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September 21, 2010

Frances Nichols Anglin  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: UM-1484

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and five (5) copies of Qwest's Rebuttal Testimony of Robert Brigham, Christopher Viveros and Michael Williams, along with a certificate of service.

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

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

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

**REBUTTAL TESTIMONY**

**OF**

**CHRISTOPHER VIVEROS**

**QWEST COMMUNICATIONS INTERNATIONAL, INC.**

**September 21, 2010**

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1

**I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**  
3 **WITH QWEST.**

4 A. My name is Christopher (Chris) Viveros. My business address is 1350 Treat  
5 Boulevard, Suite 200, Walnut Creek, CA 94597. I am employed by Qwest  
6 Corporation as a Director – Legal Issues in the Law Department. In this position,  
7 I am responsible for leading and directing a team of docket managers and witnesses  
8 as well as preparing testimony and testifying on Qwest’s behalf in a variety of  
9 regulatory proceedings, predominantly about Qwest’s wholesale services.

10 **Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS**  
11 **PROCEEDING?**

12 A. Yes.

13

**II. INTRODUCTION**

14 **Q. ON WHICH PARTY’S BEHALF ARE YOU FILING TESTIMONY IN THIS**  
15 **PROCEEDING?**

16 A. My rebuttal testimony is prepared on behalf of Qwest Communications International,  
17 Inc. (“QCII” or “Qwest”), which has intervened in this proceeding.

18 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

19 A. The purpose of my testimony is to address various wholesale conditions proposed in  
20 the reply testimony of Dr. Kay Marinos, on behalf of the Staff of the Oregon Public  
21 Utility Commission (“Staff”),<sup>1</sup> and the direct testimonies of Mr. Timothy J. Gates, on  
22 behalf of tw telecom of oregon, llc, Integra Telecom of Oregon, Inc., Advanced  
23 Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., United

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<sup>1</sup> Staff/500, Marinos/29-30.

1 Telecommunications Inc, d/b/a Unicom, Covad Communications Company, Level 3  
2 Communications, LLC and Charter Fiberlink OR-CCVII, LLC (collectively, “Joint  
3 CLECs”),<sup>2</sup> and Mr. Richard E. Thayer, on behalf of Level 3 Communications, LLC  
4 (“Level 3”).<sup>3</sup> To the extent that Mr. Thayer’s proposed conditions overlap those of  
5 the Joint CLECs, my testimony is meant to address the similar Level 3 proposed  
6 conditions as well. I separately address the unique Level 3 proposed conditions later  
7 in my testimony. My testimony demonstrates to the Commission that a number of  
8 these conditions pertain to issues that have already been, or can be, addressed in  
9 interconnection agreements (“ICAs”), interconnection enforcement complaints, or  
10 other Commission proceedings.

11 **Q. ARE OTHER WITNESSES OFFERING TESTIMONY ON THE PROPOSED**  
12 **WHOLESALE CONDITIONS?**

13 A. Yes. CenturyLink witness Mr. Michael Hunsucker provides testimony in response to  
14 the proposed conditions, and demonstrates that the post-merger company will have  
15 the expertise and ability to manage any on-going wholesale obligations. In addition,  
16 the testimony of Qwest witness Mr. Michael G. Williams will address the conditions  
17 specific to the wholesale performance measurements and the Qwest Performance  
18 Assurance Plan (“QPAP”), including Integra witness Douglas Denney’s proposal of  
19 an “Additional” Performance Assurance Plan (“APAP”).

20 **III. CURRENT CLEC SAFEGUARDS**

21 **Q. PRIOR TO ADDRESSING ANY SPECIFIC CONDITIONS, DO YOU HAVE**  
22 **ANY GENERAL STATEMENTS REGARDING THE SAFEGUARDS THAT**

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<sup>2</sup> Joint CLECs/8, Gates.

<sup>3</sup> Level 3 Communications/100, Thayer/2-4.

1           **ARE CURRENTLY IN PLACE FOR COMPETITIVE LOCAL EXCHANGE**  
2           **CARRIERS (“CLECs”)?**

3           A.     Yes. The Joint CLECs have expressed concerns regarding the potential future  
4           conduct of the Qwest entity and CenturyLink post-merger. It is almost as if the  
5           CLECs are assuming the merger would result in complete deregulation of both  
6           companies, and that neither will be required to comply with any current rules, laws,  
7           regulations or existing ICAs. Nothing could be further from the truth. The merged  
8           company will still be subject to Commission rules and regulations, and it will  
9           continue to meet all of the applicable rules, laws, regulations and their numerous  
10          contractual obligations. In particular, each entity of the merged company will have to  
11          continue to meet its governing wholesale obligations.

12          The merger will have no impact on the combined company’s obligations under the  
13          1996 Telecommunications Act (“the Act”). The Act ensures that the local  
14          telecommunications market is open to competition. For example, the Act requires  
15          that the post-merger entities will continue to negotiate ICAs with CLECs in good  
16          faith and that this Commission will continue to have oversight over those agreements  
17          in Oregon. Therefore, this merger proceeding is far from the only opportunity that  
18          this Commission will have to address any of the CLECs’ concerns, especially in light  
19          of the speculative nature of their stated concerns.

20          **Q.     STAFF’S REPLY TESTIMONY ACKNOWLEDGES THIS TRANSACTION**  
21          **IS DIFFERENT FROM THE OTHER TRANSACTIONS REFERENCED IN**  
22          **JOINT CLECs’ TESTIMONY. WHY IS THAT IMPORTANT?**

23          A.     This acknowledgement is important for several reasons. First, as described in Mr.  
24          Hunsucker’s testimony, the combined company will be able to leverage its combined

1 experience in continuing to meet the varying wholesale obligations of the company's  
2 various entities. Second, CLECs in Qwest's territory can continue to rely on the  
3 terms of their negotiated and arbitrated ICAs, including the Change Management  
4 Process ("CMP") and the Qwest Performance Assurance Plan ("QPAP").

5 **IV. PROPOSED MERGER CONDITIONS**

6 **Q. CAN YOU PLEASE IDENTITY THE PROPOSED MERGER CONDITIONS**  
7 **YOU WILL ADDRESS IN YOUR TESTIMONY?**

8 A. Yes. I provide background information on subjects addressed in Staff's proposed  
9 conditions 38 and 40 as identified in Exhibit Staff/100, Dougherty/54-55, the Joint  
10 CLECs' proposed conditions 2, 3, 7, 7a, 11, 14, 15, 19b and 19c, 20, 25, 26, 27 as  
11 identified in Exhibit Joint CLECs/16, Gates, and Level 3's proposed conditions as  
12 identified in Exhibit Level 3 Communications/100, Thayer/2-4.

13 **A. Staff Proposals**

14 **Q. WHICH STAFF CONDITIONS ARE YOU DISCUSSING?**

15 A. I will be discussing Staff's proposed conditions 38 and 40, including Dr. Marinos'  
16 testimony on these conditions. While Mr. Hunsucker responds to each of the Staff  
17 proposals, I will be providing information about existing Qwest obligations that  
18 supports the conclusion that these conditions are not required in order for CLECs to  
19 not be adversely affected, let alone for the merger to be found to be in the public  
20 interest.  
21

22 **Q. IS THERE A RECURRING THEME IN DR. MARINOS' TESTIMONY**  
23 **UNDERLYING THE PROPOSED CONDITIONS?**

1 A. Yes. Dr. Marinos' testimony repeatedly refers to the "need for a period of stability  
2 for wholesale customers."<sup>4</sup> While stability is an admirable goal, a period of stability,  
3 especially a period that lasts four years, is not required to meet the standard under  
4 which this transaction is to be evaluated. More specifically, Staff's proposed  
5 conditions 38 and 40 simply duplicate Qwest's existing contractual obligations, and,  
6 in fact, contain language that could be interpreted to require changes to Qwest's  
7 existing practice.

8 **Q. PLEASE EXPLAIN HOW THESE CONDITIONS ARE DUPLICATIVE OF**  
9 **CURRENT OBLIGATIONS?**

10 A. Staff's proposed Condition 40 would require that the current Qwest CMP, with the  
11 terms contained in the CMP Document, be maintained. As I described in my direct  
12 testimony, the CMP provides a defined, documented process for managing CLEC-  
13 affecting wholesale changes, which is incorporated into most existing ICAs. Because  
14 CMP is a contractual obligation, the merged company cannot simply decide to  
15 discontinue abiding by its terms.

16  
17 Staff's proposed Condition 38 would require the merged company to maintain  
18 various pieces of contact information that were in place prior to the merger, as well as  
19 to provide a minimum of 30 days advance notice for certain types of changes. This  
20 condition duplicates existing ICA terms that govern providing contact information  
21 and the required timeframes. Additionally, for other types of information changes,  
22 such as who to contact on an escalation basis, or a change to a service center's hours

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<sup>4</sup> For example, see Staff/500, Marinos/23, lines 10-12, 15-20, and Staff/500, Marinos/25 lines 16-18.

1 of operation, the CMP terms already address providing advance notice and prescribe  
2 the necessary timeframes.<sup>5</sup>

3 **Q. HOW DO STAFF’S PROPOSED CONDITIONS 38 AND 40 DRIVE**  
4 **CHANGES TO EXISTING PROCEDURES?**

5 A. In addition to requiring the continuance of CMP, Condition 40 would also require that  
6 “[p]ending CLEC Change Requests shall be completed in a commercially reasonable  
7 time frame.” However, the CMP has explicit procedures for prioritizing changes for  
8 inclusion in scheduled releases. If a change is initiated through CMP, but is not  
9 highly prioritized by CLECs, the change can remain pending for an extended period  
10 of time. This proposed condition is not needed for the CMP to continue to serve its  
11 intended purpose of providing an established, documented mechanism to manage  
12 change – whether the change is CLEC-initiated or Qwest-initiated. In fact, the  
13 proposed condition could be interpreted to require Qwest to implement changes that  
14 CLECs do not value simply based on when the request was initiated.

15  
16 The specified 30-day timeframe included in Staff’s proposed Condition 38 is also  
17 inconsistent with the recognized differences in notice requirements based on the  
18 varying types of CLEC-impacting changes contained in the CMP. For example, a  
19 change in escalation information is noticed as a Level 2 change; under CMP, the  
20 standard notice interval for Level 2 changes is 21 days. There is nothing about this  
21 transaction that warrants a change to the existing notice process being followed today,  
22 and absent adoption of Condition 38, the existing notice process can be followed  
23 post-close to provide CLECs with ample notice.

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<sup>5</sup> See *infra*, p. 14.

**B. CLEC Proposals**

1  
2  
3 **Q. PLEASE IDENTITY THE FIRST GROUP OF CLEC CONDITIONS YOU**  
4 **WILL ADDRESS.**

5 A. Yes. Below are the Joint CLECs' proposed merger conditions that all appear to be  
6 rate-related.

7 2. The Merged Company will not recover, or seek to recover, through  
8 wholesale service rates or other fees paid by CLECs, and will hold wholesale  
9 customers harmless for, one-time transfer, branding, or any other transaction-  
10 related costs. For purposes of this condition, "transaction related costs" shall  
11 be construed broadly and, for example, shall not be limited in time to costs  
12 incurred only through the Closing Date.

13 3. The Merged Company will not recover, or seek to recover, through  
14 wholesale service rates or other fees paid by CLECs, and will hold wholesale  
15 customers harmless for, any increases in overall management costs that result  
16 from the transaction, including those incurred by the Operating Companies.

17 7. Rates charged by legacy CenturyLink and rates charged by legacy  
18 Qwest (including those described in condition 6) for tandem transit service,  
19 any interstate special access tariffed or non-tariffed and commercial offerings,  
20 any intrastate wholesale tariffed offering, and any service for which prices are  
21 set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications  
22 Act shall not be increased for at least the Defined Time Period. The Merged  
23 Company will not create any new rate elements or charges for distinct  
24 facilities or functionalities that are already provided under rates as of the  
25 Closing Date.

26 a. The Merged Company shall continue to offer any term and volume discount  
27 plans offered as of the Merger Announcement Date, for at least the Defined  
28 Time Period, without any changes to the rates, terms, or conditions of such  
29 plans. The Merged Company will honor any existing contracts for services on  
30 an individualized term pricing plan arrangement for the duration of the  
31 contracted term.

32  
33 **Q. DOES THE COMMISSION ALREADY HAVE A PROCESS IN PLACE TO**  
34 **ADDRESS RATES FOR SECTION 251-RELATED SERVICES, AS**  
35 **IDENTIFIED IN THE PROPOSED CONDITIONS?**

1 A. Yes. The Commission typically conducts cost dockets and interconnection  
2 arbitrations to establish rates for services that Incumbent Local Exchange Carriers  
3 (“ILECs”) provide to CLECs pursuant to Section 251 of the Act. In fact, the Act  
4 requires that rates for products and services subject to Section 251 be priced at Total  
5 Element Long Run Incremental Cost (“TELRIC”). Thus, Qwest cannot unilaterally  
6 alter existing TELRIC-established rates. Changing of rates or a rate structure would  
7 require ICA amendment negotiations or Commission approval through a TELRIC  
8 cost docket. Any CLEC’s concerns can be addressed through the opportunity to  
9 participate in Commission cost proceedings,<sup>6</sup> or through amendment negotiations.  
10 Thus, no unique merger conditions are necessary to address these theoretical rate  
11 issues.

12  
13 **Q. BASED ON THE FACT THAT THE COMMISSION GENERALLY**  
14 **APPROVES SECTION 251 RATES, AND THAT A CLEC CAN REQUEST**  
15 **THAT COMMISSION-APPROVED RATES BE ESTABLISHED, IS THERE**  
16 **ANY NEED FOR MERGER CONDITIONS THAT SPEAK TO HOW RATES**  
17 **WILL BE ESTABLISHED POST-MERGER?**

18 A. No. To the extent that CLECs have any concerns regarding Section 251-related rates  
19 which are subject to Commission approval, there are ample safeguards for CLECs to  
20 express any future cost model concerns in the appropriate cost proceeding.

21

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<sup>6</sup> See Integra/1, Denney/2. Mr. Denney identifies that he has participated in more than 50 state utility commission proceedings and that much of his prior experience has involved cost models, and that he also has testified regarding wholesale costs for local service.

1 **Q. PLEASE IDENTITY THE NEXT PROPOSED CONDITION YOU ARE**  
2 **ADDRESSING.**

3 A. The next proposed condition I will address is Joint CLECs' proposed Condition 11:

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

9  
10 **Q. PROPOSED CONDITION 11 POTENTIALLY REQUESTS THAT THE**  
11 **COMMISSION ESTABLISH LIMITATIONS ON INSTALLATION**  
12 **INTERVALS FOR POTENTIALLY ALL QWEST WHOLESALE**  
13 **PRODUCTS, SERVICES AND "FUNCTIONALITY."<sup>7</sup> IS THIS**  
14 **APPROPRIATE?**

15 A. No. The issue of installation intervals involves a number of very complicated legal,  
16 factual and practical issues. The proposed condition would impose a broad-brush  
17 restriction on installation intervals without any factual support. Qwest's installation  
18 intervals are established based on a variety of reasons, including underlying  
19 technology, which can be subject to change over time. In addition, "functionality" is  
20 not clearly defined, so Qwest would not even know which wholesale products or  
21 services would be subject to this installation interval limitation. Qwest has developed  
22 and implemented separate and distinct procedures and provisioning intervals for  
23 Unbundled Network Elements ("UNEs"), combinations of UNEs, commercial  
24 products and services, retail local exchange services, and tariffed private line services,  
25 to name a few. These installation intervals should not be artificially limited due to the

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<sup>7</sup> Joint CLECs/8, Gates/133-135.

1 same CLECs' desires to control this key component of the Qwest provisioning  
2 process for all its products and services.

3 **Q. ARE INSTALLATION INTERVALS FOR UNEs THAT CLECs USE TO**  
4 **COMPETE WITH QWEST IN THE LOCAL EXCHANGE MARKET**  
5 **INCLUDED IN CURRENT QWEST ICAs?**

6 A. While service installation intervals are included in many CLECs' ICAs, more  
7 recently, numerous CLECs have agreed with Qwest to make reference to the Qwest  
8 Service Interval Guide ("SIG").

9 **Q. IF QWEST MAKES A CHANGE IN THE INSTALLATION INTERVAL OF A**  
10 **PRODUCT OR SERVICE, IS THERE A MECHANISM IN PLACE TO**  
11 **NOTIFY CLECs IN ADVANCE, AND THUS GIVE THEM AMPLE TIME TO**  
12 **PREPARE FOR ANY CHANGE IN AN INTERVAL?**

13 A. Yes. Qwest follows the CMP notification intervals to provide advance notice of SIG  
14 changes, and specific reseller notices are issued, when appropriate, to advise resellers  
15 of changes in applicable retail intervals. Clearly, there are safeguards in place to keep  
16 CLECs informed regarding any interval changes in Qwest's retail and wholesale  
17 products and services, and thus there is no need for the Commission to establish any  
18 artificial limitations that would only serve to restrict the merged company from  
19 having the flexibility to manage its operations in response to changes in the  
20 marketplace. Existing requirements to provide CLECs with non-discriminatory  
21 access to provisioning, coupled with the notice obligations contained in the CMP, are  
22 sufficient. For the foregoing reasons, and those contained in Mr. Hunsucker's  
23 rebuttal testimony, the Commission should reject the CLECs' proposed Condition 11.

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**Q. PLEASE IDENTIFY THE NEXT CONDITION THAT YOU WILL ADDRESS.**

A. Below is the Joint CLECs' proposed Condition 14:

14. For at least the Defined Time Period, the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.

**Q. IS CONDITION 14 (WHICH PROPOSES LIMITATIONS ON QWEST'S ABILITY SEEK "NON-IMPAIRED" STATUS FOR NEW WIRE CENTERS) CONSISTENT WITH STATE AND FEDERAL ORDERS?**

A. No, it is not. First, CLECs have no legal basis to require Qwest to waive any rights it has under federal law, nor does the Commission have authority to do so. Further, my understanding is that the rules and guidelines that the FCC established in the *Triennial Review Remand Order* ("TRRO") are not subject to change simply because of an ILEC merger proceeding, and I am not aware that any state utility commission has ever required an ILEC to waive rights it has under federal law to seek non-impairment status of its wire centers. Moreover, filings for non-impaired status are based on the competitive marketplace and the alternatives that CLECs have in that marketplace to buy (or self-provision) network elements that they need to compete.

In addition, this proposed condition ignores the extensive work that Qwest and a representative body of CLECs (many of which are intervenors here) have already done to establish clear and consistent procedures for future wire center

1 reclassification petitions.<sup>8</sup> The CLECs' proposed condition ignores their own  
2 agreement regarding the process that would be used for addressing  
3 reclassification petitions.

4 Specifically, several of the Joint CLECs and Qwest worked cooperatively in 2006 and  
5 2007 to develop and stipulate to the process and procedures to be used when Qwest  
6 would request that future wire centers be added to the non-impaired wire center list.  
7 The stipulation includes the following section:

8 **Settlement Section VI: Future Qwest Filings to Request Commission**  
9 **Approval of Non-Impairment Designations and Additions to the**  
10 **Commission-Approved Wire Center List**

11  
12 This section summarizes the Parties' agreement regarding how Qwest can  
13 request Commission approval of non-impairment designations and additions  
14 to the Commission approved non-impaired wire center list in the future (i.e.,  
15 future additions to the initial Commission-approved list).<sup>9</sup>  
16

17 **Q. DID THE COMMISSION REVIEW AND APPROVE THIS STIPULATION?**

18 A. Yes. On July 31, 2007, the Commission approved the stipulation, and I presume it  
19 was in part because all of the parties (including several of the Joint CLECs) stated  
20 that this stipulation would resolve all issues regarding the future process for  
21 determining new non-impaired wire centers:

22 . . . The methodology set forth in the Settlement Agreement is applicable both  
23 to the Initial List, satisfying the remaining portions of Ordering Clause 2,  
24 when associated with data already submitted in this proceeding, and to wire  
25 centers that may be added at later dates. The methodology agreed upon by the

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<sup>8</sup> See Order No. 07-328 (July 31, 2007) in Docket UM 1251 (Commission approving a stipulation and settlement agreement between Qwest and numerous CLECs). See also Order No. 07-109 in Docket UM 1251 and Order No. 07-404 in Docket UM 1326, in which this Commission declared certain Qwest wire centers "non-impaired" for certain UNEs (Portland Capitol, Salem and Eugene for DS3 loops and Portland Capitol for DS1 loops).

