies. For purposes of this condition, "transaction-related costs" shall be construed to include all Merged Company costs related to or resulting from the transaction and any related transition, conversion, or migration costs and, for example, shall not be limited in time to costs incurred only through the Closing Date.

2. In the legacy Qwest ILEC service territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Closing Date. In the legacy Qwest service territory, the Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Closing Date,

[1] *See Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a/ CenturyLink for Consent to Transfer of Control, Pleading Cycle Established*, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) ("Public Notice") and related applications filed in state proceedings.

or as subsequently modified or eliminated as permitted under this Agreement or pursuant to any changes in law. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, to the extent a state commission or FCC finds it is consistent with its jurisdiction. The Merged Company does not waive its right to oppose such a request.

a. The Parties will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) [2] that is offered, or provided via contract or Commission approved plan, as of the Merger Closing Date for at least eighteen months after the Closing Date.[3] After the eighteen month period, the Parties may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will be available to all requesting CLECs unless the Merged Company obtains approval from the applicable state commission to eliminate or withdraw it.

i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel merger, in the legacy Qwest ILEC service territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC, measured as follows:

(a.) For the first three months after Closing Date, Qwest's performance will be compared to Qwest's performance for the twelve months prior to Closing Date.
(b.) Thereafter, each successive month of Qwest's performance will be added to the three month period in (a.) in determining Qwest's performance until twelve months after Closing Date.
(c.) Beginning one year after Closing Date, Qwest's performance will be measured by a rolling twelve month average performance.

b. If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must

[2] In Colorado, the QPAP is known as the CPAP. In Minnesota, the QPAP is known as the MPAP. These state-specific terms will be used in agreements filed in Colorado and Minnesota.
[3] The limitations of paragraph 2.a.do not apply to implementation of any decision arising from Colorado Docket No. 02M-259T. In addition, the parties agree not to initiate any further action in North Dakota Docket No. PU-08-04, until at least eighteen months after the Closing Date, however the Parties may implement any decision arising from that docket. Qwest will implement Idaho Order No. 32106 in Case No. QWE-T-08-04. The Parties agree, however, that they will jointly request that the Idaho Commission take no further action in that docket until at least eighteen months after the Closing Date.

conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC for review and comment.

i. CLEC may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation included within a PID measure if CLEC determines that the performance it received for that PID, product, or disaggregation is materially different and provides the basis for CLEC's determination.

ii. If performance deficiencies are not resolved, CLEC may request a resolution or wholesale service quality proceeding before the state commission. The Merged Company does not waive its right to oppose such a request.

3. Notwithstanding any provision allowing one or both parties to Qwest interconnection agreements, Commercial agreements, Wholesale agreements, interstate tariffs, and intrastate tariffs, and other wholesale agreements between Qwest Corporation or its successors and assigns and CLEC ("Extended Agreements") to terminate the Extended Agreement upon or after expiration of the term of the agreement, the Merged Company shall not terminate or grandparent, change the terms or conditions, or increase the rates of any Extended Agreements during the unexpired term or for at least the Applicable Time Period identified below, whichever occurs later (the "Extended Time Period"), unless required by a change of law, or CLEC requests or agrees in writing to a change and any applicable procedure to effectuate that change is followed. In the event that the Extended Agreement expressly allows termination of the agreement in other circumstances, such as default due to non-payment, this Condition does not preclude termination of an Extended Agreement in those circumstances provided that the Merged Company follows both (1) the Extended Agreement's express provisions, and (2) any applicable procedures pertaining to such termination. Upon approval of the Transaction with this Agreement in the public record, the Parties will consider these terms to be part of the order of approval and thus not trigger or require the filing of an ICA amendment, unless directed otherwise by the commissions or FCC. To the extent an amendment is requested, the Parties agree to execute and file an amendment to the ICA within 30 days of the Closing Date, the terms of which will mirror the language in this Agreement, unless mutually agreed otherwise.

   a. *Interconnection Agreements.* The Applicable Time Period for Qwest's interconnection agreements (ICAs) is at least thirty-six months after the Closing Date.[4] The Extended Time Period applies whether or not the initial or current term has expired or is in evergreen status.

