

January 7, 2011

**VIA Email and UPS Next Day**

Frances Nichols  
Oregon Public Utility Commission  
550 Capitol St. NE, Suite 215  
Salem, OR 97308-2148

RE: *In the Matter of CenturyLink, Inc., Application for Approval of Merger Between CenturyTel Inc. and Qwest Communications, Inc.— Docket UM 1484*

Dear Ms. Nichols:

Pursuant to agreement among the parties, as approved by Administrative Law Judge Arlow at the hearing in the above referenced matter, enclosed for filing and service, and for incorporation into the record in this proceeding, are the following portions of the record in Utah Public Service Commission Docket No. 10-049-16<sup>1</sup>:

1. Exhibit Integra 1, Direct Testimony of Douglas Denney, dated August 30, 2010, Cover Page through page 14, line 10;
2. Exhibit Integra 1.1, attached to Direct Testimony of Douglas Denney (18 pages);
3. Rebuttal Testimony of Michael G. Williams, dated September 30, 2010
4. Surrebuttal Testimony of Douglas Denney, dated October 14, 2010, Cover Page through page 24;
5. Supplemental Testimony of Timothy Gates, dated October 28, 2010, Cover Page through page 2, and page 71, line 17 through page 74, line 17;
6. Supplemental Response Testimony of Michael G. Williams, dated November 2, 2010, Cover Page through page 9; Exhibit MGW-S1, attached to Supplemental Response Testimony of Michael G. Williams (1 page); Exhibit MGW-S2, attached to Supplemental Response Testimony of Michael G. Williams (6 pages);
7. Transcript Volume I, page 182, line 5 through page 201, line 22;
8. Transcript Volume II, page 366, line 13 through page 442, line 8;

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<sup>1</sup> *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corporation, Public Service Commission of Utah, Docket No. 10-049-16.*

DWT 16266370v1 0038936-001199

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9. Transcript Volume III, page 573, line 18 through page 584, line 1;
10. Certificate of Service.

Please call me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP



Mark Trinchero

MPT/jan

Enclosures

cc: Service list (w/enclosure)

**CERTIFICATE OF SERVICE**  
**UM 1484**

I hereby certify that the **Pre-filed Testimony and Exhibits and Hearing Transcript Excerpts from the Utah Proceeding – Docket 10-049-16** was served on the following persons on January 7, 2011, by email to all parties and by U.S. Mail to parties who have not waived paper service:

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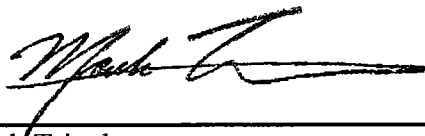
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Dated: January 7, 2011



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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of Qwest Communications  
International, Inc. and CenturyTel, Inc. for  
Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company, LLC, and Qwest LD Corporation

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DOCKET NO. 10-049-16

**DIRECT TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**INTEGRA TELECOM**

**EXHIBIT INTEGRA 1**

**August 30, 2010**

1 **I. INTRODUCTION**

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

3 A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My  
6 job duties include negotiating interconnection agreements, monitoring, reviewing and  
7 analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest,  
8 and representing Integra and its affiliates on regulatory issues. I am also involved in  
9 Integra's review of ILEC performance assurance plans.

10 Integra Telecom, Inc. has 3 affiliated companies in Utah. These companies are: Electric  
11 Lightwave, LLC, Eschelon Telecom of Utah, Inc., and Integra Telecom of Utah, Inc. For  
12 convenience, I will generally refer to Integra Telecom, Inc. and its affiliates as Integra. I  
13 will refer specifically to Eschelon when discussing events specific to Eschelon prior to  
14 Integra's purchase of Eschelon.

15 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**  
16 **BACKGROUND.**

17 A. I received a B.S. degree in Business Management from Phillips University in 1988. I  
18 spent three years doing graduate work at the University of Arizona in Economics, and  
19 then I transferred to Oregon State University where I have completed all the requirements  
20 for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I

1 focused on cost models and the measurement of market power. I taught a variety of  
2 economics courses at the University of Arizona and Oregon State University. I was hired  
3 by AT&T in December 1996 and spent most of my time with AT&T analyzing cost  
4 models. In December 2004, I was hired by Eschelon Telecom, Inc. ("Eschelon").  
5 Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.

6 I have participated in over 50 proceedings in the Integra operating territory. Much of my  
7 prior testimony involved cost models — including the HAI Model, BCPM, GTE's ICM,  
8 U S WEST's UNE cost models, and the FCC's Synthesis Model. I have also testified  
9 about issues relating to the wholesale cost of local service — including universal service  
10 funding, unbundled network element pricing, geographic de-averaging, and competitive  
11 local exchange carrier access rates. I testified on a number of issues in the Eschelon /  
12 Qwest arbitrations,<sup>1</sup> and have been involved in the Qwest and Verizon "non-impaired"  
13 wire center lists and related issues. I have also been involved in the performance  
14 assurance plans that impact Integra. This includes negotiations of changes to  
15 performance plans to assure they provide meaningful incentives for wholesale service  
16 quality.

17 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN UTAH?**

18 **A.** Yes. I have been involved in numerous dockets in Utah over the years while working for  
19 AT&T, Eschelon, and Integra. I filed testimony in numerous dockets in Utah relating to

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<sup>1</sup> The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Colorado, 06B-497T ("Colorado arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03 ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

1 the pricing of Unbundled Network Elements (“UNEs”) and Universal Service (dockets  
2 01-049-85, 00-049-105 and 94-999-01 3B and 3C). In addition I participated in a number  
3 of workshops with the Division, other parties and the Commission pertaining to  
4 Universal Service, the FCC Synthesis Model, Unbundled Network Elements, and  
5 Collocation. I also filed testimony in the Triennial Review Order (“TRO”) proceeding  
6 (docket 03-999-04) which was suspended after the D.C. Circuit Court ruling remanding  
7 certain portions of the TRO back to the FCC. I’ve also been involved in the subsequent  
8 Triennial Review Remand Order (“TRRO”) dockets such as 06-049-40, 07-049-30, 08-  
9 049-29 and the just completed 10-049-22. In addition, I testified on numerous issues in  
10 docket 07-2263-03 regarding the interconnection agreement arbitration between Eschelon  
11 and Qwest. I was also involved in all aspects of the 2007 stipulation regarding changes  
12 to Qwest’s Performance Assurance Plan which is the current performance assurance plan  
13 in place in Utah today. I was also involved in the recent discussions regarding Qwest’s  
14 performance assurance plan that took place as part of docket 09-049-60.

15 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

16 A. The first section of this testimony introduces this testimony, describes my background  
17 and describes Integra. The second section of my testimony supports Joint CLEC  
18 recommended condition number 4 regarding wholesale service quality. This section  
19 explains how the Commission can simply put into place a self-effectuating mechanism to  
20 help assure that wholesale performance in the legacy Qwest territory does not deteriorate  
21 after the merger. The third section of my testimony supports Joint CLEC recommended  
22 condition numbers 8 and 9. This testimony describes the interconnection agreement

1 (“ICA”) negotiation process and the time that it takes to negotiate and resolve disputed  
2 issues. The fourth section of my testimony supports condition numbers 18 and 27. This  
3 section verifies the facts set out in Exhibit Integra 2.1 and Exhibit Integra 2.2. In  
4 addition, I describe why these conditions are important.

5 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

6 A. Yes. As part of my testimony, I have included the following exhibits:

- 7 • Exhibit Integra 1.1: A copy of an Additional Performance Assurance Plan, calculated  
8 using the methodology in the Current PAP, for use to assure Qwest’s wholesale  
9 performance to CLECs is not impacted by the CenturyLink merger.

10 **Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRA AND ITS BUSINESS?**

11 A. Integra is a competitive local exchange carrier (“CLEC”) providing communications  
12 services across 33 metropolitan areas in 11 states of the Western United States. We own  
13 (directly or under indefeasible rights to use) and operate backbone fiber networks. These  
14 backbone networks connect to our intercity, interstate data network for a combined 4,900  
15 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-  
16 quality data, broadband and voice services to over 100,000 small-to-medium-sized  
17 business customers and “enterprise” customers.

18 Our network is designed to deliver products such as Ethernet over broadband at speeds of  
19 up to 25 Mbps over a variety of delivery technologies tailored to the unique applications  
20 of our small-to-medium-sized business, enterprise and wholesale customers, including  
21 Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation  
22 bonded digital subscriber lines, or DSL. We have 230 unique collocations, 20 in Utah,

1 positioned across our markets. Providing services to our customers primarily over our  
2 owned switching and transport facilities allows us to control the quality and reliability of  
3 our service offerings and efficiently innovate and provide advanced products and  
4 services. At the same time, we cannot be successful without access to the last-mile, and  
5 Qwest is the only supplier of last-mile facilities within its territory.

6 While we continue to make large investments in expanding and upgrading our network,  
7 therefore, we remain almost entirely dependent upon the incumbent local exchange  
8 carrier for last mile connections to our customers.

9 **Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO QWEST AND**  
10 **CENTURYLINK?**

11 A. Qwest is Integra's largest competitor, but Integra is relatively small when compared to  
12 Qwest and even smaller when compared to a combined Qwest/CenturyLink. A combined  
13 Qwest/CenturyLink will operate in 37 states,<sup>2</sup> compared to 11 for Integra. Further, a  
14 combined Qwest/CenturyLink will have 50,000 employees,<sup>3</sup> compared to 2,300 for  
15 Integra and the combined Qwest/CenturyLink proforma revenue will be \$19.8 billion,<sup>4</sup>  
16 compared to Integra's 2009 revenue of \$638 million.<sup>5</sup> To put these differences into  
17 perspective, a combined Qwest/CenturyLink will have 22 employees for each Integra  
18 employee and \$31 dollars of revenue for each Integra dollar of revenue. The combined

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<sup>2</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>3</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>4</sup> See <http://www.centurylinkqwestmerger.com/index.php>

<sup>5</sup> See

[http://www.integratelecom.com/about/news/press\\_release\\_articles/2010%20Fastest%20Growing%20Private%20Companies\\_FINAL.pdf](http://www.integratelecom.com/about/news/press_release_articles/2010%20Fastest%20Growing%20Private%20Companies_FINAL.pdf)

1 Qwest/CenturyLink will earn more revenue by the second week in January than Integra  
2 will obtain in a year.

3 **II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED**  
4 **CONDITION NUMBER 4)**

5 **Q. WHAT IS JOINT CLEC RECOMMENDED CONDITION NUMBER 4 AND WHY**  
6 **IS IT NECESSARY?**

7 A. Joint CLEC recommended condition number 4 concerns wholesale service quality for the  
8 Merged Company.<sup>6</sup> The condition requires that the performance assurance plans that  
9 currently exist in the legacy Qwest ILEC territory will remain in place for five years, the  
10 time period over which the Joint Applicants have claimed the synergy savings from the  
11 merger will be accomplished.<sup>7</sup> The condition also establishes a mechanism to assure that  
12 the Merged Company performance in the legacy Qwest ILEC territory does not  
13 deteriorate compared with pre-merger performance. These conditions will help assure  
14 that the Merged Company maintains wholesale service quality at current levels and  
15 creates disincentives for the Merged Company to achieve synergies at the expense of its  
16 competitors through a deterioration of its wholesale market operations. Mr. Gates's  
17 testimony (Exhibit Joint CLECs 2) discusses the importance of wholesale service quality  
18 conditions in more detail.

19 Joint CLEC recommended condition number 4 is repeated below in its entirety.

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<sup>6</sup> The CLEC recommended conditions are attached to the testimony of Mr. Gates (Exhibit Joint CLECs 2) as Exhibit Joint CLECs 2.8.

<sup>7</sup> Direct Testimony of Jeff Glover, Utah PSC Docket No. 10-049-16, May 27, 2010, p. 11, lines 9-11.

1 In the legacy Qwest ILEC territory, the Merged Company shall comply with all  
2 wholesale performance requirements and associated remedy or penalty regimes for all  
3 wholesale services, including those set forth in regulations, tariffs, interconnection  
4 agreements, and Commercial agreements applicable to legacy Qwest as of the Merger  
5 Filing Date. The Merged Company shall continue to provide to CLECs at least the  
6 reports of wholesale performance metrics that legacy Qwest made available, or was  
7 required to make available, to CLECs as of the Merger Filing Date. The Merged  
8 Company shall also provide these reports to state commission staff or the FCC, when  
9 requested. The state commission and/or the FCC may determine that additional  
10 remedies are required, if the remedies described in this condition do not result in the  
11 required wholesale service quality performance or if the Merged Company violates  
12 the merger conditions.

13  
14 a. No Qwest Performance Indicator Definition (PID) or Performance Assurance  
15 Plan (PAP) that is offered, or provided via contract or Commission approved plan,  
16 as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or  
17 withdrawn for at least five years after the Closing Date and will be available to all  
18 requesting CLECs until the Merged Company obtains approval from the  
19 applicable state commission, after the minimum 5-year period, to reduce,  
20 eliminate, or withdraw it. For at least the Defined Time Period, in the legacy  
21 Qwest ILEC territory, the Merged Company shall meet or exceed the average  
22 wholesale performance provided by Qwest to each CLEC for one year prior to the  
23 Merger Filing Date for each PID, product, and disaggregation. If the Merged  
24 Company fails to provide wholesale performance as described in the preceding  
25 sentence, the Merged Company will also make remedy payments to each affected  
26 CLEC in an amount as would be calculated using the methodology (*e.g.*, modified  
27 Z test, critical Z values, and escalation payments) in the Current PAP, for each  
28 missed occurrence when comparing performance post- and pre- Closing Date  
29 ("Additional PAP").

30  
31 b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the  
32 Merged Company will meet or exceed the average monthly performance provided  
33 by Qwest to each CLEC for one year prior to the Merger Filing Date for each  
34 metric contained in the CLEC-specific monthly special access performance  
35 reports that Qwest provides, or was required to provide, to CLECs as of the  
36 Merger Filing Date. For each month that the Merged Company fails to meet  
37 Qwest's average monthly performance for any of these metrics, the Merged  
38 Company will make remedy payments (calculated on a basis to be determined by

1 the state commission or FCC) on a per-month, per-metric basis to each affected  
2 CLEC.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**  
4 **RECOMMENDED CONDITION NUMBER 4?**

5 A. The purpose of this testimony is to explain the additional performance assurance plan  
6 ("APAP") proposal, as described in part a, of Joint CLEC recommended condition  
7 number 4.

8 **Q. PLEASE DESCRIBE THE ADDITIONAL PERFORMANCE ASSURANCE PLAN**  
9 **("APAP") PROPOSAL.**

10 A. The APAP is a minimum five year performance assurance plan applicable to the legacy  
11 Qwest ILEC territory. This plan is in addition to the existing Utah PAP and does not  
12 alter or change the existing Utah PAP. The APAP would compare the Merged  
13 Company's post-merger ("current performance") monthly performance with the  
14 performance that existed in the twelve months prior ("prior performance") to the Merger  
15 Filing Date (*i.e.*, May 2009 through April 2010). This comparison would be made using  
16 the current Utah Performance Assurance Performance Indicators ("PIDs"), products and  
17 disaggregation, thus no new measures are required to be created. Further, the data for the  
18 year prior to the Merger Filing Date already exists, and thus also would not need to be  
19 created. The APAP would compare the current and prior performance results using the  
20 same statistical methodology that exists in the Utah PAP to determine whether a

1 statistically significant deterioration in performance exists.<sup>8</sup> If such deterioration does  
2 exist, then the APAP would calculate payments for each missed occurrence using the  
3 methodology from the Utah PAP, including one allowable miss<sup>9</sup> and escalation payments  
4 for consecutive months of below standard performance.<sup>10</sup>

5 **Q. HOW IS THE APAP DIFFERENT FROM THE CURRENT UTAH PAP?**

6 A. In terms of the methodology (*e.g.*, modified Z test, critical Z values, and escalation  
7 payments), not at all. The current Utah PAP, which is a part of many carriers'  
8 interconnection agreements, compares Qwest's wholesale performance for CLECs to  
9 Qwest's retail performance.<sup>11</sup> In other words, the current Utah PAP is intended to assure  
10 that Qwest does not treat itself more favorably than it treats CLECs, who rely upon  
11 Qwest's wholesale facilities. These plans were put in place when Qwest entered the  
12 interLATA long distance market to help assure that local markets remained opened to  
13 competition. The APAP does not replace the Utah PAP, but works in addition to the  
14 existing PAP. The purpose of the proposed APAP is to compare the current level of  
15 Qwest's wholesale performance to CLECs with a past level of wholesale performance to  
16 CLECs, rather than compare wholesale and retail performance. A plan such as the APAP  
17 would help to assure that wholesale performance does not deteriorate post merger. The  
18 Utah PAP, which was not developed to identify merger-related harm, would not capture

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<sup>8</sup> See section 4.0 of the Qwest Utah SGAT Seventh Revision, Exhibit K, February 4, 2009 ("UT PAP"),  
[http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT\\_7th\\_revised\\_6th\\_amend\\_Exhibit\\_K\\_020409.p  
df](http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT_7th_revised_6th_amend_Exhibit_K_020409.pdf) Note: this document is attached to the interconnection agreements of all CLECs who have opted into the  
Utah PAP.