<sup>9</sup> Order No. 07-328, p. 6.

1 Parties constitutes a reasonable interpretation of the *TRRO* as discussed in  
2 Order No. 07-109. The terms and conditions of Settlement Section V and  
3 associated attachments are approved.  
4

5 The methods, terms and conditions described in the Settlement Agreement as  
6 agreed upon by the Parties constitute a mutually agreed upon resolution of the  
7 numerous outstanding sub-issues among the Parties. We find those methods,  
8 terms and conditions consistent with a reasonable interpretation of the *TRRO*  
9 as discussed in Order No. 07-109. The methods, terms and conditions of  
10 Settlement Section V, as noted above, and Settlement Sections VI and VII and  
11 their associated attachments are approved.

12  
13 **Q. HAS THE SETTLEMENT AGREEMENT THAT THE COMMISSION**  
14 **APPROVED BEEN TERMINATED IN OREGON?**

15 A. No, it has not.

16  
17 **Q. DOES THE MERGER TRANSACTION AT ISSUE IN THIS PROCEEDING**  
18 **IMPACT THE STANDARD OR THE FACTUAL ANALYSIS ASSOCIATED**  
19 **WITH WIRE CENTER RECLASSIFICATIONS?**

20 A. No. And I also note that there is simply no nexus or connection with the issues that  
21 the Commission is required to consider to determine whether the merger causes “no  
22 harm,” and thus is in the public interest, and the non-impaired wire center waiver that  
23 the Joint CLECs seek. This is simply another of the CLECs’ numerous attempts to  
24 extract or leverage a legal or operational concession from CenturyLink and Qwest for  
25 their own self-interest, despite that there is no connection between the merger  
26 approval process and this issue. The Commission should therefore reject this  
27 inappropriate proposal.

28  
29 **Q. DO YOU HAVE ANY COMMENTS REGARDING JOINT CLECs’**  
30 **PROPOSED CONDITION 15?**

1 A. Yes. The Joint CLECs' proposed Condition 15 reads as follows:

2 15. The Merged Company shall provide to wholesale carriers, and maintain and  
3 make available to wholesale carriers on a going-forward basis, up-to-date  
4 escalation information, contact lists, and account manager information at least  
5 30 days prior to the Closing Date. For changes to support center location,  
6 organizational structure, or contact information, the Merged Company will  
7 provide at least 30 days advance written notice to wholesale carriers. For  
8 other changes, the Merged Company will provide reasonable advanced notice  
9 of the changes. The information and notice provided shall be consistent with  
10 the terms of applicable interconnection agreements.

11  
12 This proposed condition is simply not necessary, especially given the notice  
13 requirements of the CMP.

14 **Q. WHY ARE THESE PROPOSED CONDITIONS UNNECESSARY GIVEN THE**  
15 **NOTICE REQUIREMENTS OF CMP?**

16 A. As I discussed in response to Staff's proposed Condition 38, the CMP requires Qwest  
17 to notify CLECs of any changes that the CMP has determined may impact CLECs.  
18 The CMP guidelines define various levels of Qwest-originated product/process  
19 changes, and these guidelines are what Qwest has consistently followed to originate  
20 and implement changes that may impact CLECs. Here are two examples of changes  
21 that may impact CLECs and for which the CMP requires certain notice by Qwest:

- 22 • Changes in escalation information, such as a change to a telephone number  
23 or fax number, is considered a Level 2 CMP change and has a standard  
24 notice interval of 21 days.
- 25  
26 • A change to documented hours of operation for a center is a Level 3 CMP  
27 change, which typically requires 45 days notice be given to CLECs.

28 Further, this proposed condition, like Staff's proposed Condition 38, fails to account  
29 for the varying notice periods already defined in CMP. The Joint CLECs have  
30 advocated for the merged company to commit to continue the CMP, while at the same

1 time proposing conditions contrary to some of its terms. This condition should not be  
2 adopted.

3 **Q. WILL YOU BE ADDRESSING ALL OF THE JOINT CLECs' CONDITION**  
4 **NUMBER 19?**

5 A. No. Mr. Hunsucker's testimony addresses Condition 19 overall, and I will be  
6 addressing proposed Condition 19b, which would require expensive and unnecessary  
7 third-party testing of any new proposed Operations Support Systems (OSS), and  
8 Condition 19c, which is unnecessary because Qwest ICAs already include a  
9 commitment to train CLECs on OSS changes.

10 19b. For any Qwest system that was subject to third party testing (e.g., as part  
11 of a Section 271 process), robust, transparent third party testing will be  
12 conducted for the replacement system to ensure that it provides the needed  
13 functionality and can appropriately handle existing and continuing wholesale  
14 services in commercial volumes. The types and extent of testing conducted  
15 during the Qwest Section 271 proceedings will provide guidance as to the  
16 types and extent of testing needed for the replacement systems. The Merged  
17 Company will not limit CLEC use of, or retire, the existing system until after  
18 third party testing has been successfully completed for the replacement  
19 system.

20 19c. Before implementation of any replacement or to be integrated system, the  
21 Merged Company will allow for coordinated testing with CLECs, including a  
22 stable testing environment that mirrors production and, when applicable,  
23 controlled production testing. The Merged Company will provide the  
24 wholesale carriers training and education on any wholesale OSS implemented  
25 by the Merged Company without charge to the wholesale carrier.

26 **Q. ACCORDING TO MR. GATES, SECTION 271 OF THE ACT REQUIRES**  
27 **NON-DISCRIMINATORY ACCESS TO OSS.<sup>10</sup> DO YOU AGREE?**

28 A. Mr. Gates' testimony alludes to a separate, distinct Section 271 requirement  
29 specifically for OSS. However, there is no such requirement beyond the Sections 251

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<sup>10</sup> Joint CLECs/8, Gates/124-125.

1 and 252 requirements, and accompanying regulations, applicable to *all ILECs* to  
2 provide non-discriminatory access to UNEs and the resale of telecommunication  
3 services. The 14-point competitive checklist found in Section 271(c)(2)(B) requires,  
4 in pertinent part:

5 (ii) Non-discriminatory access to network elements in accordance with the  
6 requirements of *sections 251(c)(3) and 252(d)(1)*, and  
7

8 (xiv) Telecommunications services are available for resale in accordance with  
9 the requirements of *sections 251(c)(4) and 252(d)(3)*. (Emphasis added.)  
10

11 In summary, Section 271 requires non-discriminatory access to *all* Section 251  
12 UNEs, of which OSS is but one. However, access to OSS is not unique to Qwest as a  
13 Bell Operating Company (“BOC”) that sought interLATA long distance authority  
14 (i.e., Section 271 approval), but rather, is required of *all ILECs*, including  
15 CenturyLink in its ILEC territory.

16

17 **Q. DOES THE ACT REQUIRE THAT A BOC’S OSS UNDERGO THIRD-**  
18 **PARTY TESTING?**

19 A. No. Code of Federal Regulations (“CFR”) § 51.319(g), which defines OSS  
20 obligations, does not require third-party testing:

21 (g) Operations support systems. An incumbent LEC shall provide a  
22 requesting telecommunications carrier with nondiscriminatory access to  
23 operations support systems on an unbundled basis, in accordance with section  
24 251(c)(3) of the Act and this part. Operations support system functions  
25 consist of pre-ordering, ordering, provisioning, maintenance and repair, and  
26 billing functions supported by an incumbent LEC's databases and information.  
27 An incumbent LEC, as part of its duty to provide access to the pre-ordering  
28 function, shall provide the requesting telecommunications carrier with  
29 nondiscriminatory access to the same detailed information about the loop that  
30 is available to the incumbent LEC.

31

1 **Q. BEYOND THE OSS UNE DEFINITION, DOES SECTION 271 REQUIRE**  
2 **THAT A BOC'S OSS UNDERGO THIRD-PARTY TESTING TO BE**  
3 **"SECTION 271 COMPLIANT"?**

4 A. No. There is nothing in Section 271 that obligates a BOC to conduct third-party  
5 testing in order to satisfy the Section 271 competitive checklist. The competitive  
6 checklist merely requires a BOC to provide non-discriminatory access to UNEs,  
7 including OSS as defined in CFR § 51.319(g). Third-party testing is simply not a  
8 requirement for any ILEC, including a BOC.

9 **Q. MR. GATES CONTENDS THAT ABSENT THIRD-PARTY TESTING, ANY**  
10 **REPLACEMENT SYSTEM WILL CAUSE HARM. DO YOU AGREE?**

11 A. No. Mr. Gates provides no evidence, but merely speculation, that an existing  
12 interface that is handling commercial volumes today, such as CenturyLink's OSS  
13 does today,<sup>11</sup> cannot be modified and adapted to function as well as (or better than) an  
14 existing interface.

15  
16 **Q. IS THERE EVIDENCE THAT CONTRADICTS MR. GATES' TESTING**  
17 **DEMAND?**

18 A. Yes. The Qwest systems and processes that were third-party tested more than eight  
19 years ago during the Section 271 approval process are *not the same systems and*  
20 *processes* that Qwest utilizes in its territory today. Since the conclusion of the third-  
21 party tests, there have been hundreds, if not thousands, of changes implemented to  
22 Qwest's OSS. These changes include the retirement of the third-party tested

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<sup>11</sup> CenturyLink's OSS is estimated to handle approximately 1 million orders in 2010, based on January – May year to date volumes. See CTL/400, Hunsucker/10.

1 Interconnect Mediated Access – Electronic Data Interchange (“IMA-EDI”) interface,  
2 and the introduction of a replacement interface, Interconnect Mediated Access –  
3 Extensible Mark-up Language (“IMA-XML”).<sup>12</sup>

4

5 **Q. WERE THESE ALL QWEST-INITIATED CHANGES?**

6 A. No. Some of these changes were Qwest-initiated, while others were CLEC-initiated,  
7 including the migration to the IMA-XML interface. However, all of these changes  
8 were managed successfully through the Qwest CMP, without third-party testing.

9

10 **Q. DO QWEST ICAs COMMIT TO IMPLEMENTING OSS CHANGES VIA THE**  
11 **CMP?**

12 A. Yes. For example, in the current ICA between Qwest and Eschelon, at section 12.1.1,  
13 Qwest commits to use the CMP for OSS system improvements. Moreover, the Qwest  
14 template also makes this commitment for all new ICAs:

15

16 12.1.1 Qwest has developed and shall continue to provide Operational  
17 Support System (OSS) interfaces using electronic gateways and manual  
18 processes. These gateways act as a mediation or control point between  
19 CLEC's and Qwest's OSS. These gateways provide security for the interfaces,  
20 protecting the integrity of the Qwest OSS and databases. Qwest's OSS  
21 interfaces have been developed to support Pre-ordering, Ordering and  
22 Provisioning, Maintenance and Repair and Billing. This section describes the  
23 interfaces and manual processes that Qwest has developed and shall provide  
24 to CLEC. Additional technical information and details shall be provided by  
25 Qwest in training sessions and documentation and support, such as the  
26 “Interconnect Mediated Access User's Guide.” Qwest will continue to make  
27 improvements to the electronic interfaces as technology evolves, Qwest's  
28 legacy systems improve, or CLEC needs require. Qwest shall provide  
29 notification to CLEC consistent with the provisions of the Change  
30 Management Process (CMP) set forth in Section 12.2.6.

31

---

<sup>12</sup> The IMA-XML interface was first made available in October 2006, with the first CLEC migrations occurring in April 2007.

1 The use of the CMP provides a forum for Qwest or CLECs to explain any proposed  
2 system changes and a formalized process for CMP participants to voice any concerns  
3 they may have about any proposed change.

4  
5 **Q. THE JOINT CLECs' PROPOSED CONDITION 19C PROPOSES THAT**  
6 **CLECs HAVE AN OPPORTUNITY TO PERFORM TESTING WITH ANY**  
7 **NEW OSS SYSTEM, AND THAT THE MERGED COMPANY WOULD**  
8 **PROVIDE TRAINING FOR CLECs ON THE NEW SYSTEM. IS THIS ISSUE**  
9 **ADDRESSED IN CURRENT ICAs?**

10 A. Yes, it is. The Qwest ICA commits to training CLECs on its OSS systems, and initial  
11 training on systems will be at no charge to the CLEC: Specifically, Sections  
12 12.1.3.2.1 and 12.1.3.2.2 of the standard Qwest ICA provides as follows:

13 12.1.3.2.1 Qwest shall provide assistance for CLEC to understand how to  
14 implement and use all of the available OSS functions. Qwest shall provide  
15 CLEC sufficient electronic and manual interfaces to allow CLEC equivalent  
16 access to all of the necessary OSS functions. Through its web site, training,  
17 disclosure documentation and development assistance, as available, Qwest  
18 shall disclose to CLEC any internal business rules, specifications, test cases,  
19 mapping examples and other formatting information necessary to ensure that  
20 CLEC's requests and orders are processed efficiently and necessary to enable  
21 CLEC to design its own systems. Qwest will provide information to CLEC in  
22 writing. Qwest will post such information, including business rules regarding  
23 out-of-hours Provisioning, on Qwest's web site. If Qwest fails to provide  
24 such information or provides inaccurate information, Qwest will remedy the  
25 situation within Qwest systems. Qwest shall provide training to enable CLEC  
26 to devise its own course work for its own employees. Through its  
27 documentation available to CLEC, Qwest will identify how its interface  
28 differs from national guidelines or standards.

29  
30 12.1.3.2.2 Additional technical information and details about Qwest's  
31 OSS shall be provided by Qwest to CLEC in training sessions and  
32 documentation and support, such as Qwest's "Interconnect Mediated Access  
33 User's Guide." Qwest shall maintain its Interconnect Mediated Access User's  
34 Guide on Qwest's wholesale web site. Qwest shall offer introductory training  
35 on procedures that CLEC must use to access Qwest's OSS at no cost to

1 CLEC. If CLEC asks Qwest personnel to travel to CLEC's location to deliver  
2 training, CLEC will pay Qwest's reasonable travel related expenses unless the  
3 Parties agree otherwise.  
4

5 **Q. DO QWEST ICAs ALSO DISCUSS EXTENSIVE TESTING OPTIONS THAT**  
6 **QWEST WILL PROVIDE FOR CLECs WHEN THERE ARE OSS SYSTEM**  
7 **CHANGES AND UPDATES?**

8 A. Yes. Beginning at Section 12.2.9.3 of Qwest's standard ICA, Qwest make several  
9 pages of testing commitments to CLEC for its OSS systems:

10 12.2.9.3 Qwest will provide CLEC with access to a stable testing  
11 environment that mirrors production to certify that its OSS will be capable of  
12 interacting smoothly and efficiently with Qwest's OSS. Qwest has established  
13 the following test processes to assure the implementation of a solid interface  
14 between Qwest and CLEC:  
15

16 Subsections 12.2.9.3.1, 12.2.9.3.2, 12.2.9.3.3, and 12.2.9.3.4 of the ICA specify  
17 various processes, including Connectivity Testing, Stand-Alone Testing Environment  
18 (SATE) regression testing, SATE progression testing, and Controlled Production.

19  
20 **Q. SHOULD THE COMMISSION ADOPT THE JOINT CLECS' PROPOSED**  
21 **CONDITIONS 19b AND 19c?**

22 A. No. The Joint CLECs have failed to identify any legitimate reason to subject the  
23 merged company to costs for testing that was never required. The FCC repeatedly  
24 affirmed in Section 271 approvals that actual commercial use was the most persuasive  
25 evidence of satisfactory OSS. That, coupled with all the components of proposed  
26 Condition 19c, already being a contractual obligation that will remain intact post-  
27 merger, calls for rejection of these conditions.

28  
29 **Q. PLEASE IDENTIFY THE NEXT CONDITIONS YOU WILL ADDRESS.**

1 A. Identified below are the CLECs' proposed Conditions 25, 26 and 27:

2 25. The Merged Company will provide routine network modifications in  
3 compliance with federal and state law, as well as the terms of applicable  
4 interconnection agreements.

5  
6 26. After the Closing Date, the Merged Company will engineer and maintain its  
7 network in compliance with federal and state law, as well as the terms of  
8 applicable interconnection agreements. Resources will not be diverted to  
9 merger-related activities at the expense of maintaining the Merged Company's  
10 network.

11  
12 a. The Merged Company shall not engineer the transmission capabilities  
13 of its network in a manner, or engage in any policy, practice, or  
14 procedure, that disrupts or degrades access to the local loop.

15  
16 b. The Merged Company will retire copper in compliance with federal  
17 and state law, as well as the terms of applicable interconnection  
18 agreements and as required by a change of law.

19  
20 c. The Merged Company will not engineer or maintain the network  
21 (including routing of traffic) in a manner that results in the application of  
22 higher rates for traffic or inefficiencies for wholesale customers.

23  
24 27. The Merged Company will provide conditioned copper loops in compliance  
25 with federal and state law and at rates approved by the applicable state  
26 Commission. Line conditioning is the removal from a copper loop of any  
27 device that could diminish the capability of the loop to deliver xDSL. Such  
28 devices include bridge taps, load coils, low pass filters, and range extenders.  
29 Insofar as it is technically feasible, the Merged Company shall test and report  
30 troubles for all the features, functions and capabilities of conditioned copper  
31 lines, and may not restrict its testing to voice transmission only. If the Merged  
32 Company seeks to change rates approved by a state Commission for  
33 conditioning, the Merged Company will provide conditioned copper loops in  
34 compliance with the relevant law at the current Commission approved rates  
35 unless and until a different rate is approved.  
36

37 **Q. SEVERAL CLECs PROVIDE TESTIMONY REGARDING PROPOSED**  
38 **CONDITIONS 25, 26 AND 27. DO YOU HAVE ANY GENERAL**  
39 **COMMENTS TO THIS TESTIMONY?**

1 A. Yes. Despite CLEC claims to the contrary,<sup>13</sup> these proposed conditions attempt to  
2 litigate issues in this merger approval proceeding that have been, or can be, addressed  
3 in other more appropriate and focused Commission proceedings.

4  
5 **Q. DO YOU BELIEVE IT IS APPROPRIATE TO ADDRESS PROPOSED**  
6 **CONDITIONS THAT HAVE BEEN, OR CAN BE, ADDRESSED IN OTHER**  
7 **MORE APPROPRIATE AND FOCUSED PROCEEDINGS?**

8 A. No, I do not. These are very complex issues and disputes that have no place in this  
9 merger approval docket. To ask this Commission to take a position on these  
10 proposed conditions, potentially setting some precedent for issues which are complex  
11 telecommunications industry issues and which may be, and should be, considered in  
12 other proceedings, is inappropriate.

13  
14 **Q. MR. DENNEY STATES THAT CENTURYLINK AND QWEST SHOULD**  
15 **NOT HAVE ANY PROBLEMS WITH THESE PROPOSED MERGER**  
16 **CONDITIONS BECAUSE THE CONDITIONS ARE INTENDED TO GO NO**  
17 **FURTHER THAN THE CURRENT LAW.<sup>14</sup> WHAT IS YOUR RESPONSE TO**  
18 **THIS STATEMENT?**

19 A. If that was the sole intent of the CLECs, these issues would be moot, as the ICAs  
20 already obligate Qwest to be compliant with current law and address the process to  
21 negotiate changes in existing laws.<sup>15</sup> However, as discussed in more detail in Mr.  
22 Hunsucker's rebuttal testimony, these proposed conditions demand much more than

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<sup>13</sup> Integra/1, Denney/31-33; Integra/3, Johnson/5.