[4] Notwithstanding anything that may be to the contrary in paragraphs 3,3a, and 4, in Colorado where a cost docket is nearing completion but may not be final as of the Closing Date, the rates established in Colorado cost docket

i. The Merged Company shall allow CLEC to use its pre-existing interconnection agreement as the basis for negotiating an initial successor replacement interconnection agreement to the extended ICA. Where the parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor replacement interconnection agreement.

ii. CLEC may opt-in to an interconnection agreement in its initial term or the extended term.

iii. If Qwest and CLEC are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow CLEC to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

b. *Commercial Agreements*. The Applicable Time Period for Commercial agreements is at least eighteen months after the Closing Date for Qwest's Commercial agreements (*i.e.*, offerings made available after a UNE(s) becomes unavailable via ICA): Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, as well as any other Commercial agreement to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement:

i. After the eighteen month period, Qwest reserves the right to modify rates.

ii. If a Commercial agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Commercial agreement, subject to Qwest's right to modify

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number 07A-211T will replace the corresponding rates in Qwest-CLEC Colorado ICAs as of the Closing Date for purposes of this paragraph 3; nor does the paragraph prevent implementation of the rates contemplated in paragraph 14.

rates, for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available.

c. *Wholesale Agreements.* The Applicable Time Period for Wholesale agreements is at least eighteen months after the Closing Date for Qwest's Wholesale agreements (*i.e.*, offerings made available after a tariffed offering becomes unavailable via tariff): Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, Synchronous Service Transport), as well as any other Wholesale agreement to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provisions to the contrary in this Agreement:

i. After the eighteen month period, Qwest reserves the right to modify rates.

ii. If a Wholesale agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Wholesale agreement for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available, subject to Qwest's right to modify rates.

d. *Tariffs.* The Applicable Time Period is at least twelve months after the Closing Date for Qwest wholesale tariff offerings that CLEC ordered from Qwest via tariff as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement, Qwest may engage in Competitive Response pricing as set forth in its tariffs.

i. Regarding term and volume discount plans, such plans offered by Qwest as of the Closing Date will be extended by twelve months beyond the expiration of the then existing term, unless CLEC indicates it opts out of this one-year extension.

ii. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.

4. Rates Generally. The Merged Company, in paragraph 3, agrees not to increase the rates in Qwest interconnection agreements during the Extended Time Period[5]. If, during the

[5] Notwithstanding anything that may be to the contrary in paragraphs 3, 3a, or 4, in Colorado where a cost docket is nearing completion but may not be final as of the Closing Date, the rates established in Colorado cost docket number 07A-211T will replace the corresponding rates in Qwest-CLEC Colorado ICAs as of the Closing Date for purposes of this paragraph; nor does the paragraph prevent implementation of the rates contemplated in paragraph 14.

Extended Time Period, the Merged Company offers a Section 251 product or service that is not offered under an interconnection agreement (a "new" product or service), the Merged Company may establish a rate using normal procedures. A product, service, or functionality is not "new" for purposes of this paragraph if Qwest was already providing that product, service, or functionality at existing rates as of the Closing Date in the legacy Qwest ILEC serving territory.

a. Regarding rates changed via a state commission cost docket, the Merged Company may initiate a cost docket (or seek rate increases in a cost docket initiated by another party) before the expiration of the thirty-six month period for extension of ICA terms only if (i) the rate elements, charges or functionalities are not already provided under rates as of the Closing Date as described in paragraph 4; or (ii) the cost docket is not initiated until at least eighteen months after the Closing Date and any rates approved in the cost docket will not become effective until after expiration of the thirty-six month period for extension of ICA terms.

b. After the Closing Date, in the legacy Qwest ILEC serving territory, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC service territory before the Closing Date, unless Qwest first receives Commission approval. This condition prohibits the Merged Company from charging such fees, charges, surcharges or other assessments, including:

i. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;

ii. Access or "use" fees or charges assessed upon CLECs that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and

iii. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.

5. In the legacy Qwest ILEC service territory, to the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to

Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Closing Date. Either Party may request an amendment to the interconnection agreement to lengthen an interval after the thirty-six month period for extension of ICA terms.

6. CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. Sections 251 and 252. In the legacy Qwest ILEC service territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Communications Act.

7. In the legacy Qwest ILEC service territory, after the Closing Date, Qwest Corporation shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including Sections 271 and 272.

8. Qwest will not seek to reclassify as "non-impaired" any Qwest wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest wire center before June 1, 2012.

9. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information and will provide this information, when possible, thirty days prior to the Closing Date. If not possible, the Merged Company will provide the information within five business days, absent exigent circumstances. For changes to support center location, the Merged Company will provide at least thirty days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable notice, as circumstances permit, of the changes and will keep pertinent information timely updated. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.

10. The Merged Company will make available to each wholesale carrier in the legacy Qwest ILEC service territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).

11. The Merged Company shall ensure that Wholesale and CLEC operations are sufficiently staffed and supported, relative to wholesale order volumes, by personnel, including IT personnel, adequately trained on the Qwest and CenturyLink systems and processes. With respect to the Wholesale and CLEC operations, such personnel shall be dedicated exclusively to wholesale operations so as to provide a level of service that is not materially less than that which was provided by Qwest prior to the Merger Closing Date and to ensure that CLEC protected information is not used by the Merged Company's retail operations or marketing purposes. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers.

12. In legacy Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not materially less than that provided by Qwest prior to the Closing date, including support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:

    a. *Detailed Plan*. The Merged Company will provide notice to the Wireline Competition Bureau of the FCC, the state commission of any affected state and parties to this agreement at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLEC will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed, if the regulatory body allows comments, as well as in the Qwest Change Management Process.

    b. *CMP*. The Merged Company will follow the procedures in the Qwest Change Management Process ("CMP") Document.[6]

[6] The Qwest CMP Document is available at http://www.qwest.com/wholesale/cmp/

c. *Replacement or Retirement of a Qwest OSS Interface.*

i. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLECs to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Closing Date (as described in paragraph 12 above). Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The Parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Sufficient acceptance of a replacement for a Qwest OSS Interface will be determined by a majority vote, no vote to be unreasonably withheld, of the CMP participants (Qwest and CLECs) in testing, subject to any party invoking the CMP's Dispute Resolution process. The requirements of this paragraph will remain in place only until completion of merger-related OSS integration and migration activity. If a dispute arises as to whether such merger-related OSS integration and migration activity is complete, the state commission will determine the completion date.

ii. The Merged Company will allow coordinated testing with CLECs, including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing, unless otherwise agreed to by the Parties. Testing described in this paragraph associated with merger-related system replacement or integration will be allowed for the time periods in the CMP Document, or for 120 days, whichever is longer, unless otherwise mutually agreed to by the Parties.

iii. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.

d. *Billing Systems*. The Merged Company will not begin integration of Billing systems before the end of the minimum two year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLECs and their customers. .

i. Any changes by the Merged Company to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.

13. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements.

    a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop, as provided by 47 C.F.R. § 51.319(a)(8).

    b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.

14. No later than 30 days after the Closing Date, the Parties agree to amend its existing Qwest-CLEC interconnection agreements by executing the line conditioning amendment contained in Attachment A to this Agreement and by filing the amendment with the applicable state commissions. The terms of the amendment will be included in the ICAs between the Parties for the Extended Time Period contemplated in paragraph 3, unless required by a change in law. Notwithstanding anything to the contrary in this Agreement, the Parties agree to implement the rates, terms and conditions of the amendment upon execution and applicable commission approval of the amendment. The Parties agree to execute and file the amendment within 10 days of execution of this Agreement for Qwest-CLEC Minnesota ICAs and further agree to implement the terms of the amendment no later than January 15, 2011 in Minnesota. Upon execution of this Agreement, CLEC agrees that this amendment satisfies its concerns on line conditioning expressed in Minnesota Docket No. P-421/CI-09-1066 and that it will seek no further relief on this issue in that docket. Nothing in this Agreement precludes Qwest and CLEC from filing the Amendment for commission approval in any other state before the Closing Date, if Qwest and CLEC mutually agree to do so.

15. After fully executed, filed with and, where necessary, approved by a Commission, this Agreement will be made available to any requesting carrier. Additionally, if an order approving this transaction includes any condition not contained in this Agreement or includes provisions inconsistent with those contained in this Agreement, the Merged Company will make that condition or provision available to other carriers in that state upon request, to the extent applicable.

C. Process for Treatment of Agreement:

The Parties agree that this Agreement resolves all contested issues, objections, proposed conditions and other advocacy related specifically to this Transaction as between them. Integra agrees that this Agreement, without modification or addition, is in the public interest.