<sup>9</sup> See section 3.1.2, UT PAP.

<sup>10</sup> See section 6.2.1, UT PAP.

<sup>11</sup> In some cases a benchmark is used rather than Qwest's retail performance.

deteriorating performance, if the Merged Company's performance deteriorated for both wholesale and retail services simultaneously or if wholesale performance deteriorated, but remained above the minimum benchmarks. The APAP uses the same methodology but is tailored to the purpose of measuring merger-related performance issues.

**Q. DO YOU HAVE AN EXAMPLE OF A DOCUMENT DESCRIBING THE RECOMMENDED APAP?**

A. Yes. Exhibit Integra 1.1 is nearly identical in function to the existing PAPs in the Qwest territory, except that it relies upon a comparison of current and prior wholesale performance to CLECs. While at first glance the document may appear complicated, this is not the case as it is based upon the existing, well-familiar Utah PAP in place today. The proposed APAP does not create new PIDs, statistical tests, or payment structures, but instead utilizes the existing structures from the PAPs in place across the Qwest region. The difference is simply the standard to which performance is compared.

**Q. PLEASE PROVIDE AN EXAMPLE OF HOW A CALCULATION FROM THE APAP WOULD WORK AND HOW IT COMPARES TO THE QPAP.**

A. Below are two hypothetical examples comparing APAP and QPAP payments. One involves the measure OP-3, Installation Commitments Met, for 2-wire analog loops. This measures how often Qwest meets its installation commitments and has a benchmark standard of 90%,<sup>12</sup> which means that as long as Qwest's actual performance is greater than 90% it does not make Utah PAP payments to CLECs. Qwest's prior wholesale

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<sup>12</sup> See UT PAP.

1 performance for CLECs is approximately 96.7%.<sup>13</sup> The second example involves MR-7,  
2 Repeat Trouble Reports, for DS1 capable loops. This measures how often Qwest is  
3 called on to repair a circuit with troubles in the Qwest network that it has already been  
4 called on to repair in the prior 30 days. This measure is a parity measure and is compared  
5 to how Qwest performs for its DS1 private line circuits. Qwest's prior wholesale  
6 performance for CLECs is approximately 16.7%,<sup>14</sup> meaning 16.7% of CLEC circuits with  
7 troubles in the Qwest network, require a second repair from Qwest within 30 days.  
8 Qwest's average retail parity performance is 17.3%.<sup>15</sup>

9 The table below shows what happens if Qwest's wholesale performance on installation  
10 commitments falls to 93%, almost doubling the number of commitments missed as well  
11 as what would happen if both Qwest's retail and wholesale repair repeat rates  
12 deteriorated post merger and climbed to 25%, about 50% greater than the prior rate.

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<sup>13</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<sup>14</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<sup>15</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

### Hypothetical APAP and QPAP Payment Comparison Examples

	OP-3 Installation Commitments Met		MR-7 Repair Repeat Rate		APAP Ref
	2-wire analog loop		DS1 Capable Loops		
Average Prior Performance	96.7%		16.7%		
Standard	benchmark	90.0%	parity	17.3%	
Prior Payment	\$0.00		\$0.00		
Post Merger Performance	93.0%		25.0%		
CLEC Observations	250		70		
QPAP Standard	benchmark	90.0%	parity	25.0%	
QPAP Payment	\$0.00		\$0.00		
APAP Standard	96.7%		16.7%		
Z Stat	3.15		1.79		Sec 4.2
Z Table	2.00		1.65		Sec 5.0 Table 1
Calculated Value	94.3%		24.3%		Sec 8.2
Non Conforming Occurances	3		0.49		Sec 8.2
Payment per Occurance	\$150.00		\$150.00		Sec 6.0 Table 2
APAP Payment	\$487.00		\$74.00		Sec 8.2

As can be seen in the example for OP-3, Installation Commitments Met, even if Qwest's wholesale performance became worse post merger, Qwest would make no payments under the current Utah PAP so long as Qwest's performance is above the 90 percent benchmark. However, under the proposed APAP mechanism, a payment would occur to CLECs as a result of the significant deterioration in performance. The "calculated value" in the table above shows how performance would have to deteriorate, for a CLEC with about 250 installations a month, in order for the deterioration to be considered statistically significant and thus require a payment. Another way of looking at the "calculated value," for this example, is that missed commitments would have to increase

1 by more than 72.7%<sup>16</sup> before a payment would be triggered under the APAP.<sup>17</sup>

2 Likewise, in the example for repeat troubles, no payment would be made under the  
3 current Utah PAP if both retail and wholesale service deteriorates; however, a payment  
4 would be required under the APAP as a result in a significant deterioration of wholesale  
5 service quality post merger. Again the “calculated value” shows how far service would  
6 have to degrade,<sup>18</sup> for a CLEC with 70 repeat troubles a month, before a payment would  
7 be triggered under the APAP.

8 **Q. THERE APPEARS TO BE A SIGNIFICANT DEGRADATION OF WHOLESALE**  
9 **SERVICE QUALITY BEFORE A PAYMENT WOULD BE TRIGGERED UNDER**  
10 **THE ADDITIONAL PAP. ARE THE PERFORMANCE INCENTIVES LARGE**  
11 **ENOUGH TO PROTECT WHOLESALE SERVICE QUALITY POST MERGER?**

12 A. The question identifies an important concern, because a key factor in performance  
13 assurance plans is not to let poor performance simply become a cost of doing business.  
14 Setting performance payments too low could lead to this result. One method to care for  
15 this potential error is escalation provisions. Escalation provisions ratchet up the  
16 payments that are made for each non-conforming occurrence when the company misses a  
17 performance standard in consecutive months. The current Utah PAP contains an  
18 escalation provision,<sup>19</sup> and we propose that the same type of provision be used in the

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<sup>16</sup>  $72.7\% = (1 - 94.3\%) / (1 - 96.7\%) - 1$ .

<sup>17</sup> Note that the actual percent will be different for each CLEC depending on both performance and order volumes prior to and after the merger.

<sup>18</sup> Again, in this example, service would have to degrade by 45.5% ( $24.3\% / 16.7\% - 1$ ), before a payment would be triggered under the APAP.

<sup>19</sup> See section 6.2.1 and table 2 of the UT PAP.

1 APAP. An escalation provision is crucial to assure that substandard performance does  
2 not simply become a cost of doing business.

3 CenturyLink has professed a commitment to wholesale service quality,<sup>20</sup> thus hopefully  
4 no payment will ever be made under an APAP, and we will never have to find out  
5 whether the payment levels were too low. However, we do propose that the Commission  
6 use the escalation provisions from the current Utah PAP in the APAP. The escalation  
7 provisions increase the non-conforming payment amounts when substandard performance  
8 continues for consecutive months, clearly indicating a problem. The escalation provision  
9 is crucial to assure that substandard performance does not simply become a cost of doing  
10 business.

11 **III. ICA NEGOTIATION PROCESS (JOINT CLEC RECOMMENDED**  
12 **CONDITIONS 8 AND 9)**

13 **Q. ARE YOU INVOLVED IN NEGOTIATING INTERCONNECTION**  
14 **AGREEMENTS WITH QWEST?**

15 A. Yes, I participate in multiple entity, multi-state<sup>21</sup> interconnection agreement ("ICA")  
16 negotiations with Qwest on behalf of Integra and, before that, I participated in ICA  
17 negotiations with Qwest on behalf of Eschelon. I participate in developing negotiation

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<sup>20</sup> Direct Testimony of Jerry Fenn, Utah PSC Docket No. 10-049-16, May 27, 2010, p. 12, lines 2-3. See also, Direct Testimony of Michael R. Hunsucker, Oregon Public Utility Commission Docket No. UM 1484, June 22, 2010, CTL/400, Hunsucker/9, lines 9-12 ("Q. Is CenturyLink committed (sic) to providing quality service to its wholesale customers? A. Certainly...")

<sup>21</sup> The Qwest-Eschelon ICAs, which I discuss below, were also negotiated in multi-state negotiations, with most of the multi-state negotiations draft containing the same language for several states, with certain sections identified as state-specific language. After conclusion of negotiations, a state-specific draft was then prepared for the state-specific ICA arbitration. Similarly, at the conclusion of the Integra negotiation, a state-specific ICA will be prepared per entity for each state.

## **ADDITIONAL PERFORMANCE ASSURANCE PLAN**

### **1.0 Introduction**

1.1 As set forth in this Agreement, Qwest<sup>1</sup> and CLEC agree to the terms of the following Additional Performance Assurance Plan ("APAP"), initially prepared in conjunction with CenturyLink's merger with Qwest.

### **2.0 Plan Structure**

2.1 The APAP is a self-executing remedy plan. CLEC shall be provided with payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provided to CLECs in the year prior to the Merger Filing Date.<sup>2</sup>

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance) unless otherwise specified.

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC in the current month ("CLEC current") is at least equivalent to the service Qwest provided to CLEC in the year prior to the Merger Filing Date ("CLEC prior"). The APAP relies upon statistical scoring to determine whether any difference between CLEC current and CLEC prior performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC current performance and CLEC prior performance result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0.

### **3.0 Performance Measurements**

3.1 The performance measurements that are in the APAP are identified in Attachment 1 and sections 6.3 and 7.4. Each performance measurement identified is

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<sup>1</sup> "Qwest," as used in this agreement, refers to the legacy Qwest ILEC territory.

<sup>2</sup> The "Merger Filing Date" refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

defined in the Performance Indicator Definitions ("PIDs") included in the SGAT at Exhibit B.

3.1.1 On Attachment 1 the measurements have been given a High, Medium, or Low designation.

3.1.2 Where applicable elsewhere in the APAP, this provision modifies other provisions and operates as follows: For any non-interval parity performance sub-measure, Qwest shall apply one allowable miss to a sub-measure disaggregation that otherwise would require 100% performance before the performance is considered as non-conforming to standard (1) if at the CLEC-aggregate level, the performance standard is met or (2) where the CLEC-aggregate performance must be 100% to meet the standard, the CLEC-aggregate performance is conforming after applying one allowable miss at that level.

#### **4.0 Statistical Measurement**

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means or two percentages, to determine whether a parity condition exists between the results for CLEC current and CLEC prior. The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between CLEC current and CLEC prior performance.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

The formula for determining parity using the modified z-test is:

$$z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

$$\text{DIFF} = M_{\text{Prior}} - M_{\text{CLEC}}$$

$M_{\text{Prior}}$  = CLEC prior average or proportion from May 2009 through April 2010

$M_{\text{CLEC}}$  = CLEC current average or proportion

$$\sigma_{\text{DIFF}} = \text{square root } [\sigma^2_{\text{Prior}} (1/n_{\text{CLEC}} + 1/n_{\text{Prior}})]$$

$\sigma_{\text{Prior}}$  = calculated variance for CLEC prior performance from May 2009 through April 2010

$n_{\text{Prior}}$  = number of observations or samples used in CLEC prior measurement

$n_{\text{CLEC}}$  = number of observations or samples used in CLEC current measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between CLEC prior and CLEC current performance, the above formula applies when a larger CLEC prior value indicates a better level of performance. In cases where a smaller CLEC prior value indicates a higher level of performance, the order is reversed, i.e.,  $M_{\text{CLEC}} - M_{\text{Prior}}$ .

#### 4.3 Intentionally Left Blank

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data

Pool and mix the CLEC prior and CLEC current data sets

Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC current data set ( $n_{\text{CLEC}}$ ) and one reflecting the remaining data points, (which is equal to the size of the original CLEC prior data set or  $n_{\text{Prior}}$ ).

Compute and store the modified z-test score ( $Z_S$ ) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than  $\alpha$ , the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The  $\alpha$  shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

#### 5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

**TABLE 1: CRITICAL Z-VALUE**

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS- 3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

\* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5a, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.

For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

## **6.0 Payments to CLEC**

6.1 Payments to CLEC shall be made solely for the performance measurements designated on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity with CLEC prior performance. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Payments to CLEC, except as provided for in sections 6.2.3, 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," excluding BI-3A, payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement Cap" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," if any should be added at a later time, payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "Per Measurement Cap."

**TABLE 2: PAYMENTS TO CLEC**

Per Occurrence							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	\$150	\$250	\$500	\$600	\$700	\$800	\$100
Medium	\$ 75	\$150	\$300	\$400	\$500	\$600	\$100
Low	\$ 25	\$ 50	\$100	\$200	\$300	\$400	\$100

Per Measurement Cap							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000	\$25,000
Medium	\$10,000	\$20,000	\$30,000	\$ 40,000	\$ 50,000	\$ 60,000	\$10,000
Low	\$ 5,000	\$10,000	\$15,000	\$ 20,000	\$ 25,000	\$ 30,000	\$ 5,000

6.2.3 For the BI-3A performance measurement, the dollar payment amount for non-conforming performance varies depending upon the Total Bill Adjustment Amount for the CLEC. The payment amount is calculated using Table 2A below by multiplying the per occurrence amount times the number of occurrences based on the Total Bill Adjustment Amount,<sup>3</sup> capped at the amount shown in the table for that Total Bill Adjustment Amount. The escalation of payments for consecutive months as stated in section 6.2.1 does not apply.

**TABLE 2A: PAYMENTS TO CLECS FOR BI-3A**

Total Bill Adjustment Amount	Per Occurrence Amount	Cap
\$0 - \$0.99	\$0	\$0
\$1 - \$199.99	\$1	\$200
\$200 - \$999.99	\$10	\$5,000
\$1,000 - \$9,999.99	\$10	\$10,000
\$10,000 - \$49,999.99	\$15	\$15,000
\$50,000 - \$99,999.99	\$20	\$20,000
\$100,000 and over	\$25	\$25,000

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7.4 Performance Measurements Subject to Per Measurement Payment: The following performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard,

<sup>3</sup> Total Bill Adjustment Amount is determined by subtracting the BI-3A numerator from the BI-3A denominator as defined in the BI-3 PID formula.

therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this APAP. The performance measurements are:

- GA-1: Gateway Availability - IMA-GUI
- GA-3: Gateway Availability – EB-TA
- GA-4: System Availability – EXACT
- GA-6: Gateway Availability – GUI-Repair
- GA-8: Gateway Availability – IMA XML
- PO-1: Pre-Order/Order Response Times
- OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
- MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has two sub-measurements: GA-1A and GA-1D. PO-1 shall have two sub-measurements: PO-1A and PO-1X. PO-1A and PO-1X shall have their transaction types aggregated together.

For these measurements, Qwest will make a payment based upon monthly performance results according to Table 6: Per Measurement Payments will be allocated to CLECs that have opted into the APAP based on their relative level of circuits as contained in the denominator to the MR-8 measure.

**TABLE 6: PER MEASUREMENT PAYMENTS TO STATE FUNDS**

Measurement	Performance	State Payment	14 State Payment
GA-1,3,4,6,8	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$10,000	\$140,000
	>3% to 5%	\$20,000	\$280,000
	>5%	\$30,000	\$420,000
PO-1	2 sec. Or less	\$1,000	\$14,000
	>2 sec. to 5 sec.	\$5,000	\$70,000
	>5 sec. to 10 sec.	\$10,000	\$140,000
	>10 sec.	\$15,000	\$210,000
OP-2/MR-2	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$5,000	\$70,000
	>3% to 5%	\$10,000	\$140,000
	>5%	\$15,000	\$210,000

## **8.0 Step by Step Calculation of Monthly Payments to CLEC**

8.1 Application of the Critical Z-Values: Qwest shall identify the parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC current volume at each level of disaggregation or sub-measurement.

### **8.2 Performance Measurements for which Payment is Per Occurrence:**

#### **8.2.1 Performance Measurements that are Averages or Means:**

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is  $\% \text{ diff} = (\text{CLEC result} - \text{Calculated Value}) / \text{Calculated Value}$ . The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

#### **8.2.2 Performance Measurements that are Percentages:**

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used.

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in

percentage calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

#### **8.2.3 Performance Measurements that are Ratios or Proportions:**

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

#### **8.3 Performance Measurements for which Payment is Per Measure:**

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Payments to CLEC.

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### **11.0 Payment**

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this APAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

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## **13.0 Limitations**

13.1 The APAP shall not become available in the State unless and until the CenturyLink / Qwest merger closes.

13.2 Qwest will not be liable for payments to CLEC until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this APAP.

13.3 Qwest shall not be obligated to make payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required to reasonably provide services or facilities; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

13.3.1 Qwest will not be excused from payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this APAP.

13.4 The implementation of these enforcement terms, and specifically Qwest's payment of any "liquidated damages" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251

or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.)