<sup>14</sup> Integra/1, Denney/31.

<sup>15</sup> Moreover, Qwest and CenturyLink are required to comply with applicable laws, rules, regulations, and contractual obligations in any event, even without Section 251 ICAs.

1 compliance with existing law, which CenturyLink and Qwest are already obligated to  
2 follow, and which they do follow. In fact, both companies make clear in their ICAs  
3 that their contractual obligations are based on current federal and state law. Examples  
4 of such requirements in the ICA include:<sup>16</sup>

- 5 • Section 1.3 . . . Qwest shall provide such Interconnection, UNEs, Ancillary  
6 Services and Telecommunications Services on rates, terms, and conditions  
7 that are just, reasonable, and nondiscriminatory in accordance with the terms  
8 and conditions of this Agreement and the requirements of the Act and state  
9 law and the rules and regulations promulgated there under.
- 10  
11 • Section 2.2 The provisions in this Agreement are intended to be in  
12 compliance with and based on the existing state of the law, rules, regulations  
13 and interpretations thereof, including but not limited to state rules, regulations,  
14 and laws, as of March 11, 2005 (the Existing Rules). . . .To the extent that the  
15 Existing Rules are vacated, dismissed, stayed or materially changed or  
16 modified, then this Agreement shall be amended to reflect such legally  
17 binding modification or change of the Existing Rules. Where the Parties fail  
18 to agree upon such an amendment within sixty (60) Days after notification  
19 from a Party seeking amendment due to a modification or change of the  
20 Existing Rules or if any time during such sixty (60) Day period the Parties  
21 shall have ceased to negotiate such new terms for a continuous period of  
22 fifteen (15) Days, it shall be resolved in accordance with the Dispute  
23 resolution provision of this Agreement.
- 24  
25 • Section 5.19.1 This Agreement is offered by Qwest and accepted by CLEC in  
26 accordance with applicable federal law and the state law of Oregon. It shall  
27 be interpreted solely in accordance with applicable federal law and the state  
28 law of Oregon.
- 29

30 Specifically, as to the issue of retirement and replacement of copper loops (proposed  
31 Condition 26), there is an extensive section in the ICA (Section 9.2.1.2.3) that  
32 addresses that issue. The same holds true regarding Local Number Portability  
33 (“LNP”), which has a provision (Section 10.2.2.1) addressing this issue:

---

<sup>16</sup> Eschelon Oregon ICA effective November 7, 2008.

1 In summary, there is absolutely no reason to adopt these proposed conditions,  
2 especially since the current ICAs ensure the intent and contractual obligation of  
3 Qwest, today and in the future, to be compliant with current state and federal laws.

4

5 **Q. ARE THERE ANY SPECIFIC LEVEL 3-PROPOSED CONDITIONS THAT**  
6 **YOU WOULD LIKE TO ADDRESS?**

7 A. Yes. In this testimony, I address Level 3's proposed Conditions 1c, 2, 8 and 9.

8

9 **Q. DO YOU AGREE WITH LEVEL 3's PROPOSED CONDITION 1c THAT THE**  
10 **COMMISSION REQUIRE QWEST TO HAVE A STATEMENT OF**  
11 **GENERALLY AVAILABLE TERMS & CONDITIONS ("SGAT") ON FILE**  
12 **WITH THE COMMISSION FOR FIVE YEARS?**

13 A. No. At the time that Qwest began its effort to obtain Section 271 relief, it elected to  
14 obtain state approval using a collaborative workshop process to explore and resolve  
15 the literally hundreds of issues relating to specific provisions of Qwest's Section 271-  
16 related obligations. In the Section 271 collaborative workshop process, Qwest,  
17 CLECs, and Commission Staff members worked through proposed contract language  
18 that would serve to implement the Section 271 requirements as they were developed.  
19 At the time, the SGAT was the document that provided a single, common vehicle for  
20 these collaborative workshops with CLECs and state commissions to assure that  
21 Qwest's agreements met the Section 271 14-point checklist requirements.

22 Despite the SGAT's utility as a reference for the provisions incorporated during the  
23 collaborative workshop phase of the Section 271 process, the SGAT itself was not the

1 basis for Qwest’s successful multi-state Section 271 application to the FCC. The Act  
2 provides two paths by which BOCs could seek approval to enter new markets:

- 3 • 271(c)(1)(A) provides that “A Bell operating company meets the  
4 requirements of this subparagraph if it has entered into one or more  
5 binding agreements that have been approved under section 252  
6 specifying the terms and conditions under which the Bell operating  
7 company is providing access and interconnection to its network facilities  
8 for the network facilities of one or more unaffiliated competing  
9 providers of telephone exchange service....”
- 10 • 271(c)(1)(B) provides that “A Bell operating company meets the  
11 requirements of this subparagraph if, after 10 months after the date of  
12 enactment of the Telecommunications Act of 1996, no such provider has  
13 requested the access and interconnection described in subparagraph  
14 (A)...and a statement of the terms and conditions that the company  
15 generally offers to provide such access and interconnection has been  
16 approved or permitted to take effect by the State commission under  
17 section 252(f).”

18  
19  
20 The path provided under subsection 271(c)(1)(A) is known as “Track A,” while the  
21 path provided under subsection 271(c)(1)(B) is referred to as “Track B.” In  
22 requesting relief under Section 271 in Oregon, Qwest followed the Track A path,  
23 relying on the binding agreements it had with CLECs that the Commission had  
24 approved under Section 252 of the Act. Qwest did not rely on its SGAT, or pursue  
25 the Track B alternative.

26  
27 **Q. DOES THE TELECOM ACT REQUIRE THAT AN SGAT BE MAINTAINED?**

28 A. No. There is no provision in the Act that requires that an SGAT be in place or  
29 maintained. For example, in Maine, several CLECs attempted to argue that the lack  
30 of a SGAT or tariff precluded a finding that Verizon was meeting its Section 251  
31 obligations. The FCC, however, looked at the multiple interconnection agreements  
32 that Verizon had entered into with Maine CLECs, and the ability of other CLECs to

1 opt into agreements, as evidence of continuing Section 251 compliance.<sup>17</sup> The FCC  
2 paid particular emphasis to the fact that Section 252(f)(1) states that a BOC “may”  
3 file a SGAT, and not that it must file one.<sup>18</sup>

4 Furthermore, Qwest is not required to continue to make the SGAT available simply  
5 because it was the basis of previously-approved interconnection agreements. The fact  
6 that Qwest maintains multiple interconnection agreements in Oregon demonstrates  
7 that Qwest continues to meet its Section 251 requirements. Further still, in Oregon,  
8 the Commission has consistently taken the position that it does not “approve”  
9 Qwest’s SGAT in any event, but merely permits it to go into effect. See e.g., Docket  
10 UM 973. Indeed, Qwest has not filed an SGAT with the Commission in more than  
11 three years, since June 2007.

12 In Idaho, Qwest petitioned to the Idaho Commission specifically to withdraw its  
13 outdated SGAT, and the Commission noted in its order approving the withdrawal:

14 It is equally undisputed that the Act does not mandate that an SGAT be  
15 maintained, nor has this Commission ordered Qwest to file and maintain an  
16 SGAT. Thus, although the Intervenor discuss numerous advantages to an  
17 SGAT, they do not identify a legal requirement in this state that an SGAT  
18 remain in effect. On this record, the Commission grants Qwest’s motion to  
19 allow it to withdraw its SGAT in Idaho.<sup>19</sup>

20  
21 Moreover, it is not an inconvenience to CLECs if an SGAT is withdrawn. Given the  
22 numerous changes of law, arbitrations and wholesale updates since the SGAT process

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<sup>17</sup> *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services In Maine*, CC Docket No. 02-61, 17 FCC Rcd 11659, 11687-11688 (June 19, 2002).

<sup>18</sup> *Id.* at 11688, n. 185.

<sup>19</sup> *In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its Statement of Generally Available Terms and Conditions*, Case No. QWE- 08-T-08-04, Order No. 30750, Idaho PUC (March 17, 2009).

1 was concluded, it is an outdated document that would not make a reasonable starting  
2 document for negotiating a new interconnection agreement. Nor is it reasonable to  
3 require, on a going-forward basis, that an SGAT be filed and kept current. Many  
4 CLECs will often seek to review and consider adopting an agreement that has been  
5 tailored to meet their needs, and not a generic SGAT document.

6 **Q. ABSENT AN SGAT, HOW ARE QWEST'S POSITION FOR**  
7 **INTERCONNECTION AGREEMENT NEGOTIATIONS KNOWN?**

8 A. To facilitate the process of entering into an ICA, Qwest makes available a "template"  
9 interconnection agreement ("Template Agreement"). The Template Agreement  
10 serves as Qwest's initial ICA offer to CLECs, and it can be adopted as their ICA. As  
11 Qwest's initial contract offer, if the Template Agreement does not meet all of a  
12 CLEC's business needs, it serves as a starting point for subsequent negotiations and,  
13 if necessary, arbitrations, of ICAs that are ultimately submitted to the state  
14 commission for approval.

15 In addition, CLECs may "opt in" to existing agreements between Qwest and other  
16 carriers that have been recently negotiated (or arbitrated) and approved by the  
17 Commission under its Section 252 authority. Therefore, the absence of a SGAT in no  
18 way diminishes the Commission's role in overseeing and approving the terms and  
19 conditions of Section 252 agreements. Qwest submits every agreement containing  
20 Section 251 terms (including rates associated with those products and services) to the  
21 Commission for review and approval pursuant to the requirements of Section 252.

1 As a final safeguard, the Commission maintains its authority under Section 252 to  
2 serve as the arbitrator, and thus to render the final decisions on disputed  
3 interconnection agreement terms and conditions between Qwest and CLECs. The  
4 Commission also maintains its authority to reject any agreement or amendment if:  
5 a) it is found to discriminate against a telecommunications carrier not a party to the  
6 agreement; b) the implementation of such agreement or portion is not consistent with  
7 the public interest, convenience and necessity; or, c) the agreement does not meet the  
8 requirements of Section 251.

9 **Q. ARE THERE ANY ASPECTS OF LEVEL 3'S PROPOSED CONDITION 2**  
10 **THAT YOU WOULD LIKE TO ADDRESS?**

11 A. Yes. In Condition 2, Level 3 seeks to impose an obligation for the merged company  
12 to pay a reciprocal compensation rate for all Internet Service Provider ("ISP")-bound  
13 traffic inclusive of Virtual NXX ("VNXX") calls. This is an extremely complicated  
14 issue that has been extensively litigated at the state and federal level, including here  
15 in Oregon. This merger proceeding is certainly not the proper forum for re-litigating  
16 these issues.<sup>20</sup> This is especially so because the Commission has already addressed  
17 the VNXX issue in previous proceedings, including in Level 3's interconnection  
18 arbitration, Docket ARB 665. It appears that Level 3 is attempting to overturn issues  
19 lost before this very same Commission (indeed, it has just recently appealed the  
20 Commission's ARB 665 decision, three years later, to federal court).

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<sup>20</sup> In addition, Staff witness John Reynolds testified that it is not appropriate to address issues such as access charge, *intercarrier compensation* or universal service issues in this docket. Staff/300, Reynolds/13. VNXX traffic, and the compensation for it, are clearly intercarrier compensation issues that do not belong here.

1 **Q. IN HIS TESTIMONY, MR. THAYER MENTIONS SEVERAL FEDERAL**  
2 **DOCKETS TO SUPPORT THIS PROPOSED CONDITION. DO YOU**  
3 **AGREE WITH HIS INTERPRETATIONS OF FINDINGS IN THESE**  
4 **DOCKETS?**

5 A. No. Mr. Thayer takes the position that all ISP traffic is subject to reciprocal  
6 compensation pursuant to FCC and Court decisions. This interpretation is incorrect.  
7 While I am not an attorney, and cannot specifically address the inaccurate legal  
8 interpretations that Mr. Thayer has made, I do know that the orders that he cites did  
9 not find that calls to ISPs' Virtual NXX numbers are calls that would require a local  
10 exchange carrier (LEC) like Qwest to pay reciprocal compensation. Again, if Level 3  
11 believes that the Commission's legal position on VNXX is incorrect, then its remedy  
12 is in an arbitration or interconnection enforcement complaint, or even a federal court  
13 action. Indeed, more than three years after the Commission issued its arbitration  
14 orders in Docket ARB 665, this is precisely what Level 3 did earlier this month. That  
15 clearly shows that this issue, like its other carrier disputes that it tries to leverage as  
16 "conditions," do not belong in this merger proceeding.

17  
18 **Q. ARE YOU AWARE IF THIS COMMISSION HAS ALREADY RULED ON**  
19 **THE ISSUE WHETHER CALLS TO ISPs IN OREGON ARE CONSIDERED**  
20 **LOCAL CALLS, SUBJECT TO RECIPROCAL COMPENSATION?**

21 A. Yes, as stated, my understanding is that this Commission has addressed this issue  
22 several times, including in Dockets UM 1058, ARB 671 and ARB 665, which  
23 involved Level 3 itself, and in which Level 3 lost on that issue and has just this month  
24 sought judicial review from the federal court more than three years after the

1 Commission's arbitration order. I am admittedly not intimately familiar with these  
2 decisions, and only became generally aware of them in the process of preparing my  
3 testimony, but, at a very minimum, it is clear that these issues have been addressed in  
4 other proceedings, and certainly do not belong here in this merger approval docket.

5

6 **Q.**

**DOES THE CURRENT QWEST AND LEVEL 3 COMMISSION-APPROVED  
7 INTERCONNECTION-AGREEMENT (ICA) IN OREGON ADDRESS  
8 RECIPROCAL COMPENSATION FOR ISP TRAFFIC?**

9 **A.**

Yes. Section 7.3.6, "ISP-Bound Traffic," specifically addresses reciprocal  
10 compensation for ISP bound traffic.

11

12 **Q.**

**DOES QWEST SPECIALLY AGREE TO APPLY COMPENSATION  
13 CONSISTENT WITH THE FEDERAL ISP ORDER?**

14 **A.**

Yes. Pursuant to the Commission's Order in ARB 665, Section 7.3.6.1 of Qwest's  
15 ICA with Level 3 provides that Qwest will pay reciprocal compensation for calls to  
16 ISPs located within the caller's local calling area at the rate provided for in the FCC's  
17 *ISP Remand Order*.

18

19 **Q.**

**IF LEVEL 3 WAS CONCERNED THAT QWEST WAS NOT PAYING  
20 COMPENSATION CONSISTENT WITH FCC ORDERS, DOES IT HAVE A  
21 RECOURSE FOR THAT CONCERN?**

22 **A.**

Absolutely. Level 3 can invoke Section 5.18 of its ICA that addresses dispute  
23 resolution. Thereafter, if Level 3 has exhausted that provision, it can proceed with a  
24 complaint with the Commission, or an action in court. Indeed, Level 3 has availed

1           itself of that process, including a previous interconnection enforcement complaint  
2           with the Commission (Docket IC 14) and a federal court petition for judicial review,  
3           which is apparently what it did within the past month.

4

5   **Q.   LEVEL 3's PROPOSED CONDITION 8 IMPLIES THAT QWEST HAS**  
6   **UNLAWFUL BILLING DISPUTE PROCESSES. DO YOU AGREE?**

7   A.   No. Qwest follows its established billing processes, and to the extent that specific  
8       billing terms and conditions are identified in ICAs, tariffs or other agreements, Qwest  
9       honors the identified conditions. To the extent that a wholesale service or product is  
10      silent specifically to the treatment of disputed claims, as identified in Level 3's  
11      proposed condition 8, Qwest is in the process of negotiating agreements that will  
12      provide more explicit guidelines. To the extent that Level 3 is concerned about its  
13      specific billing terms and conditions, Qwest will address those directly with Level 3.  
14      It is inappropriate to use this merger docket to address Level 3's specific issues and  
15      disputes that are not relevant to the Commission's determination whether this merger  
16      is in the public interest and thus should be approved. The Commission should  
17      therefore reject Level 3's proposed Condition 8.

18

19   **Q.   LEVEL 3's PROPOSED CONDITION 9 IMPLIES THAT QWEST DOES NOT**  
20   **FOLLOW ITS INTERSTATE AND INTRASTATE TARIFFS AS TO THE**  
21   **BILLING OF RATE ELEMENTS. IS THIS ACCURATE?**

22   A.   No. Qwest follows its established rates, terms and conditions as identified in its  
23       tariffs. Specifically, Qwest does not inappropriately borrow rates from its interstate  
24       tariffs to establish intrastate rates, as this condition implies. Mr. Thayer's testimony

1 was general and not specific enough to address the testimony factually. Moreover,  
2 Mr. Thayer's testimony appears to imply not that Qwest is using an interstate rate in  
3 error, but rather, Mr. Thayer simply appears to object to the fact that the tariffed  
4 intrastate rate structure does not match the interstate expanded interconnection rate  
5 structure in some states *other than Oregon*. To the extent that Level 3 has any  
6 concerns with the billing of its tariffed services, Qwest has and will continue to  
7 address those concerns directly with Level 3, and Level 3 has recourse under the  
8 dispute resolution provisions of its ICA with Qwest. It is not appropriate, however,  
9 for Level 3 to attempt to use proposed merger conditions as leverage against Qwest to  
10 address specific issues between the two carriers. Level 3's dispute is not affected in  
11 any manner by this merger, and it is not relevant to this merger proceeding. The  
12 Commission should therefore reject Level 3's proposed Condition 9.

13

## V. CONCLUSION

14

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes.

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

**UM 1484**

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

**REBUTTAL TESTIMONY**

**OF**

**MICHAEL G. WILLIAMS**

**QWEST CORPORATION**

**September 21, 2010**

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1

**IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**  
3 **POSITION.**

4 A. My name is Michael Williams. My business address is 1801 California Street,  
5 Denver, Colorado 80202. I am a Senior Director of Public Policy for Qwest. I am  
6 testifying on behalf of QCII (“QCII”).

7 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THIS**  
8 **COMMISSION?**

9 A. Yes. In 2001 to 2002, in Docket UM 823, I testified in support of Qwest’s  
10 application for approval to offer interLATA services under Section 271 of the  
11 federal Telecommunications Act of 1996 (“the Act”) and in the related matters  
12 establishing Qwest’s performance assurance plan (“QPAP”) in Oregon. I was also  
13 the Qwest declarant for commercial service quality before the FCC in support of  
14 Qwest’s application that included Oregon.

15 **Q. PLEASE STATE YOUR BACKGROUND AND QUALIFICATIONS.**

16 A. I hold an MBA degree from the University of Utah, 1985, and a Bachelor’s of  
17 Science degree in electrical engineering from Brigham Young University, 1976.  
18 Since 1981, I have worked for Qwest or its predecessors in various management  
19 positions, including engineering, technical sales, regulatory, new technologies,  
20 international cellular joint venture leadership, wholesale interconnection operations  
21 and regulatory finance. My responsibilities have included service quality-related

1 metrics and payments since 1997. In Qwest's Section 271 application with states  
2 and the FCC, I was the service quality witness. I have held my current  
3 responsibilities since July 2005. Specifically, I am responsible for Qwest's policies  
4 and compliance associated with regulatory retail and wholesale service quality  
5 requirements. I have submitted testimony and participated in workshops in each of  
6 the 14 states in Qwest's local services region.