Consequently, from its perspective, Integra believes that the Transaction is in the public interest and should be approved by the FCC and state commissions. The Parties acknowledge that this Agreement is not confidential and further agree to the issuance of a joint press release announcing that an Agreement has been reached and that, in consideration of this Agreement, approval of the Transaction is in the public interest from Integra's perspective. The Parties further agree to immediately notify the FCC and the state commissions upon execution that this Agreement has been reached and will provide a courtesy copy of this Agreement. This Agreement shall be filed with the state commissions in the states of Arizona, Colorado, Minnesota, Montana, Oregon, Utah and Washington[7] and any other states where required, within five business days of execution. Integra further commits that, upon request of CenturyLink and QCI, that within 10 days of execution, a representative of Integra with knowledge of this Agreement will accompany CenturyLink and QCI to meetings at the FCC or with members of Congress or their staff to explain that this Agreement, without modification or addition, is in the public interest from Integra's perspective and the Transaction should be approved.

Where testimony filed by one or both of the Integra witnesses has not yet been admitted into evidence and the procedural schedule and rules of a regulatory body permit, Integra will seek leave to withdraw or not submit into the evidentiary record the prefiled testimony of the Integra witnesses in that state, subject to Integra's right to file or re-file testimony as provided in this Agreement. Integra agrees it will represent that this Agreement adequately addresses its concerns and proposed conditions contained in its pre-filed testimony and will represent that, from its perspective, with this Agreement, the Transaction is in the public interest and should be approved. Furthermore, if required by a regulatory body or requested by CenturyLink, Integra will provide a witness to support this Agreement and will testify that with this Agreement, without modification, approval of the Transaction as in the public interest from its perspective. To the extent required by a regulatory body, Integra also agrees to provide such other information in support of this Agreement and approval of the Transaction. No Party to this Agreement will engage in any advocacy (directly or indirectly) contrary to this Agreement. Integra will not advocate for any other party's proposed wholesale conditions or opposition to the Transaction before any regulatory body, or otherwise, except as provided for in this Agreement regarding modification, rejection, or enforcement of this Agreement. Integra will no longer retain QSI Consultants, or any other consultant, as consultants or witnesses in a proceeding reviewing the Transaction after the date this Agreement is executed and filed in that proceeding, unless this Agreement is modified over Integra's objection or rejected. To the extent the consultants, witnesses, and outside counsel represent other intervenors before the FCC and the state commissions, Integra will inform them, as well as the FCC and those state commissions, that they are no longer representing Integra, nor advocating for Integra's positions, unless otherwise retained, at Integra's option, consistent with Integra's obligation under this Agreement.

[7] To the extent necessary to comply with a given state filing convention, the Parties agree to work cooperatively to present this Agreement in the appropriate format, without change in content.

In the event any portion of this Agreement is rejected or altered by a state regulatory body, Integra may submit or re-submit its pre-filed testimony in that jurisdiction. In the event this Agreement is modified or rejected, each Party reserves its right, upon written notice to the Commission and the parties within five (5) business days of the Commission's Order modifying or rejecting this Agreement, to withdraw from this Agreement as to that particular state, with the effect of respectfully requesting the Commission decide all contested issues based on the record, including any testimony that had been withdrawn or not filed due to the execution of this Agreement.

D. Entire Agreement:

This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in any proceeding related to this Transaction, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

E. Agreement As Precedent:

The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty and delay. Nothing in this Agreement (or any testimony, presentation or briefing in any proceeding to approve the Transaction) shall be asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions related to this Transaction. The limitations in this paragraph shall not apply to any proceeding to enforce the terms of this Agreement or any commission order adopting this Agreement in full, as appropriate.

Furthermore, because this Agreement represents a compromise position of the Parties no Party may use this Agreement as precedent on the appropriateness of the positions of that other Party or of other intervenors in any other proceeding and no conduct, statements or documents disclosed in the negotiation of this Agreement (not including non-privileged, publicly available documents) shall be admissible as evidence in any other proceeding.

F. Effective Date:

This Agreement is effective upon execution, however, the Settlement Terms contained in Section B shall not become effective unless and until the Transaction closes. If the Transaction does not close, this Agreement and Settlement Terms are null and void.

G. Manner of Execution:

This Agreement is considered executed when all Parties sign this Agreement. A designated and authorized representative may sign this Agreement on a Party's behalf. The Parties may execute this Agreement in counterparts. If this Agreement is executed in counterparts, all counterparts shall constitute one agreement. A faxed or scanned and emailed signature page containing the signature of a Party is acceptable as an original signature page signed by that Party. Each Party shall indicate the date of its signature on this Agreement.