13.5 By incorporating these liquidated damages terms into the APAP, Qwest and CLEC accepting this APAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that payments made pursuant to this APAP are not intended to be a penalty. The application of the damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This APAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, along with the Qwest Performance Assurance Plan ("QPAP"), as an integrated whole. To elect the APAP, CLEC must adopt the APAP and QPAP in their entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief for the same wholesale services governed by the APAP and QPAP. Where alternative standards or remedies for Qwest wholesale services governed by the APAP and QPAP are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either APAP and QPAP standards and remedies or the standards and remedies available under rules, orders, or contracts and CLEC's choice of remedies shall be specified in its interconnection agreement.

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

13.9 Whenever a Qwest payment to an individual CLEC exceeds \$3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the \$3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of \$3 million into escrow, to be held by a third-party pending the outcome of the

proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the payments, its application. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of \$3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than \$1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the APAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

## **14.0 Reporting**

14.1 Upon the Closing Date<sup>4</sup>, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Solely upon the specific order of the Commission, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures. Qwest shall provide such notice as the Commission directs to the CLEC involved. By accepting this APAP, CLEC consents to Qwest providing CLEC's report and raw data to the Commission.

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<sup>4</sup> The "Closing Date" refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of \$500 for each business day for which performance reports are 6 to 10 business days past the due date; \$1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and \$2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this APAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable form for one year. For the remaining two years, the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

## **15.0 Integrated Audit Program/Investigations of Performance Results**

15.1 Audits of the APAP may be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The participating Commissions may select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions may form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating commissions pursuant to Section 15.1.4.

15.1.2 The audit plan may be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more

moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the APAP and should be of a nature and scope that can be conducted in accordance with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to participating CLECs, the state Commissions and the independent auditor, if any, in meetings in which any party may ask questions about changes made in the Qwest measurement regimen.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the APAP, including disagreement regarding changes as part of 15.2, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC requested audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing test initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

## **16.0 Reviews**

**16.1 Intentionally Left Blank**

16.1.1 Any party may submit a root cause analysis to the Commission requesting removal of a PID or sub-measure from the APAP. In the analysis and recommendations concerning the root cause analysis, the Commission is to consider, at a minimum, whether the root cause analysis provides evidence of no harm, the same harm as covered by other PID measures, non-Qwest related causes, or other factors which directly relate to the harm or circumstances specific to the PID or sub-measure being analyzed.

16.3 Qwest will make the APAP available for CLEC interconnection agreements until five years after the Closing Date. At that time, the Commission and Qwest shall review the appropriateness of the APAP and whether its continuation is necessary.

**17.0 Intentionally Left Blank**

**18.0 Dispute Resolution**

For the purpose of resolving disputes over the meaning of the provisions of the APAP and how they should be applied, the dispute resolution provisions of the CLEC Interconnection Agreement, shall apply.

**Attachment 1: Performance Measurements Subject to Per Occurrence Payment**

Performance Measurement		Payments					
		Low	Med	High			
GATEWAY							
Timely Outage Resolution	GA-7			X			
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3 <sup>a</sup>	X					
Firm Order Confirmations On Time	PO-5	X					
Work Completion Notification Timeliness	PO-6 <sup>b</sup>	X					
Billing Completion Notification Timeliness	PO-7 <sup>b</sup>	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16			X			
(Expanded) – Manual Service Order Accuracy	PO-20		X				
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3 <sup>g</sup>			X			
Installation Intervals	OP-4 <sup>c,g</sup>			X			
New Service Quality	OP-5 <sup>a,g</sup> ,b <sup>d,g</sup>			X			
Delayed Days	OP-6 <sup>e,g</sup>			X			
Number Portability Timeliness	OP-8			X			
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X			
LNP Disconnect Timeliness	OP-17			X			
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3 <sup>g</sup>			X			
All Troubles Cleared within 4 hours	MR-5 <sup>g</sup>			X			
Mean time to Restore	MR-6 <sup>a,g</sup> ,b <sup>g</sup> ,c <sup>g</sup> ,d <sup>f</sup> ,e <sup>f</sup>			X			
Repair Repeat Report Rate	MR-7 <sup>g</sup>			X			
Trouble Rate	MR-8 <sup>g</sup>			X			
LNP Trouble Reports Cleared within Specified Timeframes	MR-11			X			
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X					
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			
NXX Code Activation	NP-1			X			

- a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.
- b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.
- c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.
- d. Section 3.1.2 applies to OP-5b only if the number of orders with trouble in OP-5a is no more than one.
- e. For purposes of the APAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).
- f. Applicable only to xDSL-I capable loops.
- g. Excludes the following product disaggregations as applicable to this PID: Resale Centrex, Resale Centrex 21, Resale DS0 (non-designed), Resale DS0 (designed), Resale DS0, E911/911 Trunks, Resale Frame Relay, Resale Basic ISDN (non-designed), Resale Basic ISDN (designed), Resale Basic ISDN, Resale Primary ISDN (non-designed), Resale Primary ISDN (designed), Resale Primary ISDN, Resale PBX (non-designed), Resale PBX (designed), Resale PBX, Sub-Loop Unbundling, UNE-P (POTS), UNE-P (Centrex), and UNE-P (Centrex 21).

**Attachment 2: Performance Measurements Subject to Per Measurement Caps**

**Billing**

Time to Provide Recorded Usage Records – BI-1  
Billing Accuracy – Adjustments for Errors – BI-3  
Billing Completeness – BI-4

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of Qwest Communications  
International, Inc. and CenturyTel, Inc. for  
Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company, LLC, and Qwest LD Corporation

DOCKET NO. 10-049-16

**REBUTTAL TESTIMONY**

**OF**

**MICHAEL G. WILLIAMS**

**QWEST CORPORATION**

**September 30, 2010**

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**IDENTIFICATION OF WITNESS**

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

A. My name is Michael Williams. My business address is 1801 California Street, Denver, Colorado 80202. I am a Senior Director of Public Policy for Qwest.

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

A. Yes. In Docket No. 00-049-08, I testified in support of Qwest's application for approval to offer interLATA services under Section 271 of the federal Telecommunications Act of 1996 ("the Act") and in the related matters establishing Qwest's performance assurance plan ("QPAP") in Utah. I was also the Qwest declarant for commercial service quality before the FCC in support of Qwest's application that included Utah. In 1998, I testified in the Commission's intercarrier (wholesale) service quality rulemaking, Docket No. 98-R365-01. Otherwise, I have testified in a variety of other dockets before this Commission, as far back as 1987.

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

A. I hold an MBA degree from the University of Utah, 1985, and a Bachelor's of Science degree in electrical engineering from Brigham Young University, 1976. Since 1981, I have worked for Qwest or its predecessors in various management positions, including engineering, technical sales, regulatory, new technologies, international cellular joint

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

8 **PURPOSE**

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

10 A. My testimony responds to the direct testimonies of Casey Coleman of the Utah Division  
11 of Public Utilities ("Division"), Douglas Denney of Integra Telecom ("Integra"), and  
12 Timothy Gates on behalf of multiple CLECs ("Joint CLECs"), on the topics of wholesale  
13 performance assurance, generally, and Mr. Denney's proposed "Additional Performance  
14 Assurance Plan" ("APAP"), specifically. Overall, these witnesses' statements about  
15 wholesale service performance issues are irrelevant to this merger proceeding, especially  
16 because sufficient and significant market pressures, provisions in the QPAP, and Utah  
17 Commission rules exist and will continue to address any legitimate concerns there may  
18 be on these issues, and the merger transaction does nothing to change that.

1                    **WHOLESALE SERVICE PERFORMANCE ASSURANCE**

2            **Background and Purpose of the QPAP**

3            **Q.    IN THEIR TESTIMONY, BOTH MR. DENNEY OF INTEGRA AND MR.**  
4                    **COLEMAN OF THE DIVISION REFER TO THE UTAH "PAP." WHAT IS THE**  
5                    **UTAH PAP?**

6            **A.**    The Utah PAP or QPAP is a self-executing plan based on Qwest's level of wholesale  
7                    service quality performance under a variety of metrics called "PIDs" ("performance  
8                    indicator definitions"). The PIDs are measurements of specific dimensions of Qwest's  
9                    wholesale service performance. For example, PIDs cover the areas of pre-order/order,  
10                  billing, provisioning, maintenance and repair, network performance, and so forth. PID  
11                  results for Utah are reported on an individual CLEC basis, as well as on an aggregate-  
12                  CLEC basis, statewide.

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

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

2    A.    Qwest obtained approval of the QPAP in conjunction with obtaining interLATA long  
3    distance approval from the Federal Communications Commission ("FCC") under Section  
4    271 of the Telecommunications Act of 1996 ("the Act"). The FCC looked for assurances  
5    that wholesale markets would remain open after the requirements of Section 271 had  
6    been met, and interLATA freedom had been granted to the Bell Operating Companies  
7    ("BOCs") such as Qwest. While it accepted performance assurance plans ("PAPs") for  
8    this purpose, the FCC noted at the time that it could not require such plans. Instead, the  
9    FCC stated it would deem a properly-designed plan as "probative evidence that the BOC  
10   will continue to meet its Section 271 obligations after a grant of such authority."<sup>1</sup>

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

13   A.    If adopted by a CLEC, the QPAP becomes part of the CLEC's interconnection agreement  
14   ("ICA") in the form of two exhibits. Exhibit B sets forth the measurement definitions  
15   and standards, and Exhibit K sets forth the payment framework. Thus, Qwest cannot  
16   make unilateral changes to the QPAP because it is part of a contractual agreement.

17   **Q.    PLEASE DESCRIBE THE PROCESS OF HOW THE QPAP CAME INTO**  
18   **EXISTENCE.**

19   A.    Overall, the PIDs and the QPAPs were developed through a process of multiple years of  
20   negotiations with numerous CLECs and commission staffs, involving a number of

1 frequent forums, including business-to-business negotiations, commission-facilitated  
2 collaboratives, and operational support systems ("OSS") testing – most on a multi-state  
3 basis.<sup>2</sup> These activities took place, generally, from 1998 through 2003, when Qwest  
4 obtained Section 271 approvals, and then afterward in the form of audits, reviews, and  
5 further negotiations.

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

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

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<sup>1</sup> *Qwest 9 State 271 FCC Order*, at ¶ 453.

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

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

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

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

20 Finally, there are *due process* concerns relative to the CLECs trying to force onto Qwest  
21 and CenturyLink an additional PAP, based on only about six pages of testimony and one

1 exhibit, which deal with very complex issues and potentially-significant amounts of  
2 money, without anything remotely resembling a full record. The CLEC APAP proposal,  
3 if it were to be adopted in any form here, would make a mockery out of the appropriate  
4 process – a process that had its origins more than seven years ago in the Section 271  
5 proceedings regionwide, which in Utah was Docket No. 00-049-08.

6 **The Current QPAP**

7 **Q. PLEASE DESCRIBE THE UTAH QPAP, INCLUDING HOW IT WORKS**  
8 **GENERALLY AND THE TYPES OF MEASUREMENTS, OR METRICS, THAT**  
9 **IT TRACKS.**

10 **A.** As I mentioned, the Utah QPAP consists of PIDs in Exhibit B and payment provisions in  
11 Exhibit K of interconnection agreements in which it resides. The payment provisions use  
12 PID results as the self-executing basis for triggering payments when service performance  
13 is nonconforming to parity or benchmark standards set forth in the PIDs. The PIDs  
14 contain what can be called “business rules” that define what is to be included, and what is  
15 to be excluded, from the measurements in order to properly and accurately account for  
16 Qwest’s wholesale service quality performance, while striving to minimize the effects of  
17 external factors that parity standards or benchmark allowances may not necessarily  
18 account for.

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

20 **A.** At the lowest (most detailed) level of disaggregation, each PID with a parity or  
21 benchmark standard has only one or the other: a parity standard or a benchmark standard.

1 The nondiscrimination standard of the Act calls for a comparison between an ILEC's  
2 wholesale and retail service quality performance. However, precisely comparable retail  
3 services do not always exist. If there were truly comparable retail services available for  
4 all wholesale services and elements measured by the PIDs, there would be only parity  
5 standards in the PIDs. Strictly speaking, "parity" is not an explicit requirement of the  
6 Act, but it is a factor in evaluating nondiscrimination. Accordingly, in the original  
7 collaborative proceedings in which the PIDs were developed, the parties agreed to use  
8 parity as the primary basis for setting standards. For unbundled elements where precise  
9 apples-to-apples comparisons with retail "analogues" were not available,<sup>3</sup> proxies were  
10 selected that were as close as possible to the measured elements, such as for specific  
11 types of unbundled loops. For other elements, there were no retail analogues, and no  
12 reasonable proxies for such analogues, and thus benchmark standards were adopted  
13 through negotiations in the various proceedings that pre-dated the Qwest Section 271  
14 FCC applications. Benchmarks were also used to evaluate the "pre-order" processes  
15 where, for example, CLECs submit local service requests ("LSRs") and trouble reports  
16 through interfaces that do not exist in the retail context.

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

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

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

2    A.    Payment amounts are determined by the extent to which Qwest's PID results do not  
3       conform to or meet the applicable standards. Specifically, the difference between a PID  
4       result and the applicable standard is translated into a number of occurrences (e.g., orders  
5       or tickets) that do not meet the relevant standard, which number is then multiplied by the  
6       applicable "per-occurrence" payment level to calculate the payment amount due for that  
7       PID result.

8       The QPAP defines two categories of payments: Tier 1 and Tier 2. Tier 1 payments are  
9       made to individual CLECs, and Tier 2 payments are placed into an escrow account for  
10      the State, the disbursements from which are directed by the Commission. The QPAP also  
11      defines other payment-affecting procedures, such as payment escalations (where there are  
12      consecutive nonconforming months) and minimum payments (where the low volumes of  
13      small CLECs generate small payments).

14   **Q.    HOW DOES THIS CONTRAST WITH THE APAP'S APPROACH?**

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

1 **RESPONSE TO MR. COLEMAN OF THE DIVISION**

2 **Q. BEGINNING ON PAGE 13 OF HIS DIRECT TESTIMONY, MR. COLEMAN**  
3 **LISTS “POTENTIAL CHALLENGES.” WHAT IS YOUR RESPONSE?**

4 **A.** Mr. Coleman’s list of potential challenges on pages 13 through 17 deals with operational  
5 support systems (OSS). Mr. Michael Hunsucker of CenturyLink will address specific  
6 details about OSS. My comment is that what “could” happen and what is “likely” to  
7 happen are two significantly different things. No party has brought forth any factual  
8 evidence to indicate that any of the “potential challenges” are likely. In any event, the  
9 QPAP that exists in Utah today extensively measures OSS dimensions that have been  
10 established since the beginning of the QPAP. Further, as I explain above, the QPAP  
11 cannot be unilaterally changed or eliminated without Commission involvement, since it is  
12 a part of contractual agreements (i.e., interconnection agreements with CLECs).

13 **Q. ALSO ON PAGE 13, MR. COLEMAN RECOMMENDS FOLLOWING THE**  
14 **TENET, “HOPE FOR THE BEST AND PLAN FOR THE WORST.” SHOULD**  
15 **THAT APPLY HERE?**

16 **A.** Overall, there is a clear framework set forth in Utah statutes that provides the proper  
17 guidance to the Commission. While the quoted tenet might be appropriate in some  
18 instances, I respectfully disagree that it applies here – for at least two reasons. First, good  
19 public policy must be based on facts and evidence, not driven by fears of what “could”  
20 happen. Second, the QPAP already addresses a wide range of possibilities, originating in  
21 the earlier time period when competition in the telecommunications market was not

1 nearly as developed or robust. However, as Qwest's Utah President Jerry Fenn testified  
2 in his direct testimony, at pages 14 to 21, and as Qwest witness Robert Brigham also  
3 discusses in his rebuttal testimony, in addition to the existing QPAP there are significant  
4 and increasing market pressures, which I assert are more than sufficient to insure that the  
5 post-merger company continues to provide high quality service.

6 **Q. ON PAGES 18-19, MR. COLEMAN STATES THAT, WITHOUT CONDITIONS**  
7 **REQUIRING THE SAME QPAP TO BE KEPT IN PLACE, "...THERE IS NO**  
8 **ASSURANCE THAT CENTURYLINK WILL KEEP THE QPAP AND THEREBY**  
9 **MAINTAIN THE HEALTH OF THE WHOLESALE MARKET." DO YOU**  
10 **AGREE?**

11 **A.** The facts say otherwise. First, as I mentioned, Qwest, which will remain the operating  
12 local company in Utah, cannot unilaterally change or remove the QPAP. It exists as a  
13 part of interconnection agreements that have the force of contracts, and the Commission  
14 has authority over interconnection agreements, which thus provides assurance that the  
15 QPAP cannot go away without Commission approval. Second, there is absolutely no  
16 evidence that the QPAP is necessary to "maintain the health of the wholesale market."  
17 Finally, again, market pressures are immense and will provide the most direct,  
18 independent assurance – far from "no assurance." I explain this in more detail later in  
19 this testimony.