### 7 **PURPOSE**

#### 8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. My testimony responds to the direct testimonies of Douglas Denney of Integra  
10 Telecom and Timothy Gates on behalf of multiple CLECs on the topics of wholesale  
11 performance assurance plans, generally, and Mr. Denney's proposed "Additional  
12 Performance Assurance Plan" ("APAP"), specifically. Overall, the CLECs'  
13 purported concerns about wholesale service performance issues are irrelevant to this  
14 merger proceeding, especially because sufficient market pressures, provisions in  
15 "performance assurance plans" ("PAPs") and rules exist to address any legitimate  
16 concerns they may have on these issues, and the merger transaction does nothing to  
17 change that.

### 18 **WHOLESALE SERVICE PERFORMANCE ASSURANCE**

#### 19 **Background and Purpose of the QPAP**

20 **Q. IN HIS TESTIMONY ADVOCATING FOR AN "APAP," MR. DENNEY**  
21 **REFERS TO THE OREGON "PAP." WHAT IS THE OREGON PAP?**

22 A. The Oregon PAP or QPAP is a self-executing plan based on Qwest's level of

1 wholesale service quality performance under a variety of metrics called “PIDs”  
2 (“performance indicator definitions”). The PIDs are measurements of specific  
3 dimensions of Qwest’s wholesale service performance. For example, PIDs cover the  
4 areas of pre-order/order, billing, provisioning, maintenance and repair, network  
5 performance, and so forth. PID results for Oregon are reported on an individual  
6 CLEC basis, as well as on an aggregate-CLEC basis, statewide.

7 The PIDs have three types of standards: “parity,” “benchmark,” or “diagnostic.”  
8 Parity standards compare Qwest’s performance for CLECs to its performance for its  
9 own retail customers or operations, while benchmark standards compare Qwest’s  
10 performance to specified fixed performance levels. Diagnostic standards designate  
11 that the PID results are for monitoring purposes. QPAP payments to CLECs (so  
12 called “Tier 1 payments”) and payments to states (“Tier 2 payments”) are triggered  
13 as provided in the QPAP for Qwest’s non-conformance with the standards only by  
14 measurements with parity or benchmark standards in the PIDs, and as further  
15 delineated in the body of the QPAP.

16 **Q. WHAT IS THE PURPOSE OF THE QPAP?**

17 A. Qwest obtained approval of the QPAP in conjunction with obtaining interLATA  
18 long distance approval from the Federal Communications Commission (“FCC”)  
19 under Section 271 of the Telecommunications Act of 1996 (“the Act”). The FCC  
20 looked for assurances that wholesale markets would remain open after the  
21 requirements of Section 271 had been met and interLATA freedom granted to the  
22 Bell Operating Companies (“BOCs”) such as Qwest. While it accepted performance

1 assurance plans (“PAPs”) for this purpose, the FCC noted at the time that it could  
2 not require such plans. Instead, the FCC stated it would deem a properly-designed  
3 plan as “probative evidence that the BOC will continue to meet its Section 271  
4 obligations after a grant of such authority.”<sup>1</sup>

5 **Q. HOW DOES THE QPAP RELATE TO INTERCONNECTION**  
6 **AGREEMENTS BETWEEN QWEST AND CLECs?**

7 A. If adopted by a CLEC, the QPAP becomes part of the CLEC’s interconnection  
8 agreement (“ICA”) in the form of two exhibits. Exhibit B sets forth the  
9 measurement definitions and standards, and Exhibit K sets forth the payment  
10 framework. Thus, Qwest cannot make unilateral changes to the QPAP, because the  
11 QPAP is part of a contractual agreement.

12 **Q. PLEASE DESCRIBE THE PROCESS OF HOW THE QPAP CAME INTO**  
13 **EXISTENCE.**

14 A. Overall, the PIDs and the QPAPs were developed through a process of multiple  
15 years of negotiations with numerous CLECs and commission staffs, involving a  
16 number of frequent forums, including business-to-business negotiations,  
17 commission-facilitated collaboratives, and operational support systems (“OSS”)  
18 testing – most on a multi-state basis.<sup>2</sup> These activities took place, generally, from

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<sup>1</sup> *Qwest New Mexico, Oregon, South Dakota Order*, FCC 03-81, WC Docket No. 03-11, at ¶ 119.

<sup>2</sup> Arizona began the process with its own PID workshops. OSS testing workshops began later and continued with the PID development. The remaining 13 states held a collaborative OSS test (under the auspices of the “Regional Oversight Committee” (or “ROC”), which included PID and statistical workshops and third-party validation of PID mechanisms. Later, “Post-entry Performance Plan” (“PEPP”) workshops were hosted by some of the states of the ROC (with all states but Arizona, Colorado, Minnesota, and Washington participating), which were later folded back into the ROC workshops.

1 1998 through 2003, when Qwest obtained Section 271 approvals, and then afterward  
2 in the form of audits, reviews, and further negotiations.

3 The PIDs were selected and defined, with lengthy attention to large volumes of  
4 minute details. Statistical methods were discussed exhaustively, involving Ph.D-  
5 level statisticians from multiple parties. Then, QPAP workshops of various types  
6 took place and, finally, each state commission considered the resulting PAPs, and  
7 sometimes made state-specific modifications. In the years since then, further  
8 modifications have been made, as negotiated among interested parties and as  
9 approved by commissions. Generally, these latter modifications consisted of  
10 changes to PIDs or refinements in standards.

11 All of this activity took place in connection with Section 271 requirements, and not  
12 as a result of an issue raised by a self-interested CLEC as a condition for a merger.  
13 Further, no state commission has ordered additional PAPs in any previous merger to  
14 the best of my knowledge.

15 **Q. WHAT LIGHT DOES THIS EXTENSIVE PROCESS OF QPAP**  
16 **DEVELOPMENT SHED ON MR. DENNEY'S PROPOSAL TO ESTABLISH**  
17 **AN "ADDITIONAL PAP" ("APAP")?**

18 A. This background and context highlight how improper it is for a CLEC to use a  
19 merger proceeding to attempt to establish a completely new overlay that is designed  
20 to obtain more payments from the post-merger company. At the outset, before even  
21 addressing the numerous fatal flaws of the APAP, it is clear that a merger proceeding  
22 is not the place for such an endeavor.

1 This is particularly clear when considering the extensive CLEC involvement in  
2 developing the QPAP and the PIDs, including Integra and its subsidiary predecessors  
3 (e.g., Eschelon), and considering that the APAP sets off in a direction that Mr.  
4 Denney admits is different from that addressed by the current QPAP. Thus, even  
5 though the APAP purports to be based on the PIDs of the current Oregon QPAP, its  
6 purpose is entirely different from the QPAP's purpose, as I explain in more detail  
7 later.

8 Also, the current QPAP is already robustly comprehensive and is not going away in  
9 the foreseeable future. The merger transaction does not diminish the fact that the  
10 QPAP will continue to be in force, post-merger, and that any material changes would  
11 need Commission approval, along with Staff and CLEC input, before they could be  
12 implemented.

13 Finally, there are *due process* concerns relative to the CLECs trying to force onto  
14 Qwest and CenturyLink an additional PAP, based on only about six pages of  
15 testimony and one exhibit, which deal with very complex issues and potentially-  
16 significant amounts of money, without anything remotely resembling a full record.  
17 The CLEC APAP proposal, if it were to be adopted in any form here, would make a  
18 mockery out of the appropriate process – a process that had its origins more than  
19 seven years ago in the Section 271 proceedings regionwide, which in Oregon was  
20 Docket UM 823.

21 **The Current QPAP**

22 **Q. PLEASE DESCRIBE THE OREGON QPAP, INCLUDING HOW IT WORKS**

1           **GENERALLY AND THE TYPES OF MEASUREMENTS, OR METRICS,**  
2           **THAT IT TRACKS.**

3    A.    As I mentioned, the current Oregon QPAP consists of PIDs in Exhibit B and  
4           payment provisions in Exhibit K of interconnection agreements in which it resides.  
5           The payment provisions use PID results as the self-executing basis for triggering  
6           payments when service performance is nonconforming to standards set forth in the  
7           PIDs. Standards based on either parity with Qwest's retail operations or negotiated  
8           benchmarks are used to trigger and determine payment amounts. Diagnostic  
9           standards are used only for monitoring purposes. The PIDs contain what can be  
10          called "business rules" that define what is to be included, and what is to be excluded,  
11          from the measurements in order to properly and accurately account for Qwest's  
12          wholesale service quality performance, while striving to minimize the effects of  
13          external factors that parity standards or benchmark allowances may not necessarily  
14          account for.

15   **Q.    WHY ARE THERE BOTH PARITY AND BENCHMARK STANDARDS?**

16   A.    At the lowest (most detailed) level of disaggregation, each PID with a parity or  
17          benchmark standard has only one or the other: a parity standard or a benchmark  
18          standard. The nondiscrimination standard of the Act calls for a comparison between  
19          an ILEC's wholesale and retail service quality performance. However, precisely  
20          comparable retail services do not always exist. If there were truly comparable retail  
21          services available for all wholesale services and elements measured by the PIDs,  
22          there would be only parity standards in the PIDs. Strictly speaking, "parity" is not

1 an explicit requirement of the Act, but it is a factor in evaluating nondiscrimination.  
2 Accordingly, in the original collaborative proceedings in which the PIDs were  
3 developed, the parties agreed to use parity as the primary basis for setting standards.  
4 For unbundled elements where precise apples-to-apples comparisons with retail  
5 “analogues” were not available,<sup>3</sup> proxies were selected that were as close as possible  
6 to the measured elements, such as for specific types of unbundled loops. For other  
7 elements, there were no retail analogues, and no reasonable proxies for such  
8 analogues, and thus benchmark standards were adopted through negotiations in the  
9 various proceedings that pre-dated the Qwest Section 271 FCC applications.  
10 Benchmarks were also used to evaluate the “pre-order” processes where, for  
11 example, CLECs submit local service requests (“LSRs”) and trouble reports through  
12 interfaces that do not exist in the retail context.

13 All of these considerations were heavily influenced by the purposes at hand –  
14 namely, addressing whether service performance was nondiscriminatory. As I point  
15 out later, this is in stark contrast with the purposes of Mr. Denney’s APAP.

16 **Q. HOW ARE PAYMENT AMOUNTS DETERMINED UNDER THE QPAP?**

17 A. Payment amounts are determined by the extent to which Qwest’s PID results do not  
18 conform to or meet the applicable standards. Specifically, the difference between a  
19 PID result and the applicable standard is translated into a number of occurrences  
20 (e.g., orders or tickets) that do not meet the relevant standard, which number is then

---

<sup>3</sup> For example, there are no retail “unbundled loops” with which to compare wholesale unbundled loops that Qwest provided to CLECs.

1 multiplied by the applicable “per-occurrence” payment level to calculate the  
2 payment amount due for that PID result.

3 The QPAP defines two categories of payments: Tier 1 and Tier 2. Tier 1 payments  
4 are made to individual CLECs, and Tier 2 payments are made to the State of  
5 Oregon.<sup>4</sup> The QPAP also defines other payment-affecting procedures, such as  
6 payment escalations (where there are consecutive nonconforming months) and  
7 minimum payments (where the low volumes of small CLECs generate small  
8 payments).

9 **Q. HOW DOES THIS CONTRAST WITH THE APAP’S APPROACH?**

10 A. The current QPAP triggers payments on a “self-executing” basis according to  
11 business rules that, after extensive negotiations, testing, and audits, Qwest  
12 voluntarily agreed to accept in connection with obtaining Section 271 relief. In  
13 contrast, the APAP has not had the benefit of such extensive consideration, does not  
14 have Qwest’s acceptance, and a merger proceeding is not the proper place for such to  
15 occur. Further, as I explain later, the goals of the QPAP and the proposed APAP are  
16 not the same.

17 **The CLECs’ Proposal for an “APAP” is Unnecessary, Inappropriate, and Unreasonable**

18 **1. The APAP is Unnecessary**

19 **Q. ON PAGE 46 OF HIS DIRECT TESTIMONY, MR. GATES STATES THAT**  
20 **“QWEST’S PAPs AND ASSOCIATED PIDs ARE ABSOLUTELY**

1           **ESSENTIAL TO ENSURE THAT LOCAL MARKETS IN QWEST’S**  
2           **REGION REMAIN OPEN TO COMPETITION (I.E., QWEST DOES NOT**  
3           **BACKSLIDE).” DO YOU AGREE?**

4       A.     No, and Mr. Gates provides no evidence whatsoever to support his claim. Instead,  
5           he merely quotes an FCC statement<sup>5</sup> out of context, and he ignores the dramatic  
6           changes that have taken place in the telecommunications industry since the FCC  
7           made that statement in 2002.

8           First, Mr. Gates loses sight (as does Mr. Denney) that there is already a  
9           comprehensive and robust PAP in place in Oregon today that Qwest, numerous  
10          CLECs, and this Commission and its Staff labored hard for many years to develop.  
11          There is absolutely no basis, or need, to try to cram several years’ worth of work, by  
12          hundreds of people and stakeholders, into this merger docket in order to develop a  
13          new, additional plan, especially considering that it is based on only several pages of  
14          testimony. Adopting such a plan here, in any form, would effectively undermine the  
15          extensive work done that this Commission and the numerous parties and  
16          stakeholders did years ago in the various Section 271 dockets, including Docket UM  
17          823 here.

18          Second, contrary to Mr. Gates’ assertion that a performance plan is “absolutely

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<sup>4</sup> Specifically, payments to the State of Oregon are made into the “Connecting Oregon Communities Fund,” pursuant to section 7.5 of the Oregon QPAP.

<sup>5</sup> Mr. Gates’ reference to the FCC statement is not correct. He refers to the *Qwest 9 State 271 Order* at paragraph 440. However, the statement he discusses is actually at paragraph 454. This is important, as I point out, because that paragraph makes clear that a performance assurance plan is not a requirement for Section 271 approval or compliance. The corresponding paragraph in the FCC Order that addresses Oregon is paragraph 119. See *Qwest New Mexico, Oregon, South Dakota Order*, FCC 03-81, WC Docket No. 03-11.

1 essential,” the FCC went on to say later in the same quoted paragraph that a  
2 performance assurance plan is not a requirement for the authority of a BOC like  
3 Qwest to provide interLATA toll services under Section 271, but merely that a PAP  
4 would be “probative evidence” that a BOC will continue to meet its Section 271  
5 obligations.<sup>6</sup>

6 Third, in acknowledging that a PAP was not required but could constitute “probative  
7 evidence,” the FCC thus recognized that there are other ways to show that a BOC  
8 will continue to meet its obligations. In this vein, Mr. Gates ignores the fact that,  
9 nearly eight years after the FCC issued that order, telecommunications market  
10 conditions have changed dramatically. When the FCC originally made that  
11 statement, there was relatively little other evidence available. The local  
12 telecommunications market was only on the brink of being determined by the FCC  
13 to be open, and there was certainly no crystal ball that could assure that the market  
14 would remain open. However, now, eight years later, the evidence is clear that the  
15 market has not only remained open, but that it is robustly open, and that it will  
16 continue to be so, with or without a PAP.

17 Again, it bears repeating that there is already a PAP, and thus there is no need for an  
18 “additional” PAP. The CLECs’ proposal for an APAP appears to be merely a self-  
19 interested attempt to saddle the post-merger company with additional regulatory  
20 obligations, with their concomitant financial (penalty) costs, perhaps because  
21 Qwest’s payments under the Oregon QPAP have decreased so dramatically in recent

---

<sup>6</sup> *Qwest New Mexico, Oregon, South Dakota Order*, FCC 03-81, WC Docket No. 03-11, at ¶ 119.

1 years as shown below. In other words, this APAP concept is completely  
2 unnecessary, and is really nothing more than a punitive attempt to extract additional  
3 “remedies” or “benefits” in the form of APAP penalties.

4 **Q. ON WHAT DO YOU BASE YOUR STATEMENT THAT THE LOCAL**  
5 **MARKET IS “ROBUSTLY OPEN”?**

6 A. First, I base that statement in part on the fact that as of the end of 2009, 77 CLECs in  
7 Oregon have opted into interconnection agreements (“ICAs”) that contain the QPAP.  
8 Thus, having started from zero (i.e., at the point in time before the  
9 Telecommunications Act when there were no CLECs), this number represents a  
10 significant increase and continuing presence of CLECs in the market in Oregon.  
11 I also base it on the competitive data and analysis that witnesses such as John Jones  
12 of CenturyLink and Judy Pepler and Robert Brigham of Qwest provide in this  
13 proceeding. The FCC found the market-opening mechanisms satisfied when it  
14 declared the market to be open, and all of those mechanisms are still in place and  
15 will continue through and beyond the merger.

16 **Q. DOES THE DECREASING TREND IN QWEST’S QPAP PAYMENT**  
17 **LEVELS INDICATE THAT QWEST’S SERVICE LEVELS SUPPORT A**  
18 **ROBUST MARKET?**

19 A. Absolutely. Despite this large number of CLECs having the QPAP in their ICAs,  
20 Qwest’s payments under the QPAP have been declining significantly over the past  
21 several years. For example, in the first full year (2004) of QPAP operation, Qwest  
22 paid more than \$420,000 in payments in Oregon. In contrast, in 2009, Qwest’s

1 QPAP payments in Oregon amounted to slightly more than \$74,000 for the entire  
2 year – less than 20% of its payment levels in 2004.

3 **Q. ARE THERE OTHER FACTORS THAT SUPPORT YOUR ASSERTION**  
4 **THAT THE MARKET REMAINS ROBUSTLY OPEN?**

5 A. Yes. As Qwest's Oregon President Judy Pepler testified in her direct testimony, at  
6 pages 14-21, and as Qwest witness Robert Brigham also discusses in his rebuttal  
7 testimony, there are intense competitive pressures on Qwest in Oregon, and they are  
8 increasing rapidly. Specifically, the immense market forces, which are reflected in  
9 the significant line losses that Ms. Pepler and Mr. Brigham enumerated, and the  
10 competition from cable telephony, wireless, VOIP, and CLECs, are both expanding.  
11 While all wireline carriers (including CLECs) are generally losing lines to wireless  
12 providers, the only competitive alternatives that offer Qwest the opportunity to retain  
13 customers on its wireline network are those same CLECs who purchase Qwest's  
14 wholesale services and elements in order to provide the services they offer to their  
15 customers. Accordingly, Qwest values CLECs, and recognizes them as extremely  
16 important in helping to keep customers on Qwest's wireline network. It is this  
17 robust local market that provides the meaningful incentives that will assure CLECs  
18 that Qwest (and thus CenturyLink) will continue to provide a high level of wholesale  
19 service quality, regardless of the existence of the current merger transaction.

20 **2. The Proposed "APAP" is Inappropriate**

21 **Q. BEGINNING ON PAGE 8 OF HIS DIRECT TESTIMONY, MR. DENNEY**  
22 **PROPOSES THE APAP TO IMPLEMENT THE JOINT CLECs'**

1           **CONDITION NUMBER 4. WHAT DOES HIS APAP REPRESENT?**

2    A.    The “APAP” concept that Mr. Denney proposes represents an additional, extensive  
3           set of standards, above and beyond the standards already in place in the QPAP that is  
4           more than sufficient and working well today. I characterize the proposed APAP as  
5           “extensive” because the APAP concept – which I do not believe any other state  
6           utility commission has implemented, and certainly not in any merger proceeding to  
7           my knowledge – would apply additional standards, as well as the associated  
8           evaluations and calculations, to each and every measurement that is in the QPAP  
9           today. The APAP would also apply to additional measurements that are not even  
10          currently in the QPAP (pursuant to its “reinstatement/removal” process that removed  
11          measurements where performance had been consistently penalty-free).

12   **Q.    ON WHAT DO YOU BASE YOUR EARLIER ASSERTION THAT THE**  
13   **APAP IS INAPPROPRIATE?**

14   A.    First, the APAP is inappropriate because Mr. Denney loses sight of the fact that, as  
15          I said before, there is already a comprehensive and robust PAP in place in Oregon  
16          today that Qwest, numerous CLECs, and the Commission and its Staff labored hard  
17          for many years to develop to ensure wholesale service quality. Accordingly,  
18          I reiterate that there is absolutely no need to try to cram several years’ worth of  
19          work, by hundreds of people and stakeholders, in order to develop a new, additional  
20          plan, based on several pages of testimony in a merger docket, to implement a new  
21          plan.