Dated this 6th day of November 2011.

CENTURYLINK, INC.

By: William E. Cheek, President Wholesale Operations
Dated:

QWEST COMMUNICATIONS INTERNATIONAL, INC.

By: R. Steven Davis,
Senior Vice President—Public Policy & Government Relations
Dated:

INTEGRA TELECOM, INC.

By: James H. Huesgen, President
Dated:

G. Manner of Execution:

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CENTURYLINK, INC.

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CENTURYLINK, INC.

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By: William E. Cheek, President Wholesale Operations
Dated:

QWEST COMMUNICATIONS INTERNATIONAL, INC.

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By: R. Steven Davis,
Senior Vice President—Public Policy & Government Relations
Dated:

INTEGRA TELECOM, INC.

_____

By: James H. Huesgen, President
Dated:

CERTIFICATE OF SERVICE

UM 1484

I hereby certify that on the 25th day of January, 2011, I served the foregoing CENTURYLINK'S AND QWEST'S OPENING POST HEARING BRIEF, in the above entitled docket on the following persons via e-mail, and via U.S. Mail by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. Post Office at Portland, Oregon.

William Sargent (w)
Tillamook county
1134 Main Avenue
Tillamook, OR 97141
wsargent@oregoncoast.com

** Arthur A. Butler (w)
Ater Wynne LLP
601 Union Street, Site 1501
Seattle, WA 98101-3981
aab@aterwynne.com

Joel Paisner
Ater Wynne
601 Union St., Suite 5450
Seattle, WA 98101-2327
jrp@aterwynne.com

William E. Hendricks (w)
Rhonda Kent
CenturyLink
805 Broadway Street
Vancouver, WA 98660-3277
Tre.hendricks@centurylink.com
Rhonda.kent@centurylink.com

Michael Moore (w)
Charter Fiberlink OR-CCVII LLC
12405 Powerscourt Dr.
St Louis, MO 63131
Michael.moore@chartercom.com

**Gordon Feighner (w)
Citizens' Utility Board of OR
610 SW Broadway, Suite 308
Portland, OR 97205
Gordon@oregoncub.org

**Robert Jenks (w)
Citizens' Utility Board of OR
610 SW Broadway, Suite 308
Portland, OR 97205
bob@oregoncub.org

**G. Catriona McCracken (w)
Citizens' Utility Board of OR
610 SW Broadway, Suite 308
Portland, OR 97205
catriona@oergoncub.org

**Raymond Myers (w)
Citizens' Utility Board of OR
610 SW Broadway, Suite 308
Portland, OR 97205
ray@oregoncub.org

Kenneth Schifman (w)
Sprint Communications
6450 Sprint Pkwy
Overland park, KS 66251
Kenneth.schifman@sprint.com

Marsha Spellman
Converge Communications
10425 SW Hawthorne Ln.
Portland, OR 97225
marsha@convergecomm.com

Katherine K. Mudge
Covad Communications Co.
7000 N. Mopac EXPWY
2nd Floor
Austin, TX 78731
kmudge@covad.com

**K.C. Halm (w)
Davis Wright Tremaine
1919 Pennsylvania Ave. NW
2nd floor
Washington DC 20006-3458
kchalm@dwt.com

Diane Browning (w)
Sprint Communications
6450 Sprint Pkwy
Overland park, KS 66251
Diane.c.browning@sprint.com

** Mark Trinchero (w)
Davis Wright Tremaine
1300 SW 5th Ave., Suite 2300
Portland, OR 97201-5682
marktrinchero@dwt.com

**Jason Jones
Department of Justice
1162 Court St., NE
Salem, OR 97301-4096
Jason.w.jones@state.or.us

Edwin Parker (w)
Economic Dev. Alliance
P.O. Box 402
Gleneden Beach, OR 97388
edparker@teleport.com

Karen Clauson (w)
Integra Telecom
6160 Golden Hills Dr.
Golden Valley, MN 55416
klclauson@integratelecom.com

*Greg Rogers (w)
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021
Greg.rogers@level3.com