20 **Q. WHAT IS YOUR RESPONSE TO MR. COLEMAN'S ASSERTION (PAGE 19)**  
21 **THAT THE "SAME QPAP" NEEDS TO STAY IN PLACE FOR THREE YEARS**

**AFTER THE MERGER?**

This proposed condition presents a totally unnecessary constraint on a process that is already in place, will stay in place under Commission direction, and has worked well. Even though market pressures provide the far greater assurances, the QPAP continues to exist and will do so until the Commission approves otherwise. There is no basis for taking away the provisions built into the QPAP that allow CLECs, Qwest, or the Commission to initiate improvements in the form of changes to the QPAP.

**RESPONSE TO MR. DENNEY OF INTEGRA**

**The CLECs' Proposal for an "APAP" is Unnecessary, Inappropriate, and Unreasonable**

**1. The APAP is Unnecessary**

**Q. ON PAGE 47 OF HIS DIRECT TESTIMONY, MR. GATES STATES THAT "QWEST'S PAPs AND ASSOCIATED PIDs ARE ABSOLUTELY ESSENTIAL TO ENSURE THAT LOCAL MARKETS IN QWEST'S REGION REMAIN OPEN TO COMPETITION (I.E., QWEST DOES NOT BACKSLIDE)." DO YOU AGREE?**

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

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<sup>4</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 453. This is important, as I point out,

1 First, Mr. Gates loses sight (as does Mr. Denney) that there is already a comprehensive  
2 and robust PAP in place in Utah today that Qwest, numerous CLECs, and this  
3 Commission and its Staff labored hard for many years to develop. There is absolutely no  
4 basis, or need, to try to cram several years' worth of work, by hundreds of people and  
5 stakeholders, into this merger docket in order to develop a new, additional plan,  
6 especially considering that the proposal is based on only few pages of testimony and an  
7 exhibit. Adopting such a plan here, in any form, would effectively undermine the  
8 extensive work done that this Commission and the numerous parties and stakeholders did  
9 years ago in the various Section 271 dockets, including Docket Number 00-049-08 here.

10 Second, contrary to Mr. Gates' assertion that a performance plan is "absolutely  
11 essential," the FCC went on to say later in the same quoted paragraph that a performance  
12 assurance plan is not a requirement for the authority of a BOC like Qwest to provide  
13 interLATA toll services under Section 271, but merely that a PAP would be "probative  
14 evidence" that a BOC will continue to meet its Section 271 obligations.<sup>5</sup>

15 Third, in acknowledging that a PAP was not required but could constitute "probative  
16 evidence," the FCC thus recognized that there are other ways to show that a BOC will  
17 continue to meet its obligations. In this vein, Mr. Gates ignores the fact that, nearly eight  
18 years after the FCC issued that order, telecommunications market conditions have  
19 changed dramatically. When the FCC originally made that statement, there was

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because that paragraph makes clear that a performance assurance plan is not a requirement for Section 271 approval or compliance.

<sup>5</sup> *Qwest 9 State 271 Order*, at ¶ 453.

1 relatively little other evidence available. The local telecommunications market was only  
2 on the brink of being determined by the FCC to be open, and there was certainly no  
3 crystal ball that could assure that the market would remain open. However, now, eight  
4 years later, the evidence is clear that the market has not only remained open, but that it is  
5 robustly open, and that it will continue to be so, with or without a PAP.

6 Again, it bears repeating that there is already a PAP, and thus there is no need for an  
7 “additional” PAP. The CLECs’ proposal for an APAP appears to be merely a self-  
8 interested attempt to saddle the post-merger company with additional regulatory  
9 obligations, with their concomitant financial (penalty) costs, perhaps because Qwest’s  
10 payments under the Utah QPAP have decreased so dramatically in recent years as shown  
11 below. In other words, this APAP concept is completely unnecessary, and is really  
12 nothing more than a punitive attempt to extract additional “remedies” or “benefits” in the  
13 form of APAP penalties.

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

16 A. First, I base that statement in part on the fact that as of the end of 2009, 46 CLECs in  
17 Utah have opted into interconnection agreements (“ICAs”) that contain the QPAP. On  
18 pages 11 and 12 of his direct testimony, addressing competitive carriers, Mr. Coleman  
19 states: “Currently, Utah has over 90 companies that have been granted certificates of  
20 public convenience and necessity (‘CPCN’) to operate as telecommunications providers.”  
21 He goes on to say: “Over the last 12 months, a dozen companies have filed and been

1 granted CPCNs.” Thus, having started from zero (i.e., at the point in time before the  
2 Telecommunications Act when there were no CLECs), this number represents a  
3 significant increase and a continuing presence and growth of CLECs in the market in  
4 Utah. I also base it on the competitive data and analysis that Mr. Fenn provides in his  
5 direct testimony and Mr. Brigham discusses in his rebuttal testimony. The FCC found the  
6 market to be open, the market is still robustly open, and it will continue to be so through  
7 and beyond the merger.<sup>6</sup>

8 **Q. DOES THE DECREASING TREND IN QWEST’S QPAP PAYMENT LEVELS**  
9 **INDICATE THAT QWEST’S SERVICE LEVELS SUPPORT A ROBUST**  
10 **MARKET?**

11 A. Absolutely. Despite this large number of CLECs having the QPAP in their ICAs,  
12 Qwest’s payments under the QPAP have been declining significantly over the past  
13 several years. For example, in the first full year (2004) of QPAP operation, Qwest paid  
14 almost \$290,000 in payments in Utah. In contrast, in 2009, Qwest’s QPAP payments in  
15 Utah amounted to less than \$55,000 for the entire year – less than 20% of its payment  
16 levels in 2004.

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

19 A. Yes. Again, as Mr. Fenn testified in his direct testimony, at pages 14-21, and Mr.

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<sup>6</sup> Mr. Coleman, on page 12 of his direct testimony, also states: “The Division believes the wholesale market is functioning adequately.”

1 Brigham also discusses in his rebuttal testimony, there are intense competitive pressures  
2 on Qwest in Utah, and they are increasing rapidly. Specifically, the immense market  
3 forces, which are reflected in the significant line losses that Mr. Fenn and Mr. Brigham  
4 enumerate, and the competition from cable telephony, wireless, VOIP, and CLECs, are  
5 both expanding. While all wireline carriers (including CLECs) are generally losing lines  
6 to wireless providers, the only competitive alternatives that offer Qwest the opportunity  
7 to retain customers on its wireline network are those same CLECs who purchase Qwest's  
8 wholesale services and elements in order to provide the services they offer to their  
9 customers. Accordingly, Qwest values CLECs, and recognizes them as extremely  
10 important in helping to keep customers on Qwest's wireline network. It is this robust  
11 local market that provides the meaningful incentives that will assure CLECs that Qwest  
12 (and thus CenturyLink) will continue to provide a high level of wholesale service quality,  
13 regardless of the existence of the current merger transaction.

14 **Q. IS THERE ANOTHER, UTAH-SPECIFIC REASON THAT THE PROPOSED**  
15 **APAP IS UNNECESSARY?**

16 **A.** Yes, on January 13, 1999, the Commission's intercarrier service quality rules<sup>7</sup> went into  
17 effect in Utah, after more than a year of development. These rules took effect before the  
18 QPAP did, and they serve as an additional protection – and, Qwest observes, no longer  
19 necessary given the overriding assurances of market forces – for wholesale service  
20 quality, independent of the parity evaluations of the QPAP.

1 **Q. MR. COLEMAN IS CONCERNED THAT, ABSENT A CONDITION**  
2 **REQUIRING THE QPAP TO CONTINUE, THE EXISTING UTAH**  
3 **WHOLESALE RULES “DO NOT HAVE EXTENSIVE MEASUREMENT**  
4 **REQUIREMENTS” (PAGES 20 TO 21). HOW DO YOU RESPOND?**

5 A. As I have stated, the QPAP is not going away in the foreseeable future, with or without a  
6 merger condition. Accordingly, as I explain in more detail below, the QPAP  
7 measurements will also continue.

8 **2. The Proposed “APAP” is Inappropriate**

9 **Q. BEGINNING ON PAGE 8 OF HIS DIRECT TESTIMONY, MR. DENNEY**  
10 **PROVIDES DETAILS OF HIS APAP TO IMPLEMENT THE JOINT CLECs’**  
11 **CONDITION NUMBER 4. WHAT DOES THE APAP REPRESENT?**

12 A. The “APAP” concept that Mr. Denney proposes represents an additional, extensive set of  
13 standards, above and beyond the standards already in place in the QPAP that is more than  
14 sufficient and working well today. I characterize the proposed APAP as “extensive”  
15 because the APAP concept – which I do not believe any other state regulatory  
16 commission has implemented, and certainly not in any merger proceeding to my  
17 knowledge – would apply additional standards, as well as the associated evaluations and  
18 calculations, to each and every measurement that is in the QPAP today. The APAP  
19 would also apply to additional measurements that are not even currently in the QPAP  
20 (pursuant to its “reinstatement/removal” process that removed measurements where

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<sup>7</sup> Utah Public Service Commission Rule R746-365, *Intercarrier Service Quality*.

1 performance had been consistently penalty-free).

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

4 A. First, the APAP is inappropriate because Mr. Denney loses sight of the fact that, as I said  
5 before, there is already a comprehensive and robust PAP in place in Utah today that  
6 Qwest, numerous CLECs, and the Commission and its Staff labored hard for many years  
7 to develop to ensure wholesale service quality. Accordingly, I reiterate that there is  
8 absolutely no need to try to cram several years' worth of work, by hundreds of people  
9 and stakeholders, in order to develop a new, additional plan, based on few pages of  
10 testimony in a merger docket, to implement a new plan.

11 The APAP concept is further inappropriate because, in addition to being unreasonable, as  
12 I describe later, the appropriate standard to apply to wholesale service performance is  
13 "nondiscrimination," and not simply "performance degradation." In the proposed APAP,  
14 "performance degradation" in reality would simply mean that Qwest's performance in the  
15 future might be lower than its superb results at the present time, even though those results  
16 continue to meet the various standards in the QPAP. As I explain in more detail below,  
17 Mr. Denney's improperly-defined concept of "performance degradation" is problematic,  
18 especially because it holds Qwest to a much higher standard than the PAP, in part  
19 because Qwest's service quality performance in recent years has been outstanding and far  
20 higher than required under the QPAP. Further, while Mr. Denney attempts to justify his

1 APAP concept by arguing that it focuses on “merger-related harm,”<sup>8</sup> it is not appropriate  
2 to attempt to redress alleged but unspecified potential harm in an involuntary, self-  
3 executing manner. The APAP cannot distinguish between normal variations in  
4 performance that could occur, with or without the merger, from variations that might be  
5 alleged to be merger-related.

6 **Q. HAS THE QUESTION OF THE APPROPRIATENESS OF SELF-EXECUTING**  
7 **PENALTIES OUTSIDE OF A VOLUNTARY MECHANISM LIKE THE QPAP**  
8 **BEEN ADDRESSED BY THE COURTS?**

9 A. I am not aware of any such case in Utah. However, in 2005, the State of Minnesota  
10 Supreme Court concluded that the Minnesota Commission could not levy self-executing  
11 consequences for reasons that I believe also exist in Utah. Specifically, the Minnesota  
12 Supreme Court stated:

13 For the reasons discussed above, we conclude that the MPUC does not have  
14 statutory authority, either express or implied, to impose the self-executing  
15 payments as an enforcement mechanism and therefore hold that the MPUC  
16 exceeded its statutory authority in ordering Qwest to make such payments for  
17 failure to comply with the wholesale service quality standards.<sup>9</sup>

18 Although this is not a Utah ruling, my understanding is that Utah statutes also contain no  
19 express or implied authority for the Commission to impose self-executing payments for  
20 failure to comply with wholesale service quality standards.

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<sup>8</sup> Direct Testimony of Douglas Denney, Integra Telecom, August 30, 2010, p. 9.

<sup>9</sup> Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case A03-1409, State of Minnesota Supreme Court, August 18, 2005.

1        **3. The APAP is Unreasonable**

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

4        A.    Even if the Commission *were* inclined to consider the APAP concept here, there are  
5        many reasons that the proposed APAP itself is unreasonable. Chief among these reasons  
6        are that (1) the APAP requires no proof of merger-related harm before involving  
7        monetary payments, (2) it creates an improper definition of “performance degradation,”  
8        and (3) it triggers consequences based on comparisons with prior performance levels that  
9        were already far better, on the whole, than what has been required in the QPAP. In other  
10       words, Qwest would be essentially *punished* by being held to a higher standard going  
11       forward simply because its performance under the QPAP in recent years has been much  
12       better than is required in the QPAP. In addition, the APAP is seriously flawed as a  
13       performance plan – in part because it purports to be based on QPAP PIDs and provisions.  
14       The goals of the QPAP and the APAP are different, however, and PIDs and QPAP  
15       provisions simply are not designed to support the APAP’s self-executing goals.

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

17       **Q.    PLEASE EXPLAIN YOUR POINT ABOUT PROOF OF MERGER-RELATED**  
18       **HARM. WHY IS THE APAP UNREASONABLE IN NOT REQUIRING PROOF**  
19       **OF HARM?**

20       A.    This issue is really a matter of fairness. The CLECs’ purported concern appears to be  
21       that current market forces and the QPAP may not be sufficient to address wholesale

1 service performance issues after the merger. As I have stated, however, this concern is  
2 irrelevant because the merger transaction does nothing to change the market forces, the  
3 QPAP, the Utah rules, or the Commission's authority or involvement in the future of the  
4 QPAP and its own rules. Further, the merger does not diminish the contractual  
5 dimension of the QPAP in the CLECs' interconnection agreements with Qwest or the  
6 Commission's authority over these matters.

7 That said, it is important to remember that the QPAP is a *voluntary* commitment on  
8 Qwest's part in the context of Section 271 approval, while the APAP would not be  
9 voluntary. The reason this is important revolves around necessity for proof of harm, in  
10 light of the fact that Qwest already has been providing consistently very-high levels of  
11 performance. The fact that Qwest is providing such high levels of service quality has  
12 nothing to do with harm that CLECs might allege in the future, and it has nothing to do  
13 with any future performance decrease being associated with the merger. Therefore, as  
14 regards the APAP, if CLECs believe they have been harmed by issues beyond those that  
15 the QPAP addresses, such as alleged merger-related harm, it would only be proper that  
16 they would have the burden to bring forth any confirming evidence. The mere  
17 "degradation of performance" from already-superb service quality levels would not  
18 automatically translate into harm, nor could it magically quantify any alleged harm.

19 **Q. DID THE MINNESOTA SUPREME COURT OPINION WHICH YOU CITED**  
20 **EARLIER ALSO ADDRESS THIS ASPECT OF THE ISSUE?**

21 **A.** Yes, in denying the Minnesota Commission the authority to levy self-executing payments

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

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

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

13 A. In purporting to address “merger-related harm,” the APAP glosses over immense gaps in  
14 attempting to define “performance degradation,” and it makes no attempt to link  
15 performance trends to any CLEC harm.<sup>11</sup> The mere existence of lower performance  
16 levels that might be observed – particularly when compared to already-superior  
17 performance – cannot necessarily be characterized as Qwest’s performance degradation,

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<sup>10</sup> Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case No A03-1409, State of Minnesota Supreme Court, August 18, 2005.

<sup>11</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 nor can it be properly translated automatically into any level of CLEC harm, and it  
2 certainly cannot be ascribed automatically to the merger.

3 **Q. PLEASE GIVE SOME OTHER EXAMPLES OF THE OTHER FACTORS YOU**  
4 **MENTIONED THAT COULD EXPLAIN OR MITIGATE OBSERVED**  
5 **DIFFERENCES IN PERFORMANCE IN A GIVEN MONTH AGAINST THE**  
6 **PRIOR ANNUAL AVERAGE PERFORMANCE?**

7 A. Numerous factors that are not related to Qwest-driven impacts on performance levels can  
8 affect service performance levels. In virtually all cases, it is not feasible to identify these  
9 factors in advance, or in a mechanized way, in order to make it possible to exclude them  
10 from any reporting measurements. Further, even if such factors could be identified and  
11 excluded, the PIDs in the QPAP are not designed in any way that would permit  
12 identifying whether any observed differences in performance are merger-related.  
13 Nevertheless, these other factors include such things as weather-related impacts, changes  
14 in CLECs' underlying customer bases, changes in CLEC operating practices, and  
15 comparing a current month's performance against a past average annual performance.<sup>12</sup>

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

18 **Q. YOU HAVE MENTIONED THE SUPERB LEVELS OF QWEST'S 2009**

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<sup>12</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.

**PERFORMANCE UNDER THE QPAP. WHY IS THE APAP MEASURE THAT  
IS BASED ON THE PAST 12 MONTHS PRIOR TO THE MERGER AN  
UNREASONABLE STANDARD FOR DEFINING PERFORMANCE  
DEGRADATION OR IDENTIFYING MERGER-RELATED HARM?**

A. Apart from the problems that I have already mentioned with the proposed APAP, the question whether and how much merger-related harm might occur becomes even more absurd when considering that only 0.9% of Utah QPAP performance metrics actually triggered payments in 2009. In contrast, in the same year, 25.0% percent of the Utah performance metrics that are based on “parity” had performance results that were significantly *better* than the parity standard. Even if performance were to degrade below these superior levels, while still remaining nondiscriminatory, there would be no basis for automatically claiming harm.