22          The APAP concept is further inappropriate because, in addition to being

1 unreasonable, as I describe later, the appropriate standard to apply to wholesale  
2 service performance is “nondiscrimination,” and not simply “performance  
3 degradation.” In the proposed APAP, “performance degradation” in reality would  
4 simply mean that Qwest’s performance in the future might be lower than its superb  
5 results at the present time, even though those results continue to meet the various  
6 standards in the QPAP. As I explain in more detail below, Mr. Denney’s  
7 improperly-defined concept of “performance degradation” is problematic, especially  
8 because it holds Qwest to a much higher standard than the PAP, in part because  
9 Qwest’s service quality performance in recent years has been outstanding, and far  
10 higher than required under the QPAP. Further, while Mr. Denney attempts to justify  
11 his APAP concept by arguing that it focuses on “merger-related harm,”<sup>7</sup> it is not  
12 appropriate to attempt to redress alleged but unspecified potential harm in an  
13 involuntary, self-executing manner. The APAP cannot distinguish between normal  
14 variations in performance that could occur, with or without the merger, from  
15 variations that might be alleged to be merger-related.

16 **Q. HAS THE QUESTION OF THE APPROPRIATENESS OF SELF-**  
17 **EXECUTING PENALTIES OUTSIDE OF A VOLUNTARY MECHANISM**  
18 **LIKE THE QPAP BEEN ADDRESSED BY THE COURTS?**

19 A. I am not aware of any such case in Oregon. However, in 2005, the State of  
20 Minnesota Supreme Court concluded that the Minnesota Commission could not levy  
21 self-executing consequences for reasons that I believe also exist in Oregon.

---

<sup>7</sup> Integra/1, Denney/10.

1 Specifically, the Minnesota Supreme Court stated:

2 For the reasons discussed above, we conclude that the MPUC does not have  
3 statutory authority, either express or implied, to impose the self-executing  
4 payments as an enforcement mechanism and therefore hold that the MPUC  
5 exceeded its statutory authority in ordering Qwest to make such payments for  
6 failure to comply with the wholesale service quality standards.<sup>8</sup>

7 Although this is not an Oregon ruling, my understanding is that Oregon statutes also  
8 contain no express or implied authority for the Commission to impose self-executing  
9 payments for failure to comply with wholesale service quality standards.

10 **3. The APAP is Unreasonable**

11 **Q. EVEN IF THE COMMISSION WERE TO CONSIDER THE APAP**  
12 **CONCEPT, IN WHAT WAYS IS THE APAP UNREASONABLE?**

13 A. Even if the Commission *were* inclined to consider the APAP concept here, there are  
14 many reasons that the proposed APAP itself is unreasonable. Chief among these  
15 reasons are that (1) the APAP requires no proof of merger-related harm before  
16 involving monetary payments, (2) it creates an improper definition of “performance  
17 degradation,” and (3) it triggers consequences based on comparisons with prior  
18 performance levels that were already far better, on the whole, than what has been  
19 required in the QPAP. In other words, Qwest would be essentially *punished* by  
20 being held to a higher standard going forward simply because its performance under  
21 the QPAP in recent years has been much better than is required in the QPAP. In  
22 addition, the APAP is seriously flawed as a performance plan – in part because it  
23 purports to be based on QPAP PIDs and provisions. The goals of the QPAP and the

1 APAP are different, however, and PIDs and QPAP provisions simply are simply not  
2 designed to support the APAP's self-executing goals.

3 *a. The APAP Requires No Proof of Merger-Related Harm*

4 **Q. PLEASE EXPLAIN YOUR POINT ABOUT PROOF OF MERGER-**  
5 **RELATED HARM. WHY IS THE APAP UNREASONABLE IN NOT**  
6 **REQUIRING PROOF OF HARM?**

7 A. This issue is really a matter of fairness. The issue at hand is the purported CLEC  
8 concern that current market forces and the QPAP may not be sufficient to address  
9 wholesale service performance issues after the merger. As I have stated, however,  
10 this concern is irrelevant because the merger transaction does nothing to change the  
11 market forces, the QPAP, or the Commission's authority or involvement in the  
12 future of the QPAP. Further, the merger does not diminish the contractual  
13 dimension of the QPAP in the CLECs' interconnection agreements with Qwest, or  
14 the Commission's authority over these matters.

15 That said, it is important to remember that the QPAP is a *voluntary* commitment on  
16 Qwest's part in the context of Section 271 approval, while the APAP would not be  
17 voluntary. The reason this is important revolves around necessity for proof of harm,  
18 in light of the fact that Qwest already has been providing consistently very-high  
19 levels of performance. The fact that Qwest is providing such high levels of service  
20 quality has nothing to do with harm that CLECs might allege in the future, and it has

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<sup>8</sup> Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case A03-1409, State of Minnesota Supreme Court, August 18, 2005.

1 nothing to do with any future performance decrease being associated with the  
2 merger. Therefore, as regards the APAP, if CLECs believe they have been harmed  
3 by issues beyond those that the QPAP addresses, such as alleged merger-related  
4 harm, it would only be proper that they would have the burden to bring forth any  
5 confirming evidence. The mere “degradation of performance” from already-superb  
6 service quality levels would not automatically translate into harm, nor could it  
7 magically quantify any alleged harm.

8 **Q. DID THE MINNESOTA SUPREME COURT OPINION WHICH YOU CITED**  
9 **EARLIER ALSO ADDRESS THIS ISSUE?**

10 A. Yes, in denying the Minnesota Commission the authority to levy self-executing  
11 payments related to its wholesale service quality rules, the Minnesota Supreme Court  
12 stated: “Because the payments here are not restricted to compensation for losses  
13 resulting from Qwest’s failure to comply with the standards, they go beyond the  
14 scope of permissible liquidated damages.”<sup>9</sup> Mr. Denney’s proposal purports to be  
15 based on “merger-related harm,” and as such, would essentially be an ill-conceived  
16 attempt to receive *liquidated damages* on the same basis as that the Minnesota  
17 Supreme Court denied – namely, payments that were not tied to any actual damage  
18 or harm suffered by CLECs or their customers. A self-executing approach is not  
19 capable of allowing payments to be tied to actual damage or harm.

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<sup>9</sup> Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case No A03-1409, State of Minnesota Supreme Court, August 18, 2005.

1 *b. The APAP Creates an Improper Definition of “Performance Degradation”*

2 **Q. IN WHAT WAYS DOES THE PROPOSED APAP CREATE AN IMPROPER**  
3 **DEFINITION OF “PERFORMANCE DEGRADATION”?**

4 A. In purporting to address “merger-related harm,” the APAP glosses over immense  
5 gaps in attempting to define “performance degradation,” and it makes no attempt to  
6 link performance trends to any CLEC harm.<sup>10</sup> The mere existence of lower  
7 performance levels that might be observed – particularly when compared to already-  
8 superior performance – cannot necessarily be characterized as Qwest’s performance  
9 degradation, nor can it be properly translated automatically into any level of CLEC  
10 harm, and it certainly cannot be ascribed automatically to the merger.

11 **Q. PLEASE GIVE SOME OTHER EXAMPLES OF THE OTHER FACTORS**  
12 **YOU MENTIONED THAT COULD EXPLAIN OR MITIGATE OBSERVED**  
13 **DIFFERENCES IN PERFORMANCE IN A GIVEN MONTH AGAINST THE**  
14 **PRIOR ANNUAL AVERAGE PERFORMANCE?**

15 A. Numerous factors that are not related to Qwest-driven impacts on performance levels  
16 can affect service performance levels. In virtually all cases, it is not feasible to  
17 identify these factors in advance, or in a mechanized way, in order to make it  
18 possible to exclude them from any reporting measurements. Further, even if such  
19 factors could be identified and excluded, the PIDs in the QPAP are not designed in

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<sup>10</sup> These “gaps” include (1) ignoring that seasonal, external factors can cause lower performance in a given month when compared to the average of a prior year, (2) giving no consideration of other factors that might explain or mitigate observed differences between performance in a given month, and the prior annual average performance, and (3) using a method for quantifying “merger-related” harm that is completely without evidence to support any connection to the magnitude of harm.

1 any way that would permit identifying whether any observed differences in  
2 performance are merger-related. Nevertheless, these other factors include such  
3 things as weather-related impacts, changes in CLECs' underlying customer bases,  
4 changes in CLEC operating practices, and comparing a current month's performance  
5 against a past average annual performance.<sup>11</sup>

6 *c. The APAP Unfairly Triggers Payments Based on Superior Prior-year*  
7 *Performance Levels*

8 **Q. YOU HAVE MENTIONED THE SUPERB LEVELS OF QWEST'S 2009**  
9 **PERFORMANCE UNDER THE QPAP. WHY IS THE APAP MEASURE**  
10 **THAT IS BASED ON THE PAST 12 MONTHS PRIOR TO THE MERGER**  
11 **AN UNREASONABLE STANDARD FOR DEFINING PERFORMANCE**  
12 **DEGRADATION OR IDENTIFYING MERGER-RELATED HARM?**

13 A. Apart from the problems that I have already mentioned with the proposed APAP, the  
14 question whether and how much merger-related harm might occur becomes even  
15 more absurd when considering that only 1.0% of QPAP performance metrics  
16 actually triggered payments in 2009. In contrast, in the same year, 26.0% percent of  
17 the performance metrics that are based on "parity" had performance results that were  
18 significantly *better* than the parity standard. Even if performance were to degrade  
19 below the superior levels while still remaining nondiscriminatory, there would be no

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<sup>11</sup> On this last point, Qwest notes that it is entirely possible for performance that is actually improving, overall, to appear to be deteriorating in individual months of a current year, in comparison with average performance of the previous year. For example, performance levels across many months rarely, if ever, produce straight lines on a graph of results. Rather, the results range higher or lower, with or without seasonal effects, around a trend line. Thus, if compared against a 12-month average, any of the monthly results that are "worse" than the improving trend line would be judged, standing alone, as degradation when, in reality, they could be part of an improving trend.

1 basis for automatically claiming harm.

2 **QPAP PIDs Are Not, and Cannot Be, Designed to Support the APAP's Goals**

3 **Q. PLEASE EXPLAIN YOUR ASSERTION THAT THE QPAP PIDs ARE NOT**  
4 **DESIGNED TO SUPPORT THE APAP'S GOALS.**

5 A. As I have stated, the QPAP's goals are different from the APAP's goals. Mr.  
6 Denney effectively admits this on page 10 of his direct testimony, where he states:  
7 "The Oregon PAP, which was not developed to identify merger-related harm, would  
8 not capture deteriorating performance ...." On the preceding page (p. 9), he points  
9 out that the QPAP "is intended to assure that Qwest does not treat itself more  
10 favorably than it treats CLECs...." Then, near the top of page 10, he states  
11 that "[t]he purpose of the proposed APAP is to compare the current level of Qwest's  
12 wholesale performance to CLECs with a past level of wholesale performance to  
13 CLECs ...." In other words, the QPAP focuses on satisfying "parity" or established  
14 benchmarks, whereas the APAP focuses on defining allegedly merger-related  
15 "performance degradation." This is one of the many fatal flaws of APAP: the PIDs  
16 were defined to measure performance against parity or fixed benchmarks, not to  
17 properly identify "performance degradation" by some simplistic definition, and  
18 certainly not to automatically imply merger-related harm.

19 **Q. WHAT DO THE PIDs LACK IN BEING ABLE TO INDEPENDENTLY AND**  
20 **AUTOMATICALLY SUPPORT A DEFINITIVE CONCLUSION THAT**  
21 **PERFORMANCE DEGRADATION EXISTS?**

22 A. In short, the PIDs cannot automatically account for or explain the reasons for an

1 observed trend or difference in performance levels. There are many factors –  
2 including many that are not caused by Qwest, as I have already explained – that can  
3 cause the performance level in a given month, post-merger, to be different from the  
4 APAP’s proposed annual average level of pre-merger Qwest performance. Further,  
5 it is not possible for the PIDs to be defined and implemented in a manner that would  
6 permit them to account for all such factors. Thus, the PID results cannot support  
7 automatic conclusions that merger-related performance degradation has occurred,  
8 much less that such degradation actually represents harm.

9 **The QPAP is Sufficient to Provide Post-Merger Performance Monitoring**

10 **Q. NEVERTHELESS, DOES THE QPAP PROVIDE SUFFICIENT VISIBILITY**  
11 **TO DETECT TRENDS IN SERVICE PERFORMANCE LEVELS, POST-**  
12 **MERGER?**

13 A. Certainly. I believe the fact that Mr. Denney bases his APAP concept on the  
14 QPAP’s PIDs is an implicit admission that the QPAP would continue to detect trends  
15 in performance levels post-merger. What is problematic about Mr. Denney’s  
16 proposal is the APAP’s ill-conceived attempt to automatically link reported QPAP  
17 performance results with an improper definition of performance degradation, and to  
18 automatically conclude that these results would constitute merger-related harm.  
19 Nevertheless, the QPAP performance results do produce monthly “indications” of  
20 performance levels (as the “PID” acronym for “performance *indicator* definitions”  
21 implies). Thus, as it does now, QPAP data can continue to be used by any party to  
22 identify trends in Qwest’s wholesale service quality performance.

1 **Q. WHY ARE THE CURRENT PID RESULTS A REASONABLE**  
2 **ALTERNATIVE TO THE PROPOSED APAP APPROACH IN**  
3 **MONITORING POST-MERGER PERFORMANCE TRENDS?**

4 A. In a nutshell, the PID-generated performance results support monitoring  
5 performance trends, rather than focusing on single-point comparisons of one current  
6 month's results with a 12-month average of past performance results. These  
7 performance results also allow for examining the causes of trends, if necessary. As  
8 I stated above, the 12-month APAP approach could conclude there was  
9 "performance degradation" when, in fact, the trend in service levels was improving.  
10 The QPAP's PID results, on the other hand, give visibility to the significant trends  
11 are over time, which trends can then be examined further. This broader, more-  
12 holistic approach is more reasonable in helping to identify whether a question might  
13 exist about post-merger performance levels. Still, given the dynamic nature of the  
14 environment in which Qwest's network exists, as well as the many external factors  
15 that can affect performance levels – independent of the merger or of Qwest's actions  
16 – the actual conditions that exist across the entire relevant time period must be  
17 considered. This consideration of trends supports a proactive approach toward  
18 resolving problems, regardless of their causes, rather than merely arguing about  
19 whether penalties or damages should be assessed, and on what basis. At the same  
20 time, neither the merger nor this approach of providing continued visibility to  
21 performance levels takes anything away from any party that wishes to raise a  
22 concern about service quality.

1

**CONCLUSION**

2 **Q. HAVE THE CLECs PROVIDED ANY BASIS FOR THE COMMISSION TO**  
3 **CONSIDER MERGER CONDITIONS RELATED TO THE QPAP?**

4 A. No. The merger does nothing to change or jeopardize the existing provisions found  
5 in the QPAP that address wholesale service quality. As importantly, the wholesale  
6 market remains robustly open, and the post-merger company will face the same  
7 immense market pressures that Qwest faces today in its operating territories. These  
8 pressures will continue to provide incentives and protections far greater than the  
9 QPAP in assuring that the post-merger company will continue to provide the  
10 necessary attention to wholesale service quality. As for as the CLECs' purported  
11 concerns about "merger-related harm" that allegedly might be caused by some kind  
12 of performance degradation, there is simply no appropriate way to define, identify,  
13 quantify, or penalize such harm or degradation, if any occurs at all, on an automatic  
14 basis. The APAP is particularly ill-equipped to attempt such alleged remedies, as  
15 I have explained, and the QPAP is sufficient to provide continued visibility to trends  
16 in Qwest's wholesale service quality performance, without bypassing the essential  
17 tenets of due process. Accordingly, Mr. Denney's APAP concept and proposal is  
18 not reasonable or warranted, especially in this merger proceeding, and thus the  
19 Commission should reject that proposal in its entirety.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes.

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON  
UM 1484**

In the Matter of

Application of CenturyTel, Inc.  
for Approval of Indirect Transfer of Control of  
Qwest Corporation

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**REBUTTAL TESTIMONY**

**OF**

**ROBERT BRIGHAM**

**QWEST COMMUNICATIONS INTERNATIONAL, INC.**

**SEPTEMBER 21, 2010**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.**

A. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado, and I am currently employed by Qwest Corporation (“QC”) as a Staff Director in the Public Policy department. I am testifying on behalf of Qwest Communications International, Inc. (“QCII”).

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?**

A. No.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.**

A. In 1983, I received a Master of Business Administration (MBA) degree from the University of Colorado in Denver, Colorado. My area of emphasis was financial analysis. I received a Bachelor of Arts degree in 1974 from Stetson University.

I began my employment with Qwest (formerly Mountain Bell and U S WEST) in 1976. Between 1976 and 1980, I held various positions in the Mountain Bell Commercial (marketing) department. In 1980, I accepted the position of Analyst in the Cost, Rates and Regulatory Matters department, working primarily on the development of embedded cost data. In June 1987, I accepted the position of Manager in the U S WEST Service Cost organization, with responsibility for economic analysis and the development of incremental costing methodologies. In September 1992, I accepted the position of Director- Product Cost Specialist, and assumed responsibility for developing and supporting U S WEST cost studies in

1 formal regulatory proceedings, and representing U S WEST in costing and pricing  
2 workshops sponsored by various regulatory commissions in the U S WEST  
3 region. Between May 1994 and June 1997, I served as Director- Product and  
4 Market Issues. In that position, I managed competitive and local interconnection  
5 issues, supporting U S WEST's interconnection negotiation and arbitration  
6 efforts. In June, 1997, I rejoined the U S WEST cost organization as Director-  
7 Service Costs, where I was responsible for managing cost issues, developing cost  
8 methods and representing Qwest in proceedings before regulatory commissions.  
9 I held this position until April 2004, when I assumed my present responsibilities.  
10 In my current role, I represent Qwest on issues concerning pricing, competition  
11 and regulatory issues.

12

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**  
14 **OREGON COMMISSION?**

15 A. Yes. I have submitted testimony before this Commission on several occasions.  
16 Most recently, in 2005, I presented testimony in Docket No. UX 29.<sup>1</sup> I have also  
17 testified in Docket No. UM 125,<sup>2</sup> Docket No. UT 138,<sup>3</sup> Docket No. UM 773<sup>4</sup> and  
18 Docket No. UM 351.<sup>5</sup>

19

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<sup>1</sup> *In the Matter of the Petition of Qwest Corporation To Exempt From Regulation Qwest's Switched Business Services*, Docket UX 29, 2005.

<sup>2</sup> *In the Matter of the Request for Increases in Rates and Charges*, Docket UT 125, 1997-2001.

<sup>3</sup> *In the Matter of the Investigation into the Compliance Tariffs filed by U S WEST Communications, Inc.*, Docket UT 138, 1997.

<sup>4</sup> *In the Matter of U S WEST Communications, Inc.'s UM 351 Cost Study Summaries*, Docket UM 773, 1998.

<sup>5</sup> *In the Matter of the Investigation into the Cost of Providing Telecommunications Service*, Docket UM 351, 1990-1997.

1 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**  
2 **COMMISSIONS?**

3 A. Yes. I have presented testimony before commissions in Arizona, Colorado, Iowa,  
4 Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah  
5 and Wyoming.