**Adam Lowney (w)
McDowell Rackner
520 SW 6th Ave., Suite 830
Portland, OR 97204
adam@mcd-law.com

*Wendy McIndoo (w)
McDowell Rackner
520 SW 6th Ave., Suite 830
Portland, OR 97204
wendy@mcd-law.com

*Lisa Rackner (w)
McDowell Rackner
520 SW 6th Ave., Suite 830
Portland, OR 97204
lisa@mcd-law.com

* Kelly Mutch (w)
PriorityOne Telecommunications
P.O. Box 758
La Grande, OR 97850-6462
managers@p1tel.com

**Michael Dougherty
Oregon Public Utility Comm.
P.O. Box 2148
Salem, OR 97308-2148
Michael.dougherty@state.or.us

Mark Reynolds (w)
Qwest Corporation
1600 7th Ave., Rm. 3206
Seattle, WA 98191
Mark.reynolds3@qwest.com

* Lyndall Nipps
TW Telecom of Oregon, LLC
9665 Granite Ridge Dr., Suite 500
San Diego, CA 92123
Lyndall.nipps@twtelecom.com

Barbara Young
United Telephone of the NW
902 Waco St., ORHDRA0305
Hood River, OR 97031
Barbara.c.young@centurylink.com

Adam Haas (w)
WSTC
10425 SW Hawthorne Ln.
Portland, OR 97225
adamhaas@convergecomm.com

Rex Knowles
XO Communications Services
7050 Union Park Ave., Suite 400
Midvale, UT 84047
Rex.knowles@xo.com

*Kristin Jacobson (w)
Sprint Nextel
201 Mission St., Suite 1500
San Francisco, CA 94105
kristin.l.jacobson@sprint.com

Michel Singer Nelson
Penny Stanley
360networks (USA) Inc.
370 Interlocken Blvd.
Suite 600
Broomfield, CO 80021
Penny.stanley@360.net

* Judith Endejan (w)
Graham & Dunn PC
2801 Alaskan Way, Suite 300
Seattle, WA 98121
jendejan@grahamdunn.com

Dave Conn
T-Mobile USA, Inc.
12920 SE 39th St.
Bellevue, WA 98006
Dave.conn@t-mobile.com

Frank G. Patrick, Esq.
P.O. Box 121119
Portland, OR 97281
fgplawpc@hotmail.com

Richard Stevens (w)
Central Telephone, Inc.
1505 S. Grant
P.O. Box 25
Goldendale, WA 98620
rstevens@gorge.net

**Gregory Merz (w)
Gray Plant Mooty
500 IDS Center
80 S Eighth Street
Minneapolis, MN 55402
Gregory.Merz@Gpmlaw.Com

John Felz (w)
CenturyLink
5454 W. 110th St.
KSOPKJ0502
Overland Park, KS 66211
John.felz@centurylink.com

David Hawker (w)
City of Lincoln City
801 SW Highway 101
Lincoln City, OR 97367
davidh@lincolncity.org

Douglas R. Holbrook
P.O. Box 2087
Newport, OR 97365
doug@lawbyhs.com

Charles Jones (w)
Communication Connection
15250 SW Science Park Dr., Suite B
Portland, OR 97229
charlesjones@cms-nw.com

Wayne Belmont, Esq. (w)
Lincoln County Counsel
225 W. Olive St.
Newport, OR 97365
wbelmont@co.lincoln.or.us

Greg Marshall (w)
NPCC
2373 NW 185th Ave., # 310
Hillsboro, OR 97124
gmarshall@corbantechnologies.com

Randy Linderman
Pacific NW Payphone
2373 NW 185th Ave., #300
Hillsboro, OR 97124-7076
rlinderman@gofirestream.com

Edwin B. Parker (w)
Parker Telecommunications
P.O. Box 402
Gleneden Beach, OR 97388
edparker@teleport.com

**Bryan Conway
Oregon Public Utility Comm.
P.O. Box 2148
Salem, OR 97308-2148
Bryan.conway@state.or.us

Patrick L. Phipps
QSI Consulting, Inc.
3504 Sundance Drive
Springfield, IL 62711

DATED this 25th day of January, 2011.

QWEST CORPORATION

By: _____

ALEX M. DUARTE, OSB No. 02045
310 SW Park Ave., 11th Flr.
Portland, OR 97205
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation

(w) denotes waiver of paper service
* denotes signed Protective Order No. 10-192
** denotes signed Protective Order Nos. 10-192 and 10-291