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

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

A. As I have stated, the QPAP’s goals are different from the APAP’s goals. Mr. Denney effectively admits this on pages 9-10 of his direct testimony, where he states, “[t]he Utah PAP, which was not developed to identify merger-related harm, would not capture deteriorating performance....” Earlier on page 9 of his testimony, Mr. Denney points out that the QPAP “is intended to assure that Qwest does not treat itself more favorably than it treats CLECs....” Then, three sentences later, he states, “[t]he purpose of the proposed

1 APAP is to compare the current level of Qwest's wholesale performance to CLECs with  
2 a past level of wholesale performance to CLECs ....” In other words, the QPAP focuses  
3 on satisfying “parity” or established benchmarks, whereas the APAP focuses on defining  
4 allegedly merger-related “performance degradation.” This is one of the many fatal flaws  
5 of APAP: the PIDs were defined to measure performance against parity or fixed  
6 benchmarks, not to properly identify “performance degradation” by some simplistic  
7 definition, and certainly not to automatically imply merger-related harm.

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

11 A. In short, the PIDs cannot automatically account for or explain the reasons for an observed  
12 trend or difference in performance levels. There are many factors – including many that  
13 are not caused by Qwest, as I have already explained – that can cause the performance  
14 levels in a given month, post-merger, to be different from the APAP's proposed  
15 comparisons with annual average levels of pre-merger Qwest performance. Further, it is  
16 not possible for the PIDs to be defined and implemented in a manner that would permit  
17 them to account for all such factors. Thus, the PID results cannot support automatic  
18 conclusions that merger-related performance degradation has occurred, much less that  
19 such degradation actually represents harm.

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

21 **Q. NEVERTHELESS, DOES THE QPAP PROVIDE SUFFICIENT VISIBILITY TO**

**DETECT TRENDS IN SERVICE PERFORMANCE LEVELS, POST-MERGER?**

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

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

A. In a nutshell, using the PID-generated performance results to monitor performance trends is more complete and fair than focusing on single-point comparisons of one current month's results with a 12-month average of past performance results. The approach of using PID performance results to monitor trends also allows for examining the causes of trends, if necessary. As I stated above, the 12-month APAP approach could conclude there was "performance degradation" when, in fact, the trend in service levels was improving. The QPAP's PID results, on the other hand, give visibility to the significant

1 trends are over time, which trends can then be examined further. This broader, more-  
2 holistic approach is more reasonable in helping to identify whether a valid question might  
3 exist about post-merger performance levels. Still, given the dynamic nature of the  
4 environment in which Qwest's network exists, as well as the many external factors that  
5 can affect performance levels – independent of the merger or of Qwest's actions – the  
6 actual conditions that exist across the entire relevant time period must be considered.  
7 This consideration of trends supports a proactive approach toward resolving problems,  
8 regardless of their causes, rather than merely arguing about whether penalties or damages  
9 should be assessed, and on what basis. At the same time, neither the merger nor this  
10 approach of providing continued visibility to performance levels takes anything away  
11 from any party that wishes to raise a concern about service quality.

12 **CONCLUSION**

13 **Q. HAVE MR. COLEMAN OR THE CLECs PROVIDED ANY BASIS FOR THE**  
14 **COMMISSION TO CONSIDER MERGER CONDITIONS RELATED TO THE**  
15 **QPAP?**

16 **A.** No. The merger does nothing to change or jeopardize the existing provisions found in the  
17 QPAP and in Utah Commission rules that address wholesale service quality. As  
18 importantly, the wholesale market remains robustly open, and the post-merger company  
19 will face the same immense market pressures that Qwest faces today in its operating  
20 territories. These pressures will continue to provide incentives and protections far greater  
21 than the QPAP or the rules in assuring that the post-merger company will continue to

1 provide the necessary attention to wholesale service quality. As for as the CLECs'  
2 purported concerns about “merger-related harm” that allegedly might be caused by some  
3 kind of performance degradation, there is simply no appropriate way to define, identify,  
4 quantify, or penalize such harm or degradation, if any occurs at all, on an automatic basis.  
5 The APAP is particularly ill-equipped to attempt such alleged remedies, as I have  
6 explained, and the QPAP is sufficient to provide continued visibility to trends in Qwest’s  
7 wholesale service quality performance, without bypassing the essential tenets of due  
8 process.

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

10 **A. Yes.**

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of Qwest Communications  
International, Inc. and CenturyTel, Inc. for  
Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company, LLC, and Qwest LD Corporation

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DOCKET NO. 10-049-16

**SURREBUTTAL TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**INTEGRA TELECOM**

**Exhibit Integra 1SR**

**October 14, 2010**

1    **I.     INTRODUCTION**

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

3    A.     My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland,  
4           Oregon.

5    **Q.     DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING ON**  
6           **AUGUST 30, 2010?**

7    A.     Yes.

8    **Q.     PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

9    A.     The first section, this section, of my testimony introduces the testimony. The  
10           second section of my testimony responds to critiques of the Joint CLEC  
11           Additional Performance Assurance Plan (“APAP”) proposal (Joint CLEC  
12           Proposed Condition 4.a) and demonstrates that the APAP can be an effective tool  
13           to protect CLECs against post merger wholesale performance degradation. The  
14           third section of my testimony supports Joint CLEC recommended condition  
15           number 8 and clarifies that interconnection agreements (“ICA”) can be updated  
16           for circumstances beyond a change in law. The final section of my testimony  
17           corrects Ms. Stewart’s incorrect characterization of my testimony with respect to  
18           the Minnesota *UNE Provisioning and Marketing Practices Docket*<sup>1</sup> as it relates to

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<sup>1</sup> *In the Matter of a Commission Investigation into Qwest Corporation’s Provision of Network Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers (“UNE Provisioning and Marketing Practices Docket”), MPUC Docket No. P-421/CI-09-1066.*

1 the importance of a number of CLEC proposed conditions, including condition 27  
2 regarding conditioned copper loops.

3 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

4 A. No.

5  
6 **II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED**  
7 **CONDITION NUMBER 4)**

8 **Q. WHAT IS THE JOINT PETITIONERS' POSITION WITH RESPECT TO**  
9 **WHOLESALE SERVICE QUALITY?**

10 A. The Joint Petitioners promise post merger wholesale service quality, but reject the  
11 Joint CLEC proposed process for assuring wholesale service quality does not  
12 degrade if the merger is approved.

13 For example, Mr. Hunsucker, on behalf of CenturyLink, states, "I believe CLECs  
14 will benefit from the merger..."<sup>2</sup> Mr. Hunsucker explains, "CenturyLink is  
15 committed to maximizing its internal efficiencies associated with providing  
16 quality service to CLECs which also means that the CLECs benefit from this  
17 efficiency."<sup>3</sup> He continues, "CenturyLink has a long-standing history of and  
18 commitment to providing quality wholesale services. The provision of quality  
19 service to wholesale customers is a priority and will remain so after the merger

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<sup>2</sup> Rebuttal Testimony of Michael R. Hunsucker, September 30, 2010 ("Hunsucker Rebuttal"), p. 4, line 7.

<sup>3</sup> Hunsucker Rebuttal, p. 36, lines 8-10.

1 closing.”<sup>4</sup> Both Mr. Hunsucker of CenturyLink and Mr. Williams of Qwest claim  
2 that each witness’s respective company “recognizes the value of its wholesale  
3 customers to its business operations,”<sup>5</sup> and Mr. Williams calls for “a proactive  
4 approach toward resolving problems, regardless of their cause.”<sup>6</sup>

5 While promising *benefits* to CLECs and *a proactive approach*, the Joint Petitioners  
6 are proposing a *reactive* approach by suggesting using the Utah Performance  
7 Assurance Plan (“Utah PAP”)<sup>7</sup> in an undefined manner to “focus on performance  
8 trends, not just on a single-point comparison.”<sup>8</sup> Though they propose to rely upon  
9 the Utah PAP to determine trends, the Joint Petitioners argue that the performance  
10 indicators (“PIDs”) used in the Utah PAP can’t properly identify performance  
11 degradation.<sup>9</sup> They further attempt to excuse deteriorating performance by arguing  
12 that the Commission should only consider “nondiscrimination, not simply  
13 performance degradation.”<sup>10</sup> Finally, the Joint Petitioners also argue that CLECs

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<sup>4</sup> Hunsucker Rebuttal, p. 6, lines 5-7; p. 50, line 23-51, line 2.

<sup>5</sup> Hunsucker Rebuttal, p. 14, lines 1-3; Rebuttal Testimony of Michael G. Williams, September 13, 2010 (“Williams Rebuttal”), p. 16, lines 9-10.

<sup>6</sup> Williams Rebuttal, p. 27, lines 7-8.

<sup>7</sup> Williams Rebuttal, p. 26, lines 10-11.

<sup>8</sup> Williams Rebuttal, p. 26, lines 15-17.

<sup>9</sup> Williams Rebuttal, p. 26, lines 5-7.

<sup>10</sup> Williams Rebuttal, p. 18, lines 12-13.

1 should “have the burden to bring forth the confirming evidence” to demonstrate  
2 merger-related harm.<sup>11</sup>

3 This Joint Petitioner testimony is far from reassuring. In fact, it strongly suggests  
4 that the Joint Petitioners are prepared for a deterioration in service quality if the  
5 merger is approved. This is precisely why the Joint CLECs proposed a specific  
6 plan, the APAP, for comparing pre merger and post merger wholesale service  
7 quality.

8 **Q. WHAT ARGUMENTS DO THE JOINT PETITIONERS MAKE AGAINST**  
9 **A PROCESS FOR COMPARING WHOLESALE SERVICE QUALITY**  
10 **PRE AND POST MERGER?**

11 A. The Joint Petitioners make five basic arguments against a pre-defined  
12 methodology for comparing wholesale service quality pre and post merger. They  
13 argue: (1) a deterioration in wholesale service quality post merger is not proof of  
14 merger related harm to CLECs;<sup>12</sup> (2) the Joint CLEC definition of performance  
15 degradation is improper;<sup>13</sup> (3) Qwest is already providing superior service;<sup>14</sup> (4)

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<sup>11</sup> Williams Rebuttal, p. 21, lines 14-16.

<sup>12</sup> Williams Rebuttal, pp. 20-22.

<sup>13</sup> Williams Rebuttal, pp. 22-23.

<sup>14</sup> Williams Rebuttal, pp. 23-24.

1 the PIDs are not designed to capture performance degradation;<sup>15</sup> and (5) the  
2 current Utah PAP is sufficient.<sup>16</sup> All of the above arguments are flawed.

3  
4 **A. A REDUCTION IN WHOLESALE SERVICE PERFORMANCE**  
5 **IMPACTS CLECS AND THEIR END USER CUSTOMERS**

6 **Q. WILL A POST MERGER REDUCTION IN WHOLESALE SERVICE**  
7 **QUALITY IMPACT CLECS AND THEIR UTAH END USER**  
8 **CUSTOMERS?**

9 A. Of course. Mr. Williams claims that the “mere degradation of performance from  
10 already-superb levels does not automatically translate into harm.”<sup>17</sup> He also  
11 argues that the “mere existence of lower performance levels... cannot be  
12 characterized automatically as performance degradation.”<sup>18</sup> This is wrong, as  
13 performance degradation is simply another label for a decline in performance  
14 levels, and lower performance levels directly impact CLECs and their end user  
15 customers. Further, it is unclear which specific performance measures Mr.  
16 Williams believes can degrade without impacting CLECs.

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<sup>15</sup> Williams Rebuttal, pp. 24-25.

<sup>16</sup> Williams Rebuttal, pp. 25-26.

<sup>17</sup> Williams Rebuttal, p. 21, lines 16-18.

<sup>18</sup> Williams Rebuttal, p. 21, line 15 – p. 23, line 2.

1 Integra, like other CLECs, attempts to distinguish itself in the marketplace  
2 through its customer relationships and its ability to offer customers reliable and  
3 diverse voice and data network. Because Integra and other CLECs rely, in part,  
4 upon network facilities leased from Qwest, the quality of service received from  
5 Qwest is a vital component of their ability to serve customers well. There are no  
6 generally available, last mile wholesale substitutes available to Integra and other  
7 CLECs to serve end user customers across Qwest's region.<sup>19</sup> That there are no  
8 last mile substitutes for products subject to the PIDs in the Utah PAP is  
9 undisputed: Qwest applies the PIDs and the Utah PAP only to products the FCC  
10 has found *must* be provided to CLECs by ILECs in order to prevent CLEC  
11 impairment. As a result, Qwest's behavior can have a significant impact on  
12 Integra's customer relationships. Since Qwest is Integra's predominant supplier  
13 of connections to end user customers<sup>20</sup> and Qwest is also Integra's largest  
14 competitor, Qwest has the incentives and the ability to limit Integra's success in  
15 the market through poor wholesale service. Qwest's gain from poor or diminished  
16 wholesale service performance translates directly to harm to CLECs and harm to

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<sup>19</sup> The Minnesota Commission has reached this same conclusion noting, "Evidence suggests there are no significant alternatives to Qwest's wholesale facilities." Ex Parte, Comments of the Minnesota Public Utilities Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area, WC Docket No. 07-97, February 8, 2008, p. 6.

<sup>20</sup> In some markets, Integra has its own facilities to serve the last mile to a number of customers. However, overall, Integra relies upon Qwest's last mile facilities to access nearly all of its customers in every market across Qwest's region. This does not mean that Integra is not a facilities-based provider for these customers. For example, Integra often serves the customer using its own switch and collocation facilities, while leasing the loop from Qwest for the last mile piece.

1 competition. The gains to Qwest are wins in the marketplace and a potentially  
2 tarnished CLEC reputation. The end user customer demands reliable service and  
3 values met commitments. When the ability of a carrier to provide reliable service  
4 and meet its commitments diminishes, the end user customer reacts. The end user  
5 customer rarely has the patience to take sides when its service no longer works or  
6 when its order is not filled on time. The end user customer's experience is with its  
7 retail service provider, regardless of who is providing the various underlying  
8 network components. Faced with unsatisfactory service, the retail customer is  
9 naturally predisposed to migrate back to the historical, still dominant, incumbent  
10 provider. Thus, poor or diminished wholesale performance by Qwest necessarily  
11 negatively impacts the CLEC utilizing these facilities.

12 **Q. SHOULD CLECS BEAR THE BURDEN IN EACH INSTANCE TO**  
13 **DEMONSTRATE THAT PERFORMANCE DEGRADATION IS MERGER**  
14 **RELATED AND RESULTS IN HARM TO CLECS?**

15 A. No. Mr. Williams argues, "if CLECs believe they are harmed by issues outside of  
16 the Utah PAP, such as alleged merger-related harm, it is proper that they have the  
17 burden to bring forth the confirming evidence."<sup>21</sup> This argument attempts to shift  
18 the burden of proof regarding the effect of the merger on the public interest from  
19 the Joint Petitioners to the CLECs. Such a shift would effectively eviscerate the  
20 Joint CLECs' ability to enforce current wholesale service quality levels. The

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<sup>21</sup> Williams Rebuttal, p. 21, lines 16-18.

1 expense of filing a Commission complaint for each individual marker of a  
2 reduction in service quality would greatly exceed the cost of the particular  
3 individual problem, while the cumulative significant adverse affect of poor  
4 service quality harm CLECs and their end user customers. That is precisely why  
5 PAPs became a central part of Federal Communications Commission (“FCC”) approval of RBOC entry into interLATA long distance markets under Section 271  
6 of the Telecom Act. The key feature of a PAP, including the Utah PAP, is a  
7 system of self-executing remedies that is triggered automatically upon the  
8 RBOC’s failure to meet particular quality standards.  
9

10 Further, the Joint Petitioners, *not CLECs*, have requested this Commission  
11 approve their merger. As described in the Direct Testimony of Dr. Ankum, the  
12 Commission must determine whether the proposed merger is in the public  
13 interest; one criterion applied to determine whether the public interest is met is *the*  
14 *absence of harm*.<sup>22</sup> The Joint Petitioners bear the burden of demonstrating that  
15 the merger is in the public interest, prior to the merger being approved. In  
16 addition, the APAP, as proposed, contains provisions by which Qwest can seek to  
17 be excused from payments that under particular circumstances would be  
18 improper.<sup>23</sup> This will be discussed in more detail below. Mr. Williams’s proposal  
19 is to shift the burden to CLECs to prove harm from merger-related service quality

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<sup>22</sup> Direct Testimony of August H. Ankum, Ph.D., August 30, 2010, (“Ankum Direct”), pp. 14-19.

<sup>23</sup> See Exhibit Integra 1.1, APAP §§ 13.3 (circumstances where payments are not obligated) and 16.1.1 (removal of PID from APAP).

1 degradation, absent any established method or measurement, post merger. In  
2 other words, Mr. Williams is proposing that the Commission ignore the public  
3 interest standard when deciding whether wholesale service quality should be  
4 maintained, as promised by the Joint Petitioners.