6 **II. PURPOSE OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of my testimony is to address certain aspects of the testimonies of  
9 Dr. August Ankum and Mr. Timothy Gates filed on behalf of the *Joint CLECs*,<sup>6</sup>  
10 the testimony of Dr. Chris Frentrup filed on behalf of Sprint/Nextel, and the  
11 testimony of Dr. Kay Marinos filed on behalf of the Commission Staff. My  
12 testimony, which complements the testimonies of Mr. John Jones, Mr. Michael  
13 Hunsucker, Mr. Clay Bailey and Mr. Todd Schafer filed on behalf of CenturyLink  
14 and the testimonies of Mr. Mike Williams and Mr. Christopher Viveros filed on  
15 behalf Qwest, demonstrates that the Oregon telecommunications market is  
16 extremely competitive, and that the merger between CenturyLink and Qwest (the  
17 “Transaction”) will cause no competitive harm in Oregon. In fact, the  
18 Transaction will enhance competition in the state, and will provide many benefits  
19 to Oregon consumers and businesses. Therefore, the Transaction is in the public  
20 interest and should be approved.

21

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<sup>6</sup> The *Joint CLECs* include: tw telecom of Oregon, Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., United Telecommunications Inc. d/b/a Unicom, Covad Communications, Company, Level 3 Communications, LLC, and Charter Fiberlink OR-CCVII.

1                                   **III. COMPETITIVE IMPACT OF THE MERGER**

2                                   **A. Intervenor Claims of Competitive “Harm”**

3   **Q. MR. GATES AND DR. ANKUM CLAIM THAT THERE ARE**  
4   **NUMEROUS COMPETITIVE “HARMS” THAT “COULD” RESULT**  
5   **FROM THE MERGER. PLEASE COMMENT.**

6   A. I am struck by the highly-speculative and unsupported nature of Dr. Ankum’s and  
7   Mr. Gates’ testimony regarding how this merger will impact the competitive  
8   landscape in Oregon. Throughout their testimonies, they refer to the “harms” that  
9   “could” occur if the merger is approved (without onerous conditions), and the  
10   alleged “incentives” of the combined company to thwart competition, act in a  
11   discriminatory non-competitive manner, or harm CLECs. Yet these witnesses  
12   provide no evidence suggesting that these claims are likely to become a reality in  
13   Oregon as a result of this transaction. As described below, Mr. Gates, Dr. Ankum  
14   and Dr. Frentrup speculate that the proposed transaction will harm competition,  
15   but this speculation is not supported by any evidence.

16  
17   **Q. CAN YOU PROVIDE AN EXAMPLE OF THIS LACK OF EVIDENCE?**

18   A. Yes. Both Mr. Gates and Dr. Ankum provide a lengthy discussion of previous  
19   mergers and acquisitions.<sup>7</sup> Mr. Gates and Dr. Ankum repeatedly present these  
20   mergers as “lessons” of the awful things that “could” happen in this transaction.  
21   For example, Mr. Gates allegedly puts the Transaction in “context” by identifying  
22   the “significant problems that have occurred” following allegedly “similar”  
23   mergers, including the recent FairPoint acquisition of Verizon properties in New  
24   England and the investment firm Carlyle Group’s acquisition of Verizon

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<sup>7</sup> In this discussion, Mr. Gates and Dr. Ankum focus solely on a couple of less-successful transactions, while fully ignoring many other more-successful transactions.

1 properties in Hawaii.<sup>8</sup> He states that “[s]ignificant problems have been  
2 experienced after recent mergers – problems that could occur after the proposed  
3 transaction if it is approved as filed.”<sup>9</sup> However, as described in Mr. Jones’  
4 rebuttal testimony, the FairPoint transaction, as well as other recent transactions  
5 (including the Hawaiian Telecom transaction), bear little resemblance to the  
6 proposed merger of CenturyLink and Qwest.<sup>10</sup> There is no basis to assume that  
7 the failures of these very different transactions would somehow translate into  
8 harmful consequences for the competitive telecommunications market in Oregon  
9 after approval of this merger. In addition, Dr. Ankum and Mr. Gates fail to  
10 include any analysis of previous CenturyLink acquisitions other than making  
11 reference to the recent Embarq transaction, and they admit their analysis of that  
12 transaction is incomplete. The Commission should not place any reliance on  
13 references to these non-comparable transactions, as they provide no reason to  
14 reject this transaction or impose significant onerous conditions.

15  
16 **B. Merger Synergies and Competition**

17 **Q. ACCORDING TO DR. ANKUM, HOW WILL THE MERGER IMPACT**  
18 **CLECs AND COMPETITION IN OREGON?**

19 A. Dr. Ankum testifies that the Transaction represents a predominantly *horizontal*  
20 merger of companies that are generally in the same line of business in different  
21 geographic service areas.<sup>11</sup> While touting the possible benefits of *vertical*

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<sup>8</sup> Joint CLECs/8, Gates/6.

<sup>9</sup> Joint CLECs/8, Gates/88.

<sup>10</sup> As Mr. Jones explains, FairPoint and Hawaiian Telcom experienced financial distress that can be traced directly to their inability to create functioning Operational Support Systems (“OSS”) “from scratch.” However, in ILEC transactions where there has not been the need to create new OSS—as is the case with the proposed Transaction—there is a long track record of successful integrations resulting in improved combined operations, including numerous transactions involving CenturyLink.

<sup>11</sup> Joint CLECs/1, Ankum/38.

1           mergers,<sup>12</sup> he argues that the horizontal combination of these allegedly  
2           “struggling” companies with a “shrinking landline base” is unlikely to provide  
3           substantial merger benefits,<sup>13</sup> and will instead yield a riskier company that may  
4           never even recoup the upfront costs of integration.<sup>14</sup> According to Dr. Ankum, “a  
5           major concern is that, under the pressure of its debt load, the promises of merger  
6           savings to shareholders and regulators, and significant integration costs,  
7           CenturyLink will be forced to cut costs when integrating the two companies,  
8           leading to a degradation of services to wholesale customers and harm to  
9           competition.”<sup>15</sup> He claims that the post-merger company will have the  
10          “incentive” to decrease wholesale service quality in order to reduce costs, and to  
11          improve its competitive positioning in the retail market against CLECs.<sup>16</sup>

12

13   **Q.   DO DR. MARINOS, MR. GATES AND DR. FRENTRUP MAKE SIMILAR**  
14   **CLAIMS?**

15   A.   Yes. Dr. Marinos concludes that Qwest and CenturyLink have a “disincentive to  
16   provide services their competitors need,” and that the combined company may not  
17   provide adequate wholesale services to its competitors.<sup>17</sup> She speculates that the  
18   combined company might act in this manner so that it could “win back more end

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<sup>12</sup> A *horizontal* merger is a merger between companies producing similar goods or offering similar services. A *vertical* merger is a merger between two companies producing different goods or services for one specific finished product. In this instance, a company may purchase a supplier or customer to obtain upstream and downstream market benefits.

<sup>13</sup> Joint CLECs/1, Ankum/40.

<sup>14</sup> Joint CLECs/1, Ankum/40.

<sup>15</sup> Joint CLECs/1, Ankum/44.

<sup>16</sup> Joint CLECs/1, Ankum/13, stating: “Further, CLECs compete with CenturyLink and Qwest for business and residential customers, which creates a perverse incentive structure in which CenturyLink and Qwest may have disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access.”

<sup>17</sup> Staff/500, Marinos/8-9.

1 user customers.”<sup>18</sup> Mr. Gates claims that “[o]ut of the many ways that the Merged  
2 Company could integrate the two companies to the detriment of competition,  
3 degrading the quality or access to OSS [Operational Support Systems] would be  
4 the most effective.”<sup>19</sup> Dr. Frentrup claims that the merged company will achieve  
5 synergies “by raising costs to competitors like Sprint by reducing wholesale staff .  
6 . . and cutting corners on OSS integration which makes customer choice more  
7 expensive.”<sup>20</sup>

8

9 **Q. IS THERE ANY BASIS FOR THESE CLAIMS?**

10 A. No. These witnesses list various negative competitive impacts that “could” occur  
11 based on the merger, but they provide no evidence that their asserted scenarios  
12 would occur or that the merger is likely to have any negative impact on  
13 competition. It is true that the post-merger company seeks to take advantage of  
14 synergies that the merger will provide, and to capitalize on the strengths of each  
15 company, as described in the testimonies of Mr. Jones, Mr. Bailey, Mr. Schafer  
16 and Ms. Pepler. However, there is no basis to assume that the combined  
17 company will cut costs in a manner that harms CLECs—who represent a major  
18 customer group for the combined company. In reality, as described in the  
19 testimonies of Mr. Jones, Mr. Hunsucker and Mr. Williams, the combined  
20 company will offer high-quality wholesale service and OSS after the Transaction  
21 is completed, just as Qwest and CenturyLink do today. CLECs will remain major  
22 customers of the post-merger company, and as competitive options from other  
23 facilities-based providers such as cable and wireless companies (who may serve  
24 customers without use of the Qwest or CenturyLink facilities) continue to grow,

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<sup>18</sup> Staff/500, Marinos/9.

<sup>19</sup> Joint CLECs/8, Gates/37.

<sup>20</sup> Sprint/1, Fentrup/15.

1 the post-merger company will have every incentive to meet CLECs' needs with  
2 high-quality service and OSS in order to keep wholesale providers—and their  
3 retail customers—on the combined company's network. The post-merger  
4 company cannot afford, and has no incentive, to degrade OSS or offer inferior  
5 service quality because customers—including CLECs—have competitive options.  
6 Importantly, the synergies realized by the merger will reduce costs by eliminating  
7 duplicative functions and increasing economies of scale and scope. However, the  
8 actual functions needed to provide outstanding service will *not* be eliminated or  
9 compromised.

10 Furthermore, the arguments that Dr. Ankum, Mr. Gates and Dr. Frentrup present  
11 regarding OSS and service quality are red herrings because, even after the merger,  
12 wholesale services that the Qwest subsidiary provides will remain subject to  
13 current Interconnection Agreements (“ICAs”), tariffs and/or other existing  
14 contractual obligations. For example, the provision of Unbundled Network  
15 Elements (“UNEs”) will still be regulated under Section 251 of the  
16 Telecommunications Act, and the Commission will retain the authority to approve  
17 or deny changes to interconnection agreements that provide for CLEC access to  
18 UNEs. In addition, the Performance Assurance Plan (“PAP”) that applies today  
19 to Qwest is reflected in the vast majority of ICAs, and as such, will still apply  
20 after the merger is completed, as described by Mr. Williams and Mr. Hunsucker.  
21 Every contractual and legal protection available to CLECs today will still be  
22 available after the merger is completed.

23 Finally, Dr. Marinos' speculation that providing poor service to CLECs may help  
24 the combined company retain or win back retail customers is unsupported. Both  
25 CenturyLink and Qwest today, and the combined company in the future, are (will

1 be) subject to strict anti-discrimination regulations per the Telecommunications  
2 Act, and they cannot provide inferior service to CLECs in hopes of gaining back  
3 retail customers. However, even if the combined company could embark on such  
4 a strategy—which it cannot—it would make no sense to do so as it would not be a  
5 recipe for market success in the long term.

6

7 **Q. DO YOU AGREE WITH DR. ANKUM’S CHARACTERIZATION OF THE**  
8 **TRANSACTION AS A DESPERATE MERGER OF “STRUGGLING”**  
9 **COMPANIES?**

10 A. No. Qwest and CenturyLink are clearly experiencing competitive pressures from  
11 CLECs, cable providers, VoIP providers and wireless carriers, and like all  
12 companies, are navigating through a difficult economic environment. However,  
13 it is not fair to say that Qwest and CenturyLink are “struggling” today, and that  
14 this is a merger of desperate companies. In fact, it is interesting that Dr. Ankum  
15 characterizes the companies as “struggling,” while at the same time arguing that  
16 the companies are able to dominate the market and exercise “market power” to  
17 thwart competition. Dr. Ankum is unable to reconcile this contradiction. In  
18 reality, despite a challenging competitive and economic environment, Qwest and  
19 CenturyLink have maintained high-quality service and continued to invest in their  
20 networks, while effectively managing costs and earning a profit. The key point is  
21 that the merger will result in a company that is better able to meet future  
22 challenges than each company would be on its own.

23

24 **Q. HAS QWEST PROVIDED OUTSTANDING WHOLESALE SERVICE**  
25 **QUALITY OVER THE PAST SEVERAL YEARS?**

1 A. Yes. Qwest has been providing outstanding service quality to CLECs over the  
2 past years, even as it has been carefully monitoring and reducing its costs and  
3 improving its balance sheet. On the wholesale side, Qwest payments based on the  
4 QPAP have generally declined in Oregon over the years, as Mr. Williams  
5 describes. This high level of service quality has occurred at the same time that  
6 Qwest's total headcount has declined from approximately 41,000 in December  
7 2004 to approximately 30,000 in December 2009.<sup>21</sup> The bottom line is that  
8 pressures to reduce costs and operate efficiently are not new phenomena resulting  
9 from the merger; like every company, Qwest has always been under pressure to  
10 keep costs as low as possible. Even so, Qwest has continued to improve  
11 wholesale service quality while pursuing all available efficiencies. Given past  
12 performance and the legal and contractual protections that CLECs already  
13 possess, the intervenors' claims that any synergies realized by the combined  
14 company and any potential future headcount reductions will harm wholesale  
15 service quality are unfounded and represent nothing more than speculation.

16

17

**C. The Competitive Environment in Oregon**

18 **Q. ACCORDING TO MR. GATES, DR. ANKUM AND DR. FRENTRUP, IS**  
19 **THE OREGON TELECOMMUNICATIONS MARKET SUFFICIENTLY**  
20 **COMPETITIVE TODAY?**

21 A. No. Mr. Gates, Dr. Ankum and Dr. Frentrup argue that the Oregon  
22 telecommunications market is not sufficiently competitive, and that Qwest and  
23 CenturyLink possess a level of market power that allows them to dominate the  
24 wholesale and retail telecommunications market in the state today. According to

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<sup>21</sup> See Qwest Quarterly Earnings reports, Fourth Quarter 2004 and Fourth Quarter 2009, at <http://investor.qwest.com/earningsarchive>.

1 these witnesses, the merger will harm competition by conferring the merged  
2 company with additional market power, which would allegedly allow the  
3 company to act in an anti-competitive manner to the detriment of retail and  
4 wholesale customers and the public interest in Oregon. According to Dr. Ankum:  
5 “It is in it is in the Joint Applicants’ interests to strengthen their already dominant  
6 market positions in order to realize benefits that justify the merger.”<sup>22</sup> These  
7 “interests” would allegedly lead to anti-competitive actions by the merged  
8 company.

9  
10 **Q. DO YOU AGREE WITH THIS ASSESSMENT?**

11 A. No. As described below, and in Ms. Pepler’s direct testimony, the Oregon  
12 telecommunications market is extremely competitive today. Because of this high  
13 level of competition, and the ability for customers to take advantage of  
14 competitive alternatives, Qwest and CenturyLink do not have “already dominant  
15 positions” that would allow the merged company to take advantage of undue  
16 “market power” in the Oregon retail and wholesale markets. While the  
17 Transaction should result in a post-merger company that is stronger and more  
18 competitive than the two companies standing alone (as Mr. Jones and other  
19 CenturyLink and Qwest witnesses describe) there is no basis to assume that the  
20 merged company will take advantage of synergies and increased financial strength  
21 to threaten the “viability of competition,”<sup>23</sup> as Dr. Ankum claims. The “market  
22 power” claims of these parties are based entirely on speculation, are not fact-  
23 based, and ignore the realities of the market.

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<sup>22</sup> Joint CLECs/1, Ankum/21.

<sup>23</sup> Joint CLECs/1, Ankum/21.

1 **1. The Retail Market**

2 **Q. DO MR. GATES, DR. ANKUM AND DR. FRENTRUP CLAIM THAT**  
3 **QWEST AND CENTURLINK DOMINATE THE RETAIL LOCAL**  
4 **EXCHANGE MARKET IN OREGON?**

5 A. Yes. Mr. Gates claims that ILECs, including Qwest and CenturyLink, dominate  
6 the retail telecommunications market in Oregon, and that ILECs today have “70%  
7 of the market,” based on the latest FCC Local Competition Report.<sup>24</sup> According  
8 to Dr. Frentrup, “[t]he Merged Firm will increase its market-share of Oregon  
9 ILEC lines to 72%.”<sup>25</sup> Dr. Ankum claims that freedom of choice does not exist  
10 for “captive” retail customers, who he claims are totally dependent on Qwest and  
11 CenturyLink.<sup>26</sup> According to Mr. Gates, Dr. Ankum and Dr. Frentrup, since  
12 Qwest and CenturyLink have a large market share, they possess significant retail  
13 market power and an incentive—and the ability—to act in an anti-competitive  
14 manner to the detriment of consumers and businesses. They argue that this  
15 situation will only be exacerbated by the merger.

16  
17 **Q. IS THIS A PROPER CHARACTERIZATION OF THE OREGON RETAIL**  
18 **TELECOMMUNICATIONS MARKET TODAY?**

19 A. No. As Ms. Pepler describes in her direct testimony, the Oregon retail  
20 telecommunications market is very competitive today. Consumers and businesses  
21 have multiple service options from CLECs, cable companies, wireless providers  
22 and VoIP-based service providers.<sup>27</sup> The Oregon telecommunications market is

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<sup>24</sup> Joint CLECs/8, Gates/17.

<sup>25</sup> Sprint/1, Fentrup/5.

<sup>26</sup> Joint CLECs/1, Ankum/9: “Specifically, retail customers in captive segments of retail markets have little or no choice . . . .”

<sup>27</sup> See Direct testimony of Judith A. Pepler, Exhibit Qwest/1, Pepler/13-21.

1 becoming more competitive every day, and there is no reason to conclude that this  
2 explosion of competitive alternatives will subside as new technologies are  
3 developed and customer preferences evolve. Just as Qwest's and CenturyLink's  
4 "market power" is constrained by competition today, it will continue to be  
5 constrained by increasing competition in the future.

6 In addition, the competitive "market share" analyses of these witnesses are flawed  
7 in large part because they ignore wireless competition and rely on measures of  
8 historical market share that do not account for market trends. The latest version  
9 of the FCC report cited by Mr. Gates shows that ILECs' combined share  
10 (including Qwest and CenturyLink) of the *wireline and VoIP* telephone market is  
11 68% in Oregon.<sup>28</sup> However, this measure does not account for wireless  
12 competition from companies such as AT&T, Verizon, Sprint and T-Mobile. Mr.  
13 Gates, Dr. Frentrup ignore wireless service, even though it is clear that many  
14 Oregonians are substituting wireless service for wireline service today, and that  
15 wireless serves as a price-constraining substitute for wireline services. As  
16 described in Ms. Pepler's direct testimony, 25% of Americans had already "cut  
17 the cord" in the second half of 2009 and no longer had a wireline phone, while  
18 another 15% had a landline yet received all or almost all calls on wireless  
19 telephones.<sup>29</sup> According to the latest FCC data, ILEC wirelines represented *only*

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<sup>28</sup> Mr. Gates cites the FCC's Local Competition Report released in June, 2010, which provides data for December 2008. He also cites *national* data from Figure 2 of this report rather than *Oregon-specific* data found in Table 8 of the report. The latest Local Competition Report, released in September 2010, reflects June 2009 data. According to this report, total ILEC share of "Total End-User Switched Access Lines and VoIP Subscriptions" (without wireless) in *Oregon* is 68%, while total CLEC share is 32%. See: *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 8. In addition, the ILEC market share in the FCC's report includes all ILECs in the state, not just Qwest and CenturyLink. It is likely that the share for Qwest is lower than the state average because Qwest provides service in the most competitive urban areas in the state.

<sup>29</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009*, released May 12, 2010, p. 1.

1 25% of all wireline, VoIP and wireless connections in Oregon, and wireline and  
2 VoIP access lines (ILEC and non-ILEC) accounted for less than 40% of all  
3 wireline/wireless connections in the state.<sup>30</sup> The impact of wireless services on  
4 the local exchange market in Oregon cannot be ignored in any reasonable  
5 competitive analysis.

6

7 **Q. DO HISTORICAL MARKET SHARE MEASURES PROVIDE A GOOD**  
8 **INDICATOR OF A FIRM'S MARKET POWER?**

9 A. No. Even if wireless services are properly included in the analysis, it is important  
10 to understand that the Commission should not rely on historical local exchange  
11 market share measures to draw inferences regarding market power, for several  
12 reasons.<sup>31</sup> First, the relationship between “market share” and “market power” is  
13 likely to be particularly misleading in a regulated environment where rates have  
14 been set by regulators to meet policy objectives (such as, for example, universal  
15 service) rather than by market forces. Second, any measure of market share is  
16 necessarily static, based on some historical time period. In that sense, market  
17 share does not provide an indicator of where the market is headed, or what  
18 competitive alternatives are available to customers. That is particularly true when  
19 one provider, such as Qwest or CenturyLink, started out with 100% of the market  
20 in its ILEC territory, but is now subject to competition from many directions, and  
21 is experiencing declining market share. Third, it is important to understand that

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<sup>30</sup> *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Tables 8 and 17. For Oregon, this report shows 1.210 million ILEC lines, 0.558 million CLEC lines, and 3.112 million wireless connections.

<sup>31</sup> See, for example: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *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*, October 21, 2009, pp. 21-26.

1 competitive *capacity* provides a better indicator of market power than market  
2 share. If competitive *capacity* exists, a high historical market share is not  
3 determinative that the firm has a high level of market power. For example, if a  
4 cable company enters an ILEC market with voice service, it may appear initially  
5 that the ILEC has a dominant market share since the cable company has not *yet*  
6 gained a significant number of customers. However, the significant factor is that  
7 the cable service is *available* to the ILEC customers, and thus the share of  
8 *capacity* is closer to 50% for each provider.<sup>32</sup>

9 For these reasons, the Commission should not rely on historical market share in  
10 isolation as a measure of the level of Qwest or CenturyLink market power—  
11 before or after the merger. Even so, the fact that ILECs now have less than 25%  
12 of the combined wireline and wireless connections in Oregon (based on the  
13 aforementioned FCC data) demonstrates the lack of market power these firms  
14 possess. And importantly, Qwest’s market share continues to decline as  
15 customers move to CLEC, cable telephony, wireless and VoIP alternatives that  
16 are available throughout Oregon. As described in Ms. Peppler’s direct testimony,  
17 Qwest faces significant wireline competition in Oregon from cable companies  
18 (including Comcast and many companies with a smaller presence, such as Charter  
19 and Cable One), CLECs (including the various Integra companies,  
20 PAETEC/McLeod, Level 3, XO and many others), VoIP providers (including

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<sup>32</sup> Dr. Dennis Weisman and Dr. Timothy Tardiff provide an example: “Consider, for example, a particular market in which the ILEC and a cable company compete. Suppose the cable company quickly garners 5 percent of the customers and the ILEC files for deregulation. There may be a tendency to conclude that the ILEC continues to maintain market power since it has 95 percent of the customers. And yet, if capacity is truly the relevant measure of market share, and both the ILEC and the cable company are able to address 100 percent of the customers, the ILEC’s market share is actually only 48.72 percent (95/(95 + 100))” See: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest’s Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *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*, October 21, 2009, pp. 23-24.

1 Google, Vonage, MagicJack and many others), and wireless carriers (including  
2 AT&T, Verizon, Sprint, T-Mobile and others). Oregon consumers and businesses  
3 have numerous alternatives to meet their local voice calling and broadband needs.  
4

5 **Q. DR. FRENTRUP EXPRESSES CONCERN THAT THE LARGER**  
6 **COMPANY WILL HAVE A “GREATLY ENHANCED ABILITY TO**  
7 **WIELD MARKET POWER TO THE DETRIMENT OF CONSUMERS**  
8 **AND COMPETITORS, AND THE HARM WILL BE EVEN GREATER IN**  
9 **THE MARKETS FOR SEVERAL TELECOMMUNICATIONS AND**  
10 **BROADBAND SERVICES.”<sup>33</sup> PLEASE COMMENT.**

11 A. Like Mr. Gates and Dr. Ankum, Dr. Frentrup states that the combined company  
12 will have the ability to wield increased market power. However, he provides no  
13 evidence that even comes close to proving that the post-merger company will  
14 have a “lopsided competitive advantage . . . over competing carriers.”<sup>34</sup> Dr.  
15 Frentrup simply assumes that the merged firm will have “more potential to engage  
16 in anticompetitive behavior within its expanded footprint” than the legacy Qwest  
17 or CenturyLink could do before the merger.<sup>35</sup> He muses that  
18 “telecommunications service choices and prices in the market could be adversely  
19 impacted,” but does not provide any evidence as to how this adverse impact  
20 would occur in Oregon; he merely makes his erroneous claims regarding access  
21 charges.<sup>36</sup> Dr. Frentrup claims that (1) allegedly inflated switched access charges  
22 will harm competitors and (2) the combined company will have a huge advantage  
23 because it will allegedly avoid switched access rates that Qwest and CenturyLink

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<sup>33</sup> Sprint/1, Fentrup/4.

<sup>34</sup> Sprint/1, Fentrup/12.

<sup>35</sup> Sprint/1, Fentrup/12.

<sup>36</sup> Sprint/1, Fentrup/12.

1 currently pay each other. However, Mr. Jones' testimony effectively debunks Dr.  
2 Frentrup's theory regarding this alleged competitive advantage. Mr. Jones points  
3 out that after the merger, the company will continue to charge the tariffed rates to  
4 *all* long distance providers—including its own affiliates—just as the companies  
5 do currently.

6 Further, the Administrative Law Judge in this proceeding has determined that  
7 switched access rates are not an issue to be addressed in this proceeding:

8 Historically, this issue has been addressed and was resolved many years  
9 ago by the requirement that ILECs place their competitive operations in  
10 fully separated subsidiaries with separate management, technical and  
11 financial staffs and operations, so that the access charges which they pay  
12 to their ILEC affiliate will have the same economic impact upon their  
13 operations as they would to an unaffiliated CLEC competitor. Evidence  
14 regarding the amount of these special and interstate access charges that the  
15 Applicants' ILECs charge each others' CLEC affiliates is therefore not  
16 "reasonably calculated to lead to the discovery of evidence relevant to the  
17 issues involved in the pending proceeding."<sup>37</sup>

18 In addition, Mr. John Reynolds, on behalf of Staff, testifies that it is not appropriate  
19 to address access charge, intercarrier compensation or universal service issues in  
20 this docket.<sup>38</sup> He explains that "[r]educing CenturyLink's access rates at this time  
21 is likely to have serious undesirable consequences,"<sup>39</sup> which he describes in his  
22 testimony.

23

24 **Q. DR. FRENTRUP CLAIMS THAT "THE MERGED FIRM WILL ALSO**  
25 **INCREASE ITS MARKET CONCENTRATION IN THE LONG**

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<sup>37</sup> Docket UM 1484, ALJ Ruling, *Motion Dismissed as Moot in Part and Denied in Part* (September 7, 2010), p. 4.

<sup>38</sup> Staff/300, Reynolds/13.

<sup>39</sup> Staff/300, Reynolds/11.

1           **DISTANCE, ENTERPRISE AND BROADBAND MARKETS.”<sup>40</sup> PLEASE**  
2           **COMMENT.**

3           A.     First, it is rather absurd to claim that the merged company will gain additional  
4           market concentration and gain competitive advantage in the long distance market  
5           due to the merger. The long distance market in Oregon and the U.S. is extremely  
6           competitive today, and Qwest and CenturyLink’s share of this market is miniscule  
7           (less than 10% combined), especially compared to AT&T and Verizon (more than  
8           70% combined).<sup>41</sup> In addition, the distinction of the “long distance” and “local”  
9           markets is quickly disappearing, as customers adopt the pricing plans of wireless  
10          providers that offer long distance at no additional charge. The  
11          telecommunications market is becoming an “all distance” market, and thus it is  
12          clear that the merged company will not be able to wield market power in the  
13          highly-competitive “long distance” market. In its 2009 10K, Sprint itself says:  
14          “The traditional dividing lines among long distance, local, wireless, video and  
15          Internet services are increasingly becoming blurred.”<sup>42</sup>

16          Second, the intervenor witnesses cannot reasonably argue that the combined  
17          company will be able to harm competition by increasing concentration in the  
18          enterprise market. As Mr. Jones noted in his rebuttal testimony and Ms. Pepler  
19          noted in her direct testimony, Qwest and CenturyLink’s presence in the enterprise  
20          business today is dwarfed by other national providers, including AT&T and  
21          Verizon. Ms. Pepler noted that “[f]or total year 2009, Qwest *total* Business

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<sup>40</sup> Sprint/1, Fentrup/3.  
<sup>41</sup> According to a recent study by Atlantic/ACM, the AT&T and Verizon combined share of the long distance market is more than 70% in the U.S., with the Qwest and CenturyLink share less than 10% combined. *Wireless Wins, Wireline Wanes: U.S. Telecom Wired and Wireless Sizing and Share 2010-2015*, Atlantic/ACM, 2010.  
<sup>42</sup> Sprint 2009 10K Report, filed February 26, 2010, p. 18. See: <http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-sec>.

1 Markets Group revenues were \$4.09 billion, compared to business revenues of  
2 \$14.74 billion for AT&T and \$14.99 billion for Verizon.”<sup>43</sup> She continues that  
3 “[i]n terms of business revenues for 10 of its top competitors,<sup>44</sup> Qwest’s share of  
4 that business market is less than 10%, compared to 33% each for AT&T and  
5 Verizon.”<sup>45</sup> Of particular interest is that *Sprint’s wireline revenues—which are*  
6 *predominantly business-related—were \$5.6 billion in 2009—more than Qwest’s*  
7 *Enterprise revenues* for the year.<sup>46</sup> Dr. Frentrup’s claim of competitive harm to  
8 the enterprise market as a result of the merger of CenturyLink and Qwest the U.S.  
9 enterprise market today is simply not credible.

10 Third, the intervenors’ claim that the merger will cause harmful concentration in  
11 the broadband market is not reasonable. In Oregon today, based on the FCC’s  
12 latest *Internet Access Services Report*, DSL broadband connections—like those  
13 offered by Qwest—represent less than 30% of the total broadband connections in  
14 the state.<sup>47</sup> The number of cable modem connections exceeds the number of

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<sup>43</sup> Qwest/1, Pepler/14. See e.g., 2009 10K reports for Qwest at <http://qwest.investorroom.com/qcii-sec-filings>, Verizon at <http://investor.verizon.com/sec/index.aspx> and AT&T at [http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control\\_selectgroup=Show%20All](http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control_selectgroup=Show%20All). The revenues provided represent total company business revenues from corporate reports, and are not limited to Oregon.

<sup>44</sup> Includes AT&T, Verizon, Sprint, Cbeyond, Cogent, Global Crossing, Level 3, PAETEC, tw telecom and XO Communications.

<sup>45</sup> Qwest/1, Pepler/14.

<sup>46</sup> See Sprint 2009 10K Report, filed February 26, 2010, p. 44. Regarding wireline services, Sprint states on page 4 of its 10K:

We provide a broad suite of wireline voice and data communications services to other communications companies and targeted business subscribers. In addition, we provide voice, data and IP communication services to our Wireless segment and IP and other services to cable Multiple System Operators (MSOs) that resell our local and long distance service and use our back office systems and network assets in support of their telephone service provided over cable facilities primarily to residential end-user subscribers.

While there may be some retail residential service revenue included in Sprint’s \$5.6 billion “wireline” revenues, it is likely to be very small.

<sup>47</sup> *Internet Access Services Status as of June 30, 2009*, Industry Analysis and Technology Division

1 ADSL connections, and the number of wireless connections is growing rapidly  
2 and now exceeds the number of ADSL connections in Oregon. Thus, the  
3 combined company will hardly “dominate” the broadband market in Oregon.  
4 Instead, the merger will provide the combined company with the financial and  
5 operational resources to invest in broadband networks, and to better compete  
6 against cable modem and wireless broadband options. This is clearly in the public  
7 interest, and will benefit Oregon consumers, businesses and wholesale customers.  
8

9 **Q. DOES DR. MARINOS PROPOSE A MERGER CONDITION**  
10 **REGARDING POST-MERGER LONG DISTANCE RATES?**

11 A. Yes. Staff proposes Staff Condition 44, which states:

12 For at least 180 days following the close of the proposed transaction,  
13 CenturyLink will offer substantially the same intrastate toll calling  
14 services, at the same rates, in the pre-merger Qwest area as provided by  
15 Qwest immediately prior to the closing. This includes the bundled service  
16 offerings of local and long distance at the same rates as set forth in the  
17 price lists of Qwest. In addition, CenturyLink will honor all commitments  
18 made by Qwest to customers regarding the terms for which promotional  
19 discounts on intrastate long distance services apply.<sup>48</sup>

20 **Q. IS THIS CONDITION APPROPRIATE?**

21 A. No; this condition is not necessary or appropriate. As I described above, the long  
22 distance market in Oregon is exceptionally competitive, and customers have many  
23 options for long distance calling. In this competitive marketplace, there is no  
24 justification for freezing long distance rates for *any* period of time, for *any*  
25 provider, much less a provider that does not have anywhere near a dominant

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Wireline Competition Bureau, September 2010, Table 14. As of June 30, 2009, the FCC reported 367,000 ADSL connections, 531,000 cable modem connections and 413,000 mobile broadband connections out of a total of 1.4 million (at least 200 kbps in one direction) in Oregon.

<sup>48</sup> Staff/500, Marinos/4.

1 position in the market. Any company should be able to change rates and calling  
2 packages in response to market demands.

3

4 **Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL**  
5 **SIGNIFICANTLY IMPACT COMPETITION, TO THE DETRIMENT OF**  
6 **THE PUBLIC INTEREST?**

7 A. Yes. Dr. Ankum argues that:

8 A merger of CenturyLink and Qwest reduces competition in areas and for  
9 services in which the companies compete. While, for the most part, the  
10 companies operate in their own separate service areas, there are significant  
11 instances in which they do compete. Clearly, a merger would eliminate  
12 this competition, and in doing so harm the public interest.<sup>49</sup>

13 Dr. Ankum also claims that Qwest and CenturyLink serve “large numbers of  
14 exchanges that are adjacent,” and that “the merger will eliminate any incentive”  
15 for competition between the two companies.<sup>50</sup> Thus, according to Dr. Ankum, the  
16 merger would present significant competitive harms.

17

18 **Q. ARE THESE LEGITIMATE CONCERNS?**

19 A. No. As Ms. Pepler describes in her direct testimony, the Qwest and CenturyLink  
20 local exchange serving areas in Oregon are complementary. Qwest serves the  
21 larger urban areas in Oregon, including the Portland metropolitan area and several  
22 cities along the I-5 corridor, including Salem, Eugene, Corvallis and Medford, as  
23 well as other mid-size cities and rural areas. CenturyLink, on the other hand,  
24 serves many smaller communities and rural areas throughout the state. Qwest  
25 does not serve customers in CenturyLink’s serving area in Oregon, and

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<sup>49</sup> Joint CLECs/1, Ankum/45.

<sup>50</sup> *Id.*

1 CenturyLink does not serve customers in Qwest’s serving area in Oregon. In  
2 addition, while Qwest serves several exchanges in Oregon that are adjacent to  
3 CenturyLink exchanges, there is no basis to conclude that the combination of the  
4 companies would somehow have a negative impact on competition via the  
5 elimination of one of the companies as a “potential” competitor.  
6

7 **Q. IS DR. MARINOS CONCERNED ABOUT THE “POTENTIAL HARMS**  
8 **OF THE PROPOSED MERGER ON COMPETITION IN OREGON” DUE**  
9 **TO THE LOSS OF ONE INCUMBENT PROVIDER?<sup>51</sup>**

10 A. Yes. Dr. Marinos states that the lack of overlap between Qwest and CenturyLink  
11 is an “insignificant” factor in assessing competitive impact. She states that the  
12 merger “will result in the loss of one incumbent competitor in Oregon, and the  
13 emergence of an even larger competitor under the CenturyLink corporate  
14 umbrella.”<sup>52</sup> Dr. Marinos goes on to say that “the company will grow from  
15 around 109,000 lines to 911,000 in Oregon (an increase of over 700 percent).”<sup>53</sup>  
16 Therefore, according to Dr. Marinos, “the risks to Oregon customers are greater  
17 than in many other states.”<sup>54</sup>  
18

19 **Q. DO YOU AGREE WITH DR. MARINOS’ ANALYSIS?**

20 A. No. First, Dr. Marinos implies that simply because the company will be bigger  
21 and cover more geographic areas that this has the “potential” to be harmful to  
22 competition in Oregon. However, she provides no basis for the assumption that  
23 the increased geographic territory of the combined company will lead to any

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<sup>51</sup> Staff/500, Marinos/7.

<sup>52</sup> *Id.*

<sup>53</sup> Staff/500, Marinos/8.

<sup>54</sup> *Id.*

1 competitive harm. In fact, since there are no “overlaps” in Oregon, no geographic  
2 areas in the state will experience the loss of a competitor. Just the fact that the  
3 combined company will have a bigger footprint in Oregon is certainly not a basis  
4 for claiming competitive harm; in fact, it will provide competitive benefits. The  
5 combined company will have increased economies of scale and scope and thus  
6 achieve synergies that will make it a stronger competitor in a very competitive  
7 market. This will benefit Oregon consumers and businesses.

8 In addition, Dr. Marinos’ claim that CenturyLink access lines will increase 700%  
9 is misleading. In reality, when the merger is consummated, the combined  
10 company will not have significantly more access lines than Qwest has today. It is  
11 important to keep the impact of the merger on the Oregon telecommunications  
12 market in perspective. The merger will add fewer than 110,000 CenturyLink  
13 access lines to Qwest’s 802,000 access lines in Oregon—an overall increase of  
14 less than 14%—albeit under a different corporate parent.<sup>55</sup> Moreover, the  
15 resulting number of Oregon access lines will be less than the number of access  
16 lines that Qwest had in service as recently as the end of 2008. In other words, the  
17 combined companies’ share of the local voice market in Oregon will be smaller  
18 after the merger than Qwest’s share was only two years ago.

19

20 **Q. AFTER THE TRANSACTION IS COMPLETED, WILL THE OREGON**  
21 **TELECOMMUNICATIONS MARKET HAVE ROBUST COMPETITION?**

22 A. Yes. After the Transaction is completed, all of the same providers that compete  
23 against Qwest and CenturyLink today—as described above and in Ms. Peppler’s  
24 direct testimony—will still be competing with the combined company in Oregon.  
25 In fact, it is likely that the impact of competition will continue to grow as

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<sup>55</sup> Includes retail and wholesale access lines, as of December 31, 2009.

1 alternative providers continue to attract new customers. There is, therefore, no  
2 basis to conclude, as Dr. Ankum, Dr. Frentrup, Mr. Gates and Dr. Marinos do,  
3 that the merger will somehow harm competition in the state.  
4

5 **Q. HAS THE DEPARTMENT OF JUSTICE (DOJ) AND THE FEDERAL**  
6 **TRADE COMMISSION (FTC) DETERMINED THAT THE MERGER IS**  
7 **NOT A RISK FROM AN ANTITRUST PERSPECTIVE?**

8 A. Yes. On July 15, 2010, Qwest and CenturyLink received notification from the  
9 DOJ and the FTC that their merger reviews received “early termination” under the  
10 Hart-Scott-Rodino Act. Thus, the proposed merger of Qwest and CenturyLink  
11 has received clearance from an antitrust perspective;<sup>56</sup> the DOJ and FTC have  
12 determined that there will not be a significant erosion of competition resulting  
13 from the merger. There are very few overlapping areas served by the two  
14 companies in the U.S., and the DOJ expressed little concern regarding the  
15 existence of adjacent Qwest-CenturyLink exchanges in Oregon and other states.  
16 Significantly, the DOJ specifically evaluated overlaps and adjacencies in all states  
17 and determined that these overlaps and adjacencies do not pose concerns that  
18 would warrant further review.  
19

20 **Q. BASED ON THE REGULATORY SCHEME IN PLACE IN OREGON**  
21 **TODAY, DOES QWEST HAVE THE ABILITY TO TAKE ADVANTAGE**  
22 **OF SO-CALLED “MARKET POWER” IN A MANNER THAT IS**  
23 **HARMFUL TO OREGON CONSUMERS AND BUSINESSES?**

24 A. No. As described above, the highly-competitive environment in Oregon will not  
25 permit the post-merger company to engage in price discrimination or any other

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<sup>56</sup> See Form 425 filed with SEC on July 22, 2010, available at: <http://investor.qwest.com/qcii-sec-filings>.