5 **Q. DOES THE MINNESOTA SUPREME COURT DECISION IN THE**  
6 **WHOLESALE SERVICE QUALITY CASE LIMIT COMMISSION**  
7 **AUTHORITY WITH RESPECT TO ITS ABILITY TO REVIEW AND**  
8 **APPROVE MERGERS IN UTAH?**

9 A. Of course not. Mr. Williams suggests that the Commission does not have  
10 authority to require performance related merger conditions with payments for  
11 diminished performance because, “[i]n 2005, the State of Minnesota Supreme  
12 Court concluded that the Minnesota Commission could not levy self-executing  
13 consequences.”<sup>24</sup> Besides the basic fact that the Minnesota Supreme Court  
14 decision has no bearing on Utah, the referenced case had nothing to do with the  
15 Minnesota Commission’s authority to review and approve or deny a merger of  
16 companies it regulates. As discussed previously, the Commission must determine  
17 whether the merger is in the public interest. The Joint Petitioners have not argued  
18 that the Commission has no authority over the merger; rather, they have  
19 acknowledged the Commission’s authority.<sup>25</sup> Certainly, if the Commission

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<sup>24</sup> Williams Rebuttal, p. 19, lines 9-11.

<sup>25</sup> See Joint Petition for Expedited Approval of Indirect Transfer of Control, May 19, 2010, p. 2.

1 determines that the merger is not in the public interest, it can deny the merger.

2 The Commission's uncontested authority to *deny* the merger certainly includes the  
3 authority to *grant approval* subject to conditions that are intended to ensure the  
4 merger is consistent with the public interest as required by law.

5 The Joint CLECs have proposed the APAP as a merger condition to ensure that  
6 the merger does not result in a decline in wholesale service quality. Given the  
7 critical importance of quality wholesale service to competition, this merger would  
8 not be in the public interest without the APAP condition. Conditioning approval  
9 of the merger on the inclusion of the APAP allows the Joint Petitioners to accept  
10 the APAP<sup>26</sup> if they desire to go ahead with the merger. The logic contained in the  
11 Minnesota Supreme Court decision does nothing to suggest a limit to the  
12 Minnesota Commission's (or any Commission's) authority to deny a merger, or to  
13 condition approval of a merger based on the implementation of additional  
14 performance assurances.

15 Mr. Williams's own testimony supports a distinction between the Minnesota  
16 Supreme Court's rejection of the Minnesota Commission's wholesale service  
17 quality self-executing performance payments and the proposed APAP condition.  
18 As Mr. William interprets the implementation of the Utah PAP, it was the result

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<sup>26</sup> See Williams Rebuttal, p. 21, lines 7-9. Here he argues that Qwest volunteered to the Utah PAP in order to obtain 271 approval. Likewise, if the Commission determines the APAP will assist the Joint Petitioners in meeting the public interest standard, it can require the Joint Petitioners to volunteer to the APAP in order to obtain merger approval.

1 of a “Qwest voluntary agree[ment] in connection with obtaining Section 271  
2 relief.”<sup>27</sup> The Minnesota Supreme Court noted in the 2005 wholesale service  
3 quality case cited by Qwest,

4 In evaluating petitions to enter the long-distance market, the FCC relied on  
5 so-called Post-Entry Performance Assurance Plans, which were developed  
6 collaboratively by the regional Bell operating companies, including  
7 Qwest, competitive carriers, and state regulatory bodies, like the MPUC,  
8 to ensure the nondiscriminatory provision of wholesale local exchange  
9 services.<sup>28</sup>

10 However, in this docket, Mr. Williams is suggesting that the APAP would not be  
11 supportable if appealed.<sup>29</sup> Mr. Williams’s testimony on the Utah PAP and the  
12 APAP proposal actually bolsters rather than undercuts approval of the APAP  
13 condition. Just as Qwest in 2001 filed a petition to the various states and to the  
14 FCC for long distance authority, the Joint Petitioners in this proceeding have  
15 brought an application to the Commission for its approval of a proposed merger.  
16 The merger is voluntarily undertaken and a public interest determination is  
17 required for Commission approval. Under Qwest’s reasoning, the Commission  
18 has every right to consider the proposed performance measure condition, with  
19 self-executing remedies, as part of its merger consideration to ensure that the  
20 merger is in the public interest.

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<sup>27</sup> Williams Rebuttal, p. 9, lines 15-17.

<sup>28</sup> *In the Matter of Qwest’s Wholesale Service Quality Standards*, 702 N.W. 2d 246, 249 (August 18, 2005).

<sup>29</sup> Williams Rebuttal at p. 19, lines 9-20.

1 Even if one does not fully ascribe to Qwest's analysis of the Utah PAP and  
2 wholesale service quality dockets, Qwest's witness makes clear that the Joint  
3 Petitioners' "evidence" based on the Minnesota Supreme Court's decision is  
4 lacking. In fact, far from precluding the Commission's approval of the APAP  
5 condition, their testimony regarding the two performance dockets can only  
6 support, not undermine, the APAP condition.

7 **B. CLECS SHOULD BE PROTECTED FROM A POST MERGER**  
8 **REDUCTION IN WHOLESALE SERVICE QUALITY**

9 **Q. DOES PERFORMANCE DEGRADATION HARM CLECS?**

10 A. Yes. I discussed this issue previously in this testimony. While Mr. Williams  
11 erroneously argues that performance degradation may not result in harm, he also  
12 argues that performance degradation may be the result of non merger related  
13 factors,<sup>30</sup> or, if it is a result of merger related factors, that the payments aren't  
14 correlated with the magnitude of the harm.<sup>31</sup>

15 **Q. COULD PERFORMANCE DEGRADE POST MERGER FOR NON**  
16 **MERGER RELATED REASONS?**

17 A. Yes, this is possible, but the APAP already contains provisions to deal with most,  
18 if not all, of these situations. Mr. Williams raises several potential factors that  
19 could result in a degradation of performance that might not be merger related.

---

<sup>30</sup> Williams Rebuttal, p. 22, fn 11.

<sup>31</sup> Williams Rebuttal, p. 22, lines 13-15.

1        These factors are: seasonal variations,<sup>32</sup> external factors,<sup>33</sup> weather,<sup>34</sup> changes in  
2        the customer base,<sup>35</sup> CLEC operating practices,<sup>36</sup> and the comparison of the  
3        current month to a pre-merger annual average.<sup>37</sup> Section 13.3 of the proposed  
4        APAP reads as follows (emphasis added):<sup>38</sup>

5                Qwest **shall not be obligated to make payments** for any  
6                measurement if and to the extent that non-conformance for that  
7                measurement was the result of any of the following: 1) a Force  
8                Majeure event, including but not limited to acts of nature, acts of  
9                civil or military authority, government regulations, embargoes,  
10              epidemics, terrorist acts, riots, insurrections, fires, explosions,  
11              earthquakes, nuclear accidents, floods, work stoppages, equipment  
12              failure, power blackouts, volcanic action, other major  
13              environmental disturbances, unusually severe weather conditions,  
14              inability to secure products or services of other persons or  
15              transportation facilities or acts or omissions of transportation  
16              carriers; 2) an act or omission by a CLEC that is contrary to any of  
17              its obligations under its interconnection agreement with Qwest or  
18              under federal or state law; an act or omission by CLEC that is in  
19              bad faith. Examples of bad faith conduct include, but are not  
20              limited to: unreasonably holding service orders and/or applications,  
21              “dumping” orders or applications in unreasonably large batches,  
22              “dumping” orders or applications at or near the close of a business  
23              day, on a Friday evening or prior to a holiday, and failing to  
24              provide timely forecasts to Qwest for services or facilities when  
25              such forecasts are required to reasonably provide services or  
26              facilities; or 3) problems associated with third-party systems or

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<sup>32</sup> Williams Rebuttal, p. 22, fn 11.

<sup>33</sup> Williams Rebuttal, p. 22, fn 11.

<sup>34</sup> Williams Rebuttal, p. 23, line 13

<sup>35</sup> Williams Rebuttal, p. p. 23, lines 13-14.

<sup>36</sup> Williams Rebuttal, p. 23, line 14.

<sup>37</sup> Williams Rebuttal, p. 23, line 15.

<sup>38</sup> See Exhibit Integra 1.1, APAP § 13.3.

1 equipment, which could not have been avoided by Qwest in the  
2 exercise of reasonable diligence, *provided, however*, that this third  
3 party exclusion will not be raised in the State more than three times  
4 within a calendar year.  
5

6 This provision covers weather (part 1), external factors (part 3), and CLEC  
7 operating practices (part 2).

8 In addition, section 16.1.1 of the proposed APAP allows for a party to request  
9 removal of a PID or submeasure with evidence of no harm, non-Qwest related  
10 causes, or other factors. This section is copied below:<sup>39</sup>

11 Any party may submit a root cause analysis to the Commission  
12 requesting removal of a PID or sub-measure from the APAP. In the  
13 analysis and recommendations concerning the root cause analysis,  
14 the Commission is to consider, at a minimum, whether the root  
15 cause analysis provides evidence of no harm, the same harm as  
16 covered by other PID measures, non-Qwest related causes, or other  
17 factors which directly relate to the harm or circumstances specific  
18 to the PID or sub-measure being analyzed.

19  
20 **Q. HAVE THE JOINT PETITIONERS PROVIDED ANY EVIDENCE TO**  
21 **SHOW THE IMPACT OF THE FACTORS IT MENTIONS?**

22 A. No, most likely because these events are rare and quantifying them would  
23 demonstrate that they have very little impact on the PIDs and would not result in a  
24 statistical determination of degraded performance. First, many of the PIDs, such  
25 as Gateway Availability, Pre-order and Billing, which primarily involve systems,

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<sup>39</sup> See Exhibit Integra 1.1, APAP § 16.1.1.

1 would not be impacted by the factors listed by Qwest. Second, as described in my  
2 direct testimony,<sup>40</sup> service would have to substantially degrade from current levels  
3 before a payment would be made under the APAP. Third, as described above,  
4 there already exist provisions in the APAP to handle non-merger related changes  
5 to performance.

6 **Q. SHOULD CHANGES TO THE CLEC CUSTOMER BASE IMPACT THE**  
7 **JOINT PETITIONERS' ABILITY TO MAINTAIN WHOLESALE**  
8 **SERVICE QUALITY?**

9 A. No. The Utah PAP requires Qwest to provide services at parity and this does not  
10 change with changes in the CLEC customer base. Just as changes in the customer  
11 base do not impact the parity comparison, they would not impact a comparison of  
12 pre merger and post merger performance and Qwest provided no example to show  
13 why this might be the case. Further, as explained above, if for some reason Qwest  
14 believed that non-Qwest related causes, such as a change in the CLEC customer  
15 base, was the basis for deteriorating performance, section 16.1.1 of the proposed  
16 APAP could be used by Qwest to attempt to demonstrate that this is the case.

17 **Q. WHY IS IT APPROPRIATE TO COMPARE POST MERGER MONTHLY**  
18 **PERFORMANCE TO PRE MERGER ANNUAL AVERAGE**  
19 **PERFORMANCE?**

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<sup>40</sup> Direct Testimony of Douglas Denney, August 30, 2010, ("Denney Direct"), pp.12-14.

1 A. Comparing monthly performance to an average performance over multiple  
2 months is common in Qwest's performance assurance plans.<sup>41</sup> This type of  
3 comparison balances the need for a stable and predictable standard (i.e. annual  
4 pre-merger average performance) with the need for relatively quick feedback (i.e.  
5 monthly payments) so that an affected company may quickly respond to  
6 substandard wholesale service quality performance. In addition, it is important to  
7 keep in mind that the APAP uses a statistical test to determine whether there are  
8 significant variations from prior performance. Pre merger average performance is  
9 not used as a benchmark, where any performance below that level triggers a  
10 payment. Only performance that deviates significantly from pre merger  
11 performance would trigger a payment under the APAP.

12 **Q. HAVE THE JOINT PETITIONERS PROPOSED ANY APAP LANGUAGE**  
13 **CHANGES TO ADDRESS THEIR CONCERNS OVER NON-MERGER**  
14 **RELATED FACTORS?**

15 A. No. As explained previously, though the Joint Petitioners claim wholesale service  
16 quality is important and that the CLEC experience will get better, they have no  
17 proposals to simply assure that wholesale service quality doesn't degrade if the  
18 merger is approved.

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<sup>41</sup> See for Example Utah Qwest Utah SGAT Seventh Revision, Exhibit K, February 4, 2009 ("UT PAP"), [http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT\\_7th\\_revised\\_6th\\_amend\\_Exhibit\\_K\\_020409.pdf](http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT_7th_revised_6th_amend_Exhibit_K_020409.pdf) which compares monthly CLEC performance to the prior six month average Qwest performance.

1

2       **C.     QWEST IS NOT CURRENTLY PROVIDING SUPERIOR**  
3       **SERVICE TO CLECS**

4   **Q.     IS QWEST CURRENTLY PROVIDING SUPERIOR PERFORMANCE TO**  
5   **CLECS?**

6   A.    No. Mr. Williams claims that Qwest is currently providing CLECs with superior  
7       service and thus concludes, “if performance were to degrade below 2009’s  
8       superior levels while still maintaining nondiscriminatory levels, there would still  
9       be no basis for automatically claiming harm.”<sup>42</sup> Mr. Williams is wrong on two  
10       counts. First, there is no evidence that Qwest is providing CLECs with superior  
11       service. This will be discussed in more detail below. Second, the purpose of the  
12       APAP is not to measure discrimination, as is measured in the Utah PAP, but to  
13       measure performance pre and post merger. The Utah PAP was put into place in  
14       conjunction with the FCC’s 271 Approval Order to “provide assurance that the  
15       local market will remain open after Qwest receives section 271 authorization...”<sup>43</sup>  
16       The APAP is proposed as part of a *no harm*, public interest test of the proposed  
17       merger between CenturyLink and Qwest. The plans are different because the  
18       issues being addressed are different. Mr. Williams appears to be suggesting that

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<sup>42</sup> Williams Rebuttal, P. 24, lines 10-12.

<sup>43</sup> Memorandum Opinion and Order, *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Adopted December 20, 2002 (“FCC 271 Approval Order”), ¶ 440.

1 if the Joint Petitioners, post merger, were to degrade both retail and wholesale  
2 service quality, the CLECs would not be impacted. This is wrong, as I explained  
3 earlier in this testimony, and is directly contradictory of the commitments made  
4 by CenturyLink witness Mr. Ferkin when he claimed, “CenturyLink has a long  
5 history of successfully executing ILEC transactions, a fact that underscores that  
6 the Company fully understands the importance of the customer, and is capable of  
7 managing operating risks, and delivering *superior service* through these types of  
8 combinations.”<sup>44</sup> (emphasis added)

9 **Q. WHY ARE QWEST’S CLAIMS OF SUPERIOR PERFORMANCE TO**  
10 **CLECS INACCURATE?**

11 A. First, the Act requires that incumbent carriers provide CLECs interconnection that  
12 is “at least equal in quality” to that provided to their subsidiaries and retail  
13 customers. 47 U.S.C. § 251(c)(2)(C) (2000).<sup>45</sup> Thus, if Qwest truly were

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<sup>44</sup> Rebuttal Testimony of Jeremy Ferkin, September 30, 2010 (“Ferkin Rebuttal”), p. 47, lines 10-13.

<sup>45</sup> Section 251(c)(2)(C) of the Act provides:

(c) Additional obligations of incumbent local exchange carriers

\* \* \* \*

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –

\* \* \* \*

(C) that is *at least equal in quality to* that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection[.]

(Emphasis added).

1 providing CLECs with service better than it provides to its retail customers,  
2 Qwest would merely be complying with the law. Mr. Williams's suggestion that  
3 previous compliance with the law should allow the Joint Petitioners to degrade  
4 wholesale service quality, post merger, is concerning.

5 Second, Qwest's methodology for its *superior service* calculation is flawed.<sup>46</sup>  
6 Qwest's methodology for its superior service calculation overstates Qwest's  
7 performance for benchmark measures and ignores that CLECs mainly serve  
8 business customers with Qwest UNEs. Consider OP-3, Installation Commitments  
9 Met for 2-wire analog loops. This measure has a benchmark standard that is set at  
10 90%. Qwest's actual performance over the past year for 2-wire analog loops is  
11 97.6%, which translates to about 11 missed commitments for 2-wire analog loops  
12 per month. Qwest would determine that this performance is superior, based on its  
13 definition of superior service. However, for retail business services, Qwest  
14 performance is 99.2%, about 3 times better than it provides to CLECs. In fact,  
15 considering all of the retail products included in the performance plan, it is  
16 evident that Qwest routinely performs around 99% for itself. Qwest's  
17 determination that it is providing superior service to CLECs is false. Another  
18 problem with Qwest's calculation is that many of the parity measures compare

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<sup>46</sup> Qwest explained this calculation in recent testimony related to the Idaho PAP. Direct Testimony of Michael G. Williams, In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its Statement of Generally Available Terms and Conditions, Case No. QWE-T-08-04, pp. 23-25.