1 anti-competitive acts—a fact that is reinforced by the DOJ decision. However,  
2 while the competitive market by itself prevents Qwest from acting in a  
3 discriminatory or anti-competitive manner, it is also important to understand that  
4 the retail rates of QC (Qwest’s Oregon subsidiary) are regulated by this  
5 Commission. As Ms. Pepler explained in her direct testimony, QC is subject to  
6 a “Price Plan” in Oregon that includes price caps on basic local exchange  
7 services. After the merger, QC will continue to comply with all pricing, service  
8 quality, reporting and other requirements as defined in the Price Plan, including  
9 the price cap for stand-alone residential exchange service as defined in the plan.  
10 The Price Plan states that QC can only *ask* the Commission for a residential basic  
11 exchange service in late 2012, to be effective in 2013, and such an increase would  
12 only take place the Commission approves the request. Thus, regulation would  
13 continue to prohibit the post-merger company from exerting undue market power,  
14 even if it could do so (which it cannot).

15  
16 **2. The Wholesale Market**

17 **Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL “UPSET THE**  
18 **WHOLESALE RELATIONSHIP BETWEEN ILECs AND CLECs AND**  
19 **HARM COMPETITION IN OREGON.”<sup>57</sup>**

20 **A.** Yes. Dr. Ankum claims that “without reasonable, reliable and nondiscriminatory  
21 access to Qwest’s and CenturyLink’s networks, CLECs cannot get access to  
22 customers.”<sup>58</sup> Thus, he implies that the merger will somehow eliminate Qwest’s  
23 requirement to provide CLEC access to its network, and that downstream retail  
24 residence and business customers will be harmed.

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<sup>57</sup> Joint CLECs/1, Ankum/8.

<sup>58</sup> Joint CLECs/1, Ankum/8.

1

2 **Q. IS THIS A LEGITIMATE CLAIM?**

3 A. No. After the merger transaction is consummated, the Qwest subsidiary (QC) will  
4 still be subject to Sections 251, 252 and 271 of the Telecommunications Act, just  
5 as it is today. Thus, CLECs will have access to Qwest “last mile” facilities in all  
6 Oregon wire centers. UNE loops will still be available to CLECs at TELRIC-  
7 based prices<sup>59</sup> based on Section 251 of the Telecommunications Act in all wire  
8 centers except those that this Commission has declared “non-impaired” based on  
9 the FCC’s *Triennial Review Remand Order* (“*TRRO*”) criteria.<sup>60</sup> In Oregon, only  
10 three wire centers—Portland Capitol, Salem and Eugene—have been declared  
11 non-impaired for DS3 loops, and only one wire center—Portland Capitol—has  
12 been declared non-impaired for DS1 loops.<sup>61</sup> In all other wire centers, CLECs  
13 may purchase unbundled loops at TELRIC-based prices.<sup>62</sup> In the three “non-  
14 impaired” wire centers described above, CLECs may purchase DS3 last-mile  
15 facilities at non-TELRIC-based rates per Section 271 of the Telecommunications  
16 Act, and in the Portland Capitol wire center, CLECs may purchase DS1 last-mile

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<sup>59</sup> TELRIC (Total Element Long Run Incremental Cost) assumes the long-run incremental forward-looking costs of providing an element based on the least-cost most efficient technologies that could be deployed. These costs represent the theoretical costs that would be incurred to replace the network using least-cost technologies.

<sup>60</sup> See: *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005). In determining that a CLEC is not impaired without access to a UNE, the FCC has specifically found that CLECs are no longer impaired without access to that element, and that cost-based TELRIC rates are no longer necessary. With regard to DS1 and DS3 services, when the FCC determined in the *TRRO* that either DS1/DS3 loops or transport in a particular wire center are non-impaired, it specifically determined that market conditions are such that a CLEC is highly likely to have alternatives to Qwest DS1 and DS3 services.

<sup>61</sup> See Order No. 07-109 in Docket UM 1251 and Order No. 07-404 in Docket UM 1326, in which this Commission declared certain Qwest wire centers “non-impaired” for certain UNEs (Portland Capitol, Salem and Eugene for DS3 loops and Portland Capitol for DS1 loops). See also Qwest Wholesale website at: [http://www.qwest.com/wholesale/downloads/2010/100111/Non\\_Impaired\\_Wire\\_Center\\_12\\_23\\_09.xls](http://www.qwest.com/wholesale/downloads/2010/100111/Non_Impaired_Wire_Center_12_23_09.xls).

<sup>62</sup> Per the *TRRO*, other wire centers have been determined to be “Tier 1” or “Tier 2.” In Tier 1 wire centers, CLECs are not impaired without access to DS1 and DS3 transport (interoffice) facilities, and in Tier 2 wire centers, CLECs are not impaired without access to DS3 transport.

1 facilities at non-TELRIC-based rates. Thus, the merger poses no risk that such  
2 elements will not be available in Oregon post-merger. This fact demonstrates that  
3 the CLECs' claims of the merger's "competitive harm" are without merit and  
4 should be given no weight in this proceeding.

5 It is also interesting that Dr. Ankum refers to the "market power" that Qwest and  
6 CenturyLink allegedly enjoy, while at the same time admitting that regulatory  
7 constraints would prevent the post-merger company from exercising such power  
8 in the wholesale market.<sup>63</sup> As described above, Qwest is required by law to  
9 provide access to its network based on Sections 251 and 271 today, and the Qwest  
10 subsidiary will be required to do the same after the merger, which constrains  
11 Qwest's and the post-merger company's market power.

12

13 **Q. MR. GATES CLAIMS THAT QWEST HAS A "MONOPOLY OVER**  
14 **WHOLESALE INPUTS RELIED UPON BY CLECs," AND THAT THERE**  
15 **ARE NO ALTERNATIVE SOURCES OTHER THAN QWEST FOR**  
16 **WHOLESALE INPUTS.<sup>64</sup> DO YOU AGREE?**

17 **A.** No. As described above, certain wire centers in Oregon have been declared to be  
18 "non-impaired" for unbundled loops and/or transport, based on the FCC's *TRRO*  
19 non-impairment criteria. When a wire center is determined to be non-impaired, *it*  
20 *means that CLECs have competitive wholesale options and are clearly not*  
21 *"captive customers" of Qwest.*<sup>65</sup> Mr. Gates cannot reasonably claim that CLECs

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<sup>63</sup> As Dr. Ankum says, "economically efficient access by CLECs to the ILECs' network elements serves to constrain the ILECs' ability to exploit market power in wholesale markets to the detriment of competition in downstream, retail markets." Joint CLECs/1, Ankum/44.

<sup>64</sup> Joint CLECs/8, Gates/17.

<sup>65</sup> According to the FCC:

This Order [*TRRO*] imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of

1 do not have competitive alternatives in areas where it has been determined that  
2 CLECs are not “impaired” without access to a network element.<sup>66</sup> Furthermore,  
3 in the Portland area, there are numerous competitive *fiber networks* in place  
4 today. Companies with fiber networks in Portland include Zayo Bandwidth,  
5 AboveNet, AT&T, Verizon, tw telecom, PAETEC, Integra, Level 3, 360  
6 Networks, XO, and many others. In addition, CLECs have the option to obtain  
7 access from *fixed wireless* providers.

8

9 **Q. WHAT DO YOU CONCLUDE?**

10 A. The competitive issues that the CLECs raise in this proceeding represent nothing  
11 more than “noise” that is designed to distract the Commission from the real issue  
12 in this case—whether the proposed merger of CenturyLink and Qwest is in the  
13 public interest under the Commission’s “no harm” standard. As described above,  
14 and in Mr. Hunsucker’s and Mr. Viveros’ testimonies, existing wholesale  
15 obligations will continue to be in place after the merger is completed. The post-  
16 merger QC entity will still be subject to Sections 251, 252, and 271 of the  
17 Telecommunications Act, and will provide unbundled loops at regulated  
18 TELRIC-based rates in all wire centers except Portland Capitol (DS1/DS3),  
19 Salem (DS3) and Eugene (DS3), where it has been determined that competitive  
20 options exist. In geographic areas where CLECs “rely” on Qwest, they will  
21 continue to be able to do so after the merger is consummated with the same rates,

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courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition.  
*In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005), ¶ 2. (Footnotes omitted.)

<sup>66</sup> The FCC has spent more than a decade addressing Section 251 issues and has issued several rulings specifically addressing the issue of non-impairment, as noted above. If the CLECs have concerns over the FCC’s criteria for non-impairment, these concerns must be addressed in an appropriate FCC UNE proceeding.

1 terms, and conditions contained in the existing tariffs and interconnection  
2 agreements. Nothing about the merger changes these obligations. In addition, in  
3 the “non-impaired” wire centers, CLECs have the option to utilize alternative  
4 networks or to self-provision using their own networks. Thus, there is no basis to  
5 assume that the merger will negatively impact the competitive market in Oregon  
6 or harm the interests of Oregon consumers, businesses or CLECs.

7 **3. Summary of Competitive Impact**

8 **Q. IN SUM, IS THERE ANY BASIS FOR THE CLAIMS BY MR. GATES, DR.**  
9 **ANKUM AND DR. FRENTRUP THAT THE MERGER WILL HARM**  
10 **COMPETITION AND WILL NOT SERVE THE PUBLIC INTEREST?**

11 A. No. Dr. Ankum states that the Commission should not succumb to the belief that  
12 the “invisible hand” of the marketplace will safeguard the public interest in this  
13 merger.”<sup>67</sup> While CenturyLink and Qwest have demonstrated the significant  
14 benefits of this merger, in fact, the competitive nature of the market, along with  
15 the continued regulation of retail and wholesale services, *will* protect customers  
16 and the public interest once the merger is completed. In this environment, the  
17 post-merger company has every incentive to provide high-quality innovative  
18 services to retail and wholesale customers.

19 **C. Merger Benefits**

20 **Q. SEVERAL WITNESSES ARGUE THAT THE BENEFITS OF THE**  
21 **MERGER WILL ONLY ACCRUE TO SHAREHOLDERS AND THAT**  
22 **OTHER “STAKEHOLDERS” WILL NOT BENEFIT. PLEASE**  
23 **COMMENT.**

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<sup>67</sup> Joint CLECs/1, Ankum/23.

1 A. Dr. Ankum argues that the Commission should balance the benefits of the merger  
2 to shareholders with the harmful effects that will allegedly be borne by other  
3 stakeholders, such as customers.<sup>68</sup> He implies that shareholders will benefit at the  
4 expense of consumers, businesses, and wholesale customers.

5 This advocacy is misplaced because the merger is likely to benefit shareholders  
6 *and* other stakeholders. The Transaction will create a financially-strong and  
7 stable provider that has an enhanced ability to invest in local and national  
8 networks, deploy broadband and other advanced services, and provide  
9 outstanding service quality to its customers, large and small, as Mr. Jones further  
10 describes. The combined CenturyLink-Qwest entity will be stronger and more  
11 stable from a financial perspective than either company would be on its own. As  
12 a result, the combined company will have access to the necessary capital to invest  
13 in a network capable of providing enhanced products and services. Rather than  
14 harming customers/stakeholders, this transaction will provide benefits to  
15 customers and will serve the public interest. In this and any other industry, in  
16 order to provide benefits to shareholders, a company must also serve and benefit  
17 its customers.

18 Dr. Frentrup argues that the merger is problematic because it has the potential to  
19 reward or “enrich” shareholders, as if this is a negative aspect of the  
20 Transaction.<sup>69</sup> However, Dr. Frentrup ignores the fact that in order for a company  
21 to have the resources to invest, it must attract debt and equity capital, as described  
22 by Mr. Bailey. If shareholders do not believe they can earn an adequate return,  
23 they will not invest in a company, and the company will have fewer resources to  
24 invest in its network and operations. In sum, a healthy competitive post-merger

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<sup>68</sup> Joint CLECs/1, Ankum/10.

<sup>69</sup> Sprint/1, Frentrup/18.

1 company will benefit shareholders and other stakeholders—this is not a zero sum  
2 transaction.

3 Dr. Frentrup also implies that a dividend cut after the merger may be appropriate,  
4 since benefits should be “shared” with stakeholders.<sup>70</sup> Of course, providing a  
5 dividend is a way for a company to attract investors and capital. A cut in a  
6 company’s dividend would simply provide a disincentive for investment, which  
7 would harm not only investors but other stakeholders. Mr. Bailey’s testimony  
8 addresses this issue in more detail.

9 In sum, the CLECs would like to “share” in any synergies or savings obtained via  
10 the merger, apparently at the expense of shareholders. However, unlike  
11 shareholders, the CLECs are not bearing any of the “risks” of the merger, and thus  
12 should not be guaranteed a “share” of the financial gains or benefits.  
13 Shareholders, who bear the risk of the Transaction, should reap the benefits of  
14 their investment, since it is shareholders who are risking capital.<sup>71</sup>

15

16 **Q. DR. FRENTRUP CLAIM THAT CENTURYLINK HAS NOT IDENTIFIED**  
17 **A SINGLE BENEFIT THAT WOULD ACCRUE TO CLECS.<sup>72</sup> PLEASE**  
18 **COMMENT.**

19 A. Dr. Frentrup claims that Ms. Pepler’s direct testimony failed to show how  
20 CLECs would benefit from the synergies generated by the Transaction, and he  
21 claims that Qwest’s Fiber-to-the-Cell-Tower (FTTCT) initiative provides an  
22 example of this alleged failure. Specifically, Dr. Frentrup claims that:

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<sup>70</sup> Sprint/1, Fentrup/18.

<sup>71</sup> Of course, as noted elsewhere in my testimony, the CLECs *will* benefit from a healthy post-merger company that will have the resources to provide top-level services to its CLEC customers.

<sup>72</sup> Joint CLECs/1, Ankum/60.

1 Qwest's ability to generate more revenues in the wireless backhaul market  
2 it dominates within its ILEC service territory doesn't guarantee any  
3 benefits to wireless carriers. If the services provided to wireless carriers  
4 are priced like current special access services, far above the actual cost of  
5 the services, wireless carriers receive little or no benefit from  
6 CenturyLink's investment in fiber to the cell sites.<sup>73</sup>

7 However, the combined company will have the additional resources to deploy  
8 fiber to cell sites. Dr. Frentrup apparently miscomprehends the manner in which  
9 FTTCT is offered. In reality, Qwest negotiates commercial agreements with  
10 wireless providers to build fiber backhaul facilities. As described in Ms.  
11 Pepler's direct testimony, there are approximately 18,000 cell sites in the 14-  
12 state Qwest region, and Qwest has already contracted to provide fiber to 4,000  
13 locations.<sup>74</sup> In each case, the provision of the facilities is based on freely-  
14 negotiated contracts—not based on special access or other tariffs. Clearly, if the  
15 Qwest provision of FTTCT facilities provided no benefit to wireless carriers, they  
16 would not have negotiated these contracts with Qwest, and instead would have  
17 chosen another provider or foregone the purchase of these fiber facilities. Qwest  
18 must risk capital to deploy these facilities, and the additional financial strength of  
19 the combined company will provide the resources for additional fiber builds to  
20 meet burgeoning wireless broadband demand. The negotiation of FTTCT  
21 contracts provides a vivid example of how competitive markets are supposed to  
22 work.

23  
24 In addition, the CLECs will derive general benefits from the merger since the  
25 combined company will have the resources needed to invest in its network and

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<sup>73</sup> Sprint/1, Frentrup/16.

<sup>74</sup> Qwest/1, Pepler/21 See e.g., <http://investor.qwest.com/analyst-meeting>.

1 systems to serve its CLEC customers, as described more fully in the testimonies  
2 of Mr. Jones and Mr. Hunsucker.

3

4 **Q. DR. ANKUM ARGUES THAT THE MERGER INVOLVES SIGNIFICANT**  
5 **“UNCERTAINTIES” AND “RISKS,” AND THAT THESE “RISKS AND**  
6 **GAINS ARE UNEVENLY DIVIDED BETWEEN SHAREHOLDERS AND**  
7 **THE BROADER PUBLIC INTEREST, INCLUDING CAPTIVE**  
8 **CUSTOMERS, SUCH AS CLECs.”<sup>75</sup> PLEASE COMMENT.**

9 A. Essentially, Dr. Ankum and Mr. Gates argue that the merger has a risk of failure,  
10 and therefore, the Commission should deny the merger or impose onerous  
11 conditions. Of course, as Mr. Jones describes in his testimony, Dr. Ankum and  
12 Mr. Gates overstate the risk of this transaction by comparing it with several  
13 previous transactions that have experienced problems, such as the FairPoint  
14 purchase of access lines from Verizon or an investment firm’s purchase of  
15 Verizon properties in Hawaii. Based on an apples-to-oranges discussion of a  
16 select group of less-successful transactions that are not even remotely comparable  
17 with this transaction in most respects, they imply that the risk of this transaction is  
18 simply too great. Dr. Ankum then argues that stakeholders (customers) are much  
19 more “at risk” from the merger transaction than shareholders, and that this is a  
20 reason to deny the merger or impose onerous conditions.

21 This CLEC testimony represents a flawed assignment of risk. If the merger were  
22 to fail—which is highly unlikely—the losses to shareholders would be substantial  
23 and would likely exceed any negative impact on other stakeholders, especially  
24 since shareholders could potentially lose all of their investment. To give but one

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<sup>75</sup> Joint CLECs/1, Ankum/35-36.

1 example, when WorldCom—which had purchased MCI—went bankrupt,  
2 shareholders lost their entire investment. Conversely, customer services were  
3 generally not interrupted or degraded, and the surviving company was ultimately  
4 acquired by Verizon. It is simply absurd to argue that a merger presents less risk  
5 to shareholders than to other stakeholders.

6 **IV. CONCLUSION**

7 **Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS**  
8 **PROCEEDING?**

9 A. The Commission should approve the Transaction, without the onerous,  
10 unreasonable and unnecessary proposed conditions. As described above, the  
11 Oregon telecommunications market is very competitive, and the merger of  
12 CenturyLink and Qwest will cause no competitive harm in the state. Contrary to  
13 the CLECs' claims in this proceeding, the Transaction will provide many benefits  
14 to Oregon consumers and businesses, as described in Ms. Pepler's direct  
15 testimony, as well as in the testimonies of Mr. Jones, Mr. Schafer and Mr. Bailey.  
16 In addition, as Mr. Jones and Mr. Hunsucker describe, CLECs will not be harmed  
17 by the Transaction.

18  
19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.  
21

## CERTIFICATE OF SERVICE

UM 1484

I hereby certify that on the 21<sup>st</sup> day of September, 2010, I served the foregoing QWEST'S REBUTTAL TESTIMONY OF ROBERT BRIGHAM, CHRISTOPHER VIVEROS AND MICHAEL WILLIAMS 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.

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(w) denotes waiver of paper service

\* denotes signed Protective Order No. 10-192

\*\* denotes signed Protective Order Nos. 10-192 and 10-291