1 UNE loops with a combined residential and business retail measure, though most  
2 CLECs are using unbundled loops for business customers. Qwest's retail  
3 performance for business customers tends to exceed its performance for  
4 residential customers. Thus, by including residential customers in the  
5 comparison, it is easier for Qwest to pass a statistical test and falsely conclude  
6 that it is providing superior service, when in fact it isn't.

7 **Q. DOES THE COMMISSION NEED TO DETERMINE WHETHER OR NOT**  
8 **QWEST IS PROVIDING SUPERIOR SERVICE IN ORDER TO REQUIRE**  
9 **THE APAP AS A MERGER CONDITION?**

10 A. No. The comparison relevant to the APAP is how the Joint Petitioners' pre  
11 merger performance compares to its post merger performance. The intent of this  
12 proposal is to assure that wholesale service quality does not degrade as a result of  
13 the merger and as a result CLECs are not harmed, in this respect, as a result of the  
14 merger.

15  
16 **D. THE CLEC PROPOSED APAP CAN BE USED TO MEASURE**  
17 **WHOLESALE SERVICE DEGRADATION**

18 **Q. CAN THE PIDS FROM THE UTAH PAP BE USED TO MEASURE**  
19 **SERVICE DEGRADATION?**

1 A. Yes. Mr. Williams claims that the PIDs contained in the Utah PAP are not and  
2 cannot be designed to measure service degradation.<sup>47</sup> He further argues, “the  
3 PIDs were defined to measure performance against parity or benchmarks, not to  
4 properly identify performance degradation.”<sup>48</sup> He argues that, “the Utah PAP  
5 PID's business rules define the dimensions of transactions (e.g., orders or trouble  
6 reports) that are to be included and excluded, so as to frame a reasonable  
7 comparison for statistical parity evaluations,”<sup>49</sup> and “the PIDs' lists of inclusions  
8 and exclusions for parity evaluations are different than those that would be  
9 required to properly identify performance degradations and to exclude factors that  
10 would otherwise be accounted for in the parity evaluation itself.”<sup>50</sup> However, Mr.  
11 Williams does not provide a single example to demonstrate that this might be the  
12 case. Instead he simply throws up his hands and declares, “it is not possible for  
13 the PIDs to be defined and implemented in a manner that would permit them to  
14 account for all such factors.”<sup>51</sup>

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<sup>47</sup> Williams Rebuttal, p. 24, line 13.

<sup>48</sup> Williams Rebuttal, p. 25, lines 5-7.

<sup>49</sup> Williams Rebuttal, p. 7, lines 13-16.

<sup>50</sup> Williams Rebuttal, p. 7, lines 13-18.

<sup>51</sup> Williams Rebuttal, p. 25, lines 15-17.

1 Despite these claims, most exclusions are fairly obvious and have nothing  
2 whatsoever to do with a parity or benchmark comparison. For example, the  
3 exclusions for OP-3, installation commitments met, are as follows:<sup>52</sup>

- 4 • Disconnect, From (another form of disconnect) and Record order types.
- 5 • Due dates missed for standard categories of customer and non-Qwest
- 6 reasons. Standard categories of customer reasons are: previous service at
- 7 the location did not have a customer-requested disconnect order issued, no
- 8 access to customer premises, and customer hold for payment. Standard
- 9 categories of non-Qwest reasons are: Weather, Disaster, and Work
- 10 Stoppage.
- 11 • Records involving official company services.
- 12 • Records with invalid due dates or application dates.
- 13 • Records with invalid completion dates.
- 14 • Records with invalid product codes.
- 15 • Records missing data essential to the calculation of the measurement per the
- 16 PID.
- 17

18 These types of exclusions are typical of what is found in other PIDs. They have  
19 nothing to do with whether a measure will be used in a parity or benchmark  
20 comparison, nor do they determine the timeframe in which the comparison will  
21 take place. They are simply descriptors that allow a true apples-to-apples  
22 comparison of performance results, regardless of the statistical calculation that  
23 will be applied.

24 **Q. DOES QWEST RELY UPON CHANGES IN PERFORMANCE TO CLAIM**  
25 **IMPROVED WHOLESALE QUALITY OF SERVICE?**

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<sup>52</sup> Service Performance Indicator Definitions, Qwest Utah SGAT Seventh Revision, Eighth Amended Exhibit B February 4, 2009 (“UT PID Documentation”), p. 39.

1 A. Yes. Qwest talks of declining Utah PAP payments<sup>53</sup> and suggests that it is  
2 evidence of the “robust market that provides the meaningful incentives that will  
3 assure CLECs of continuing wholesale service quality, regardless of the existence  
4 of the current merger transaction.”<sup>54</sup> Mr. Williams does admit that, “the results  
5 produced in accordance with the PIDs can display trends,”<sup>55</sup> and further admits  
6 that, “the Utah PAP performance results do produce monthly ‘indications’ of  
7 performance levels (as the “PID” acronym for ‘performance indicator definitions’  
8 implies).”<sup>56</sup> Apparently it is the obligation to actually do something in response  
9 to these trends, if they point to declining wholesale service quality, that the Joint  
10 Petitioners object to.

11 **E. THE UTAH PAP IS NOT SUFFICIENT TO PROTECT CLECS**  
12 **AGAINST A POST MERGER DECLINE IN WHOLESALE**  
13 **SERVICE QUALITY**

14 **Q. IS THE UTAH PAP SUFFICIENT TO PROTECT CLECS AGAINST A**  
15 **POST MERGER DETERIORATION IN WHOLESALE SERVICE**  
16 **QUALITY?**

17 A. No. The Utah PAP serves a crucial function, but does not protect against post  
18 merger service degradation. Mr. Williams argues that CLEC concerns are

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<sup>53</sup> Williams Rebuttal, p. 15, lines 11-13.

<sup>54</sup> Williams Rebuttal, p. 16, lines 10-13.

<sup>55</sup> Williams Rebuttal, p. p. 25, line 21 – p. 26, line 1..

<sup>56</sup> Williams Rebuttal, p. 26, lines 7-9.

1 “irrelevant, because the merger transaction does nothing to change the Utah PAP  
2 and wholesale service quality rules,”<sup>57</sup> but this misses the point.

3 As described in my rebuttal and direct testimony,<sup>58</sup> the APAP and the Utah PAP  
4 are separate plans designed to solve two separate issues. The plans are meant to  
5 work in conjunction with one another, not in place of or opposed to one another.  
6 Under the Utah PAP, wholesale service quality could deteriorate post merger and  
7 never trigger a payment as long as retail service quality deteriorates in tandem.  
8 This outcome clearly is not in the public interest and does not serve Utah  
9 consumers. Though the Joint Petitioners have professed to care about service  
10 quality and have promised high quality performance post merger, they are  
11 unwilling to actually commit to any plan that would solidify that promise. The  
12 proposed APAP will help assure that the merged company maintains wholesale  
13 service quality at current levels and will create disincentives for the merged  
14 company to achieve synergies at the expense of its competitors through a  
15 deterioration of its wholesale market operations.

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<sup>57</sup> Williams Rebuttal, p. 2, lines 14-18.

<sup>58</sup> Denney Direct, pp. 9-10.

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of Qwest Communications  
International, Inc. and CenturyTel, Inc. for  
Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company, LLC, and Qwest LD Corporation

DOCKET NO. 10-049-16

**SUPPLEMENTAL TESTIMONY OF**

**TIMOTHY J GATES**

**ON BEHALF OF**

tw telecom of utah llc; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC  
Business Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon  
Telecom of Utah, Inc.; and Level 3 Communications, LLC

**Exhibit Joint CLECs 2SP**

**CONFIDENTIAL VERSION**

**SUBJECT TO PROTECTIVE ORDER IN CASE NO. 10-049-16**

**October 28, 2010**

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### **Exhibits**

Exhibit Joint CLECs 2SP.1 – Ex parte letter of Cbeyond, Integra, and Socket Telecom in FCC WC Docket No. 10-110, dated October 7, 2010.

Exhibit Joint CLECs 2SP.2 – PAETEC Motion to Enforce Settlement, Before the Iowa Utilities Board, Docket SPU-2010-0006

Exhibit Joint CLECs 2SP.3 – PAETEC Reply in Support of Its Motion to Enforce Settlement, Before the Iowa Utilities Board, Docket SPU-2010-0006

Exhibit Joint CLECs 2SP.4 – Hearing Transcripts from Minnesota Docket No. P-421, et. al./PA-10-456

**INTRODUCTION**

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

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

**Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT  
TESTIMONY IN THIS PROCEEDING ON AUGUST 30, 2010 AND  
SURREBUTTAL TESTIMONY ON OCTOBER 14, 2010?**

A. Yes.

**Q. ON WHOSE BEHALF ARE YOU FILING THIS SUPPLEMENTAL  
SURREBUTTAL TESTIMONY?**

A. My testimony is being filed on behalf of a number of CLECs: **tw telecom of utah  
llc**; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business  
Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon  
Telecom of Utah, Inc.; and Level 3 Communications, LLC. (hereafter collectively  
referred to in my testimony as "Joint CLECs").

**PURPOSE OF TESTIMONY**

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

A. The purpose of my testimony is to identify and discuss some of the problems and  
unanswered questions with the Company-DPU Proposed Partial Party

Settlement,<sup>1</sup> including the failure to seek input from any CLECs in negotiating the settlement. My testimony explains how the proposed settlement fails to adequately address the serious wholesale and competition-related risks associated with the proposed merger. As I discuss below, approving the merger with the limited conditions in the Company-DPU Proposed Partial Party Settlement would fail to protect the public interest and competition.

## **DISCUSSION**

### **I. EXCLUSION OF CLEC INTERVENORS FROM SETTLEMENT NEGOTIATIONS**

**Q. DOES THE PROPOSED SETTLEMENT ENTERED INTO BY THE DIVISION OF PUBLIC UTILITIES (“DPU” OR “DIVISION”) AND THE JOINT APPLICANTS RESOLVE THE WHOLESALE AND COMPETITION-RELATED PROBLEMS ASSOCIATED WITH THE PROPOSED TRANSACTION?**

**A.** No. The Company-DPU Proposed Partial Party Settlement<sup>2</sup> raises more questions than it answers, and certainly does not maintain the status quo or provide the certainty required by the competitive carriers and their customers. Further, as will

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<sup>1</sup> Settlement and Agreement and Stipulation of the Joint Applicants and Utah Division of Public Utilities, Docket No. 10-049-16, October 14, 2010 (“Company-DPU Proposed Partial Party Settlement” or “proposed settlement”). The Joint Applicants have also filed proposed settlements with the Office of Consumer Services and Salt Lake Community Action Program, which are not addressed in my testimony.

<sup>2</sup> The Company-DPU Proposed Partial Party Settlement requires approval by the Commission and has not yet been approved.

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*F. Wholesale Service Quality – Performance Indicator Definitions  
(PIDs) and Performance Assurance Plan (PAP)*

**Q. PLEASE ADDRESS THE TREATMENT OF THE UTAH  
PERFORMANCE ASSURANCE PLAN (“UPAP”) AND ADDITIONAL**

**PERFORMANCE ASSURANCE PLAN (“APAP”) IN THE COMPANY-  
DPU PROPOSED PARTIAL-PARTY SETTLEMENT.**

A. The Company-DPU Proposed Partial-Party Settlement states:

Following the Closing Date, Qwest Corporation (pre-merger or post-merger “Qwest” or “Qwest Corporation”) shall not discontinue the use of the Utah Performance Assurance Plan (“UPAP”) for 36 months after the transaction closing. The Parties agree that the UPAP does not automatically terminate at the expiration of the 36 months, but that the Company may, before the expiration of the 36 months, initiate a proceeding to modify or discontinue the UPAP after the expiration date of the 36-month term. CenturyLink and Qwest Corporation do not waive the right to seek modifications under the terms and conditions outlined in the Qwest UPAP. Qwest Corporation shall continue to provide the monthly reports of wholesale performance metrics to Staff and to each CLEC as set forth in the UPAP, unless modified under the terms and conditions outlined in the UPAP. Within three (3) months of the merger close, the Company will file a motion in Docket No. 09-049-60 with the Commission to limit the scope of that proceeding to consider only the elimination of the “Tier 2” payments, along with any other mutually agreed upon changes between the parties in that proceeding. The Division agrees to support the elimination of the Tier 2 payments.<sup>125</sup>

This proposed condition offers inadequate protections for wholesale service quality. It is limited to the UPAP and does not address other wholesale performance requirements, as does the Joint CLECs’ Condition 4 for Qwest. Despite the critical importance of service quality, when the similar Minnesota commitment was explored at the Minnesota hearing, the Minnesota DOC witness testified regarding retail and wholesale service quality that “there was *no*

<sup>125</sup> Company-DPU Proposed Partial-Party Settlement at pp. 5-6, §III(B)(4).

1       *discussion* about whether . . . they needed to be beefed up if there was a  
2       merger.”<sup>126</sup>

3       The Joint CLECs’ recommended Condition 4 requires that the performance  
4       assurance plans that currently exist in the legacy Qwest ILEC territory will remain  
5       in place for a minimum of five years – the time period over which the Joint  
6       Applicants have claimed the synergy savings from the merger will be  
7       accomplished.<sup>127</sup> The Joint CLECs’ Condition 4 also establishes a mechanism to  
8       assure that the merged company’s wholesale performance in the legacy Qwest  
9       ILEC territory does not deteriorate compared with pre merger performance (the  
10      APAP). These conditions – which are notably absent from the proposed  
11      settlement – will help assure that the Merged Company maintains wholesale  
12      service quality at current levels and creates disincentives for the Merged  
13      Company to achieve synergies at the expense of its competitors through a  
14      deterioration of its wholesale market operations.

15      **Q. DOES THE PROPOSED LANGUAGE AT LEAST MAINTAIN THE**  
16      **EXISTING UPAP?**

17      A. No. The proposed settlement not only omits the appropriate incentives but also it  
18      appears to allow the Merged Company to discontinue the MPAP after 3 years,  
19      even though CenturyLink’s own projection is that changes to achieve synergies

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<sup>126</sup> MN Hrg. Tr. Vol. 1, p. 237, lines 12-24 (emphasis added).

<sup>127</sup> Direct Testimony of Jeff Glover on behalf of CenturyLink, Inc., Docket No. 10-049-16, May 27, 2010 (“Glover Direct”) at p. 11, lines 9-11.

1 are projected to occur over a longer time period.<sup>128</sup> To further water down this  
2 commitment in Utah, the proposed commitment contains language not in the  
3 Minnesota commitment which would expressly allow the Merged Company to  
4 initiate a proceeding *before* the 36-month time-frame to seek to discontinue or  
5 modify the UPAP. The Joint Applicants should not be seeking elimination of the  
6 UPAP at the same time it is making changes to its wholesale operations in the  
7 pursuit of merger-related synergy savings, but that is precisely what the proposed  
8 commitment in Utah would permit.

9 Another significant way in which the proposed commitment would weaken the  
10 UPAP is that it expressly allows Qwest to seek elimination of Tier 2 payments –  
11 thereby reducing Qwest’s financial exposure for providing sub-standard  
12 wholesale service quality – and states that DPU Staff will support Qwest’s  
13 request. This is a move in the wrong direction. Qwest should have more (not  
14 less) at stake in relation to wholesale service quality to ensure that that decisions  
15 the Merged Company makes to integrate the companies and pursue merger  
16 synergy savings does not result in service quality deterioration. This is why the  
17 Joint CLECs’ proposed APAP is needed.

18 **Q. IS IT CLEAR WHAT IT MEANS TO “NOT DISCONTINUE THE UPAP”?**

19 **A.** No. It is unclear what an agreement not to discontinue the UPAP means. The  
20 UPAP contains provisions by which it can be modified or changed. There is no

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<sup>128</sup> Glover Direct at p. 11, lines 9-11.

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

**Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corporation**

DOCKET NO. 10-049-16

**SUPPLEMENTAL RESPONSE TESTIMONY**

OF

**MICHAEL G. WILLIAMS**

**QWEST CORPORATION**

**November 2, 2010**

**IDENTIFICATION OF WITNESS**

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

**A.** My name is Michael Williams. My business address is 1801 California Street, Denver, Colorado 80202. I am a Senior Director of Public Policy for Qwest.

**Q. DID YOU FILE REBUTTAL TESTIMONY ON SEPTEMBER 30, 2010 IN THIS PROCEEDING REGARDING WHOLESALE SERVICE QUALITY ON BEHALF OF QWEST?**

**A.** Yes, I did.

**Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL RESPONSE TESTIMONY?**

**A.** My testimony responds to the supplemental testimony of Timothy Gates (on behalf of the "Joint CLECs") wherein he objects to the settlement agreement that the Joint Applicants and the Utah Division of Public Utilities ("the DPU" or "the Division") entered into on October 14, 2010 ("the DPU Settlement"). Overall, he finds fault with the fact that the Settlement does not include the Joint CLECs' proposed conditions, including their proposed "additional performance assurance plan" (or "APAP"), and he continues to assert that the Commission should adopt the Joint CLECs' APAP concept (which was part of the CLECs' proposed Condition 4).

**Q. ON PAGES 71 AND 72 OF HIS SUPPLEMENTAL TESTIMONY, WHAT DOES**

**MR. GATES ARGUE ABOUT THE DPU SETTLEMENT, AND WHAT IS YOUR RESPONSE?**

A. Mr. Gates refers to the provision in the DPU Settlement dealing with Qwest's Utah Performance Assurance Plan ("UPAP") and claims:

This proposed condition offers inadequate protections for wholesale service quality. It is limited to the UPAP and does not address other wholesale performance requirements, as does the Joint CLECs' Conditions 4 and 5 for Qwest.

In response, overall, Mr. Gates completely ignores the enormous competitive pressures on Qwest and the combined company that are more than sufficient to protect wholesale service quality. He also ignores the Commission's wholesale service quality rules, R746-365. There is simply no need for a plan such as the one that the Joint CLECs recommend to address a theoretical decline in service quality as a result of the merger.

**Q. FURTHER, ON PAGE 72 OF HIS TESTIMONY, MR. GATES ARGUES THAT THE CLECs' CONDITION 4 IS "NOTABLY ABSENT FROM THE PROPOSED SETTLEMENT...." WHY WOULDN'T IT MAKE SENSE FOR THE JOINT APPLICANTS TO AGREE TO INCLUDE THE PROPOSED APAP IN THE SETTLEMENT?**

A. In addition to the many reasons that I state in my rebuttal testimony, which I will not repeat here, the APAP would substantially penalize Qwest *even* if the combined company's post-merger performance levels were *exactly the same* as the pre-merger performance levels that form the basis for the Joint CLECs' APAP concept (May 2009-April 2010).

1 **Q. DO YOU HAVE REAL-WORLD FACTS THAT DEMONSTRATE THAT THE**  
2 **COMBINED COMPANY WOULD HAVE TO PAY SUBSTANTIAL PENALTIES**  
3 **POST-MERGER EVEN IF POST-MERGER PERFORMANCE LEVELS WERE**  
4 **EXACTLY THE SAME AS PRE-MERGER LEVELS IF THE COMMISSION**  
5 **WERE TO ADOPT THE APAP CONCEPT IN UTAH?**

6 A. Yes. I have analyzed actual wholesale service performance for Utah to show that, even if  
7 service levels in the first 12 months post-merger were to remain *exactly the same* in every  
8 way to pre-merger service levels, the proposed APAP's payments would unfairly  
9 penalize the combined company despite no "performance degradation" or "performance  
10 deterioration." For example, if the merger transaction had closed at the end of 2009, and  
11 if the wholesale service quality for the post-merger year (i.e., 2010) were exactly the  
12 same as 2009, the proposed APAP would penalize Qwest more than *seven times* the  
13 amount Qwest actually paid in 2009 under the UPAP. These penalties would be in  
14 addition to the penalties that Qwest would have paid under the UPAP.

15 **Q. WHAT ARE THE FACTS YOU USED IN REACHING THIS CONCLUSION?**

16 A. I directed an analysis that was based on actual Qwest performance data for the year 2009,  
17 as used in the UPAP. This analysis applied the proposed APAP provisions to the data,  
18 for both the pre-merger and post-merger periods. In other words, the analysis examined  
19 how the APAP would treat a situation in which pre-merger service levels were exactly  
20 like 2009, *and* post-merger performance, month by month and transaction by transaction,  
21 were also exactly like 2009.

1   **Q.   WHAT DID YOU FIND?**

2   A.   I found that if both post-merger and pre-merger service levels were identical and based  
3       on 2009 data, the APAP would have penalized Qwest an additional **\$387,828** – again, for  
4       absolutely no “degradation” or “deterioration” in performance. In contrast, as I reported  
5       in my rebuttal testimony,<sup>1</sup> due to the significant improvement in Qwest’s performance  
6       over the past five years, Qwest actually paid less than \$55,000 in QPAP payments in  
7       Utah for 2009 (less than 20% of the payments five years earlier in 2004).<sup>2</sup> Thus, the  
8       APAP would have penalized Qwest over *seven times* as much the as the QPAP, based on  
9       2009 data, even though the pre- and post-period performance were *exactly the same*.  
10      (Please see my Exhibit MGW-S1 for a summary of this analysis and an example of its  
11      calculations.) Moreover, because the CLECs’ APAP concept contemplates a double  
12      recovery (i.e., the CLECs would receive payment under *both* the UPAP and the APAP),  
13      CLECs in this hypothetical year would have received total payment of \$438,528. This  
14      amounts to a substantial windfall, especially given the high-quality performance that  
15      Qwest provided in 2009.

16   **Q.   WHAT EXPLAINS THIS LARGE APAP PENALTY AMOUNT, EVEN THOUGH**  
17       **POST- AND PRE-MERGER PERFORMANCE LEVELS WERE EXACTLY THE**  
18       **SAME IN THE ANALYSIS?**

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<sup>1</sup> Williams Rebuttal Testimony, September 30, 2010, page 15.

<sup>2</sup> This analysis looked only at 2009 data, and so it incorporated only a portion of the escalation provisions that are designed into both the QPAP and the proposed APAP (i.e., the portion that would have existed if the starting point were January 1, 2009). Thus, actual payments of the proposed APAP, if it had been in effect before and since 2009, would have been even larger in comparison.

1 A. Even if one assumes that “performance degradation” or “performance deterioration” is an  
2 appropriate standard under the Telecommunications Act (which I do not, and which Mr.  
3 Denney admitted on the witness stand is not a standard under the Act)<sup>3</sup>, the CLECs’  
4 proposed APAP concept does not measure whether performance in fact “degrades” or  
5 “deteriorates.” As I explained in my rebuttal testimony, one of the primary causes of the  
6 high APAP payments is the lack of a proper measurement of “performance degradation”  
7 or “performance deterioration” (or any such measurement or definition, for that matter).<sup>4</sup>  
8 By comparing a single month of post-merger performance against an average for the  
9 entire pre-merger year, it is inevitable that some months will be worse than the average,  
10 and others better, even when comparing a given year’s performance with itself.<sup>5</sup> Then,  
11 the “escalation” provisions of the proposed APAP, which were drawn from the QPAP,  
12 nevertheless exacerbate the problem. (See the APAP, Exhibit Integra 1.1 to the Direct  
13 Testimony of Douglas Denney, at section 6.2.) Further, in the categories with the largest  
14 APAP payments, the very fact that Qwest’s performance has been consistently strong, as

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<sup>3</sup> See the “rough” transcript of the October 27, 2010 session of the hearing, at pages 31-32, attached as Exhibit MGW-S2 to this supplemental testimony. Because the October 26-27 hearing was just a few days ago, the Joint Applicants have not yet received an “official” transcript of the hearing, but the court reporter graciously provided a rough draft over the weekend. Although the header says “do not cite,” the Joint Applicants’ attorney has asked the court reporter if she had any objections to limited use of the transcript for today’s supplemental testimony, and she has assured us that she does not have any such objections under the circumstances.

<sup>4</sup> At the hearing, Mr. Denney admitted that the APAP concept did not define “performance degradation” or “performance deterioration” at all in the 18-page APAP document. (See Exhibit MGW-S2, at pp. 40-41.) He also admitted that the APAP did not define what would be a statistically “significant” difference between pre-merger performance and post-merger performance for purposes of penalties, but he defended the lack of any such definition by saying that “significant” was defined “in a sense.” (*Id.*, pp. 60-61.)

<sup>5</sup> See Exhibit MGW-S2, at pages 57-58, where Mr. Denney admitted that some months will be worse than the average, and others better, and that this is why statisticians like to use a larger sample than a smaller sample to obtain a more accurate result.

1 I testified in my rebuttal testimony (page 24), causes the statistical procedures to  
2 effectively become over-precise, resulting in declaring even the tiniest differences to be  
3 statistically significant.<sup>6</sup> When multiplied by the payment increments and the escalation  
4 factors in the APAP concept, this would result in large payments under the proposed  
5 APAP, even though the performance levels for the “post-merger” example were exactly  
6 the same as for the “pre-merger” period. This evidence demonstrates that the proposed  
7 APAP’s structure is fatally flawed. By penalizing the merged company significantly,  
8 even if service remains at its currently-high levels, the APAP fails to advance even the  
9 CLECs’ proposed purpose of providing an “incentive” for the company to maintain its  
10 current service levels (i.e., it penalizes even those very performance levels that are the  
11 same as pre-merger). Thus, the fatally-flawed APAP concept has no proper place in any  
12 reasonable settlement agreement (or in this proceeding, for that matter).

13 **Q. AT THE HEARING ON OCTOBER 27, 2010, MR. DENNEY PROPOSED A**  
14 **MODIFICATION TO HIS APAP. WHAT WAS THAT MODIFICATION, AS**  
15 **YOU UNDERSTAND IT?**

16 **A.** Mr. Denney proposed some additional language to the APAP that he argued would

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<sup>6</sup> By statistical “over precision,” I mean either that the performance is superb, or nearly perfect, in the case of a percentage measurement, and/or that there is very little variation in the data. Although the statistical results can be calculated in these instances, they tend to magnify miniscule differences in performance and, while finding significance from a statistical point of view, certainly do not find substantial or meaningful differences in the data. These miniscule statistical differences, when combined with large volumes (for example, billing measurements) in the APAP payment calculations, can result in inordinately high payments that, when looking at the data on which they are based, are completely unrealistic. This problem is exacerbated by the fact that the APAP statistical test is improperly designed, by comparing *one month* against a *twelve month average*, as I have explained. The effects of this design flaw, by itself, contributes to penalty payments by the combined company even where post-merger performance is exactly the same as in the pre-merger year.

1 mitigate its payment problems. Specifically, according to the rough transcript (Exhibit  
2 MGW-S2, at pages 17-18), he said:

3 APAP remedy payments to a CLEC for a specific PID in some measure will not  
4 occur until the remedy payments exceed the remedy credit. And for each CLEC  
5 and each PID, product, and disaggregation in the APAP a remedy credit will be  
6 calculated as described in this paragraph. The remedy credit is calculated as  
7 follows for each PID, product, and disaggregation. For each month [~~on year prior~~  
8 ~~to~~] following<sup>7</sup> the merger filing date monthly performance will be compared to  
9 the average wholesale performance provided by Qwest to each CLEC for one year  
10 prior to the merger filing date. If monthly performance as described in the  
11 preceding sentence would result in a remedy payment calculated using the  
12 methodology in the APAP to determine remedy payments, then the calculated  
13 amount will be a remedy credit for the PID, product, and disaggregation.  
14

15 My interpretation of this testimony is that the modification of the proposed APAP would  
16 calculate a "remedy credit" for each UPAP measurement, and then not require an APAP  
17 payment until and unless the payment exceeded the remedy credit amount. As  
18 I understand it, the remedy credit would be triggered on the same basis as the payment  
19 amounts, except that they would be triggered by performance that was better than, rather  
20 than degraded below, the benchmark, pre-merger year's average performance.

21 **Q. IS THE PROPOSED APAP, IF MODIFIED WITH THE "REMEDY CREDIT"**  
22 **THAT MR. DENNEY PROPOSED DURING HIS HEARING SUMMARY ON**  
23 **OCTOBER 27, 2010, REASONABLE?**

24 **A.** No. First, I believe it is much too late, months after the Joint CLECs first proposed their  
25 APAP concept, and unfair, to try to remedy one of the most punitive aspects of the

---

<sup>7</sup> The words, "on year prior to," were likely intended to read "following," in order to match the original timeframes built into the proposed APAP and to provide for the comparison of post-merger performance levels with pre-merger performance levels.

1 concept, "on the fly" on the witness stand of the hearing. It was almost if Mr. Denney  
2 was trying to negotiate, like in a settlement conference, by changing the language of the  
3 Joint CLECs' condition. This is certainly improper, and highly unusual. Therefore, it is  
4 not reasonable.

5 However, even with this eleventh-hour proposed "remedy," this would not have changed  
6 the fact that the proposed APAP would still significantly penalize the Company, even  
7 when post-merger performance levels were exactly equal to pre-merger performance  
8 levels, using the same kind of analysis that I described above.<sup>8</sup>

9 **Q. ON WHAT DO YOU BASE YOUR CONCLUSION?**

10 A. After hearing Mr. Denney describe his modification, I expanded the analysis that I  
11 described above to show what the penalty levels of the modified proposed APAP would  
12 be for the same situation as described above. I found that, instead of almost \$390,000,  
13 the proposed APAP would still have levied penalties of \$300,000, in addition to the  
14 nearly \$55,000 from the UPAP – again, even though performance levels were exactly the  
15 same post-merger.

16 **Q. COULDN'T THERE BE SOME OTHER MODIFICATION OF THE APAP THAT**  
17 **MIGHT HAVE MADE IT PALATABLE TO INCLUDE IN THE SETTLEMENT**

---

<sup>8</sup> It was as if Mr. Denney was attempting to "negotiate" at a settlement conference the flaws in the APAP concept, during the evidentiary hearing of this matter. Although I am not an attorney, this eleventh-hour attempt to "save" the APAP proposal does not seem appropriate, especially given the two months that the proposal has been part of this case, and the almost 200 pages of pre-filed and hearing testimony on this subject by three witnesses (Mr. Denney, Mr. Gates and I). I believe it is much too late for such tactics. Of course, even if the revised or modified APAP was the APAP that was proposed, it has fatal problems for the many reasons I have testified to here, and in my rebuttal testimony and oral testimony on October 26th.

**DISCUSSIONS?**

A. No. The proposed APAP has numerous fatal flaws, as I explained in my rebuttal testimony, and no combination of modifications or refinements would be sufficient to resolve these foundational problems. The foremost of all of those flaws is the self-executing or automatic nature of the proposed APAP in triggering penalties. These self-executing or automatic penalties are exacerbated by the fact that the APAP concept does not contain any provisions that specifically define “performance degradation” or “performance deterioration,” or identify whether performance changes are merger-related, or identify and quantify merger-related harm. Thus, the types of incremental modifications such as those that Mr. Denney proposed on the witness stand on October 27th could not make the proposed APAP palatable for consideration in settlement, or for proper consideration by this Commission in this docket. These incremental modifications could only constitute attempts to calibrate a bad plan by merely “playing with the numbers,” without any connection to reality, or to whether any changes in performance levels were Company-caused, merger-related, or even meaningful.

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

A. Yes.

Summary of Analysis – Proposed APAP Payments with Identical Pre-Merger and Post-Merger Performance Levels (using 2009 data)

PID Category	# Metrics Missing APAP Standard	Total # Metrics	Percent of Metrics Missed	Actual Comparable PAP payments	Projected APAP payments
Billing	60	1115	5.4%	\$15,267	\$ 105,801
Collocation	20	50	40.0%	-	281
Gateway	10	70	14.3%	12,000	28,000
Maintenance/Repair	100	2621	3.8%	18,343	20,452
Network Trunking	4	297	1.3%	-	3,194
Order/Provisioning	141	2386	5.9%	4,333	43,473
Pre-Order	172	1796	9.6%	757	186,627
<b>Grand Total</b>	<b>507</b>	<b>8335</b>	<b>6.1%</b>	<b>\$50,700</b>	<b>\$387,828</b>

Average APAP Payments per Missed Metric
\$1,763
14
2,800
205
799
308
1,085
\$765

Example Calculation from the Above Analysis

Metric: PO-6 (Work Completion Notice Interval)<sup>3</sup>

*Note: In this example, PO-6 generated zero QPAP payments (this is a new PID that began in Mar-09)*

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Reporting month	CLEC Vol	CLEC result (mins)	PAP bench mark (mins)	APAP compare volume (full year)	APAP standard (year avg) (mins)	APAP compare standard deviation	APAP critical value	APAP z-score <sup>1</sup>	APAP standard result	APAP "Miss" Occurrences	APAP Payment Level	APAP per Occurrence Payment Increment	APAP Payment
Month 1	2290	23.1	360	21969	33.2	61.7	3.7	-7.5	38.3	0	0	-	-
Month 2	2022	19.8	360	21969	33.2	61.7	3.7	-9.4	38.5	0	0	-	-
Month 3	1995	39.5	360	21969	33.2	61.7	3.7	-4.4	38.6	1	1	25	\$17,235
Month 4	2373	38.9	360	21969	33.2	61.7	3.7	4.3	38.2	1	2	50	2,460
Month 5	2416	43.6	360	21969	33.2	61.7	4.3	9.2	38.1	1	3	100	49,390
Month 6	2382	38.5	360	21969	33.2	61.7	3.7	3.9	38.2	1	4	200	37,723
Month 7	1801	34.1	360	21969	33.2	61.7	3.7	0.6	38.8	0	3	-	-
Month 8	1879	24.7	360	21969	33.2	61.7	3.7	-5.8	38.7	0	2	-	-
Month 9	2009	41.3	360	21969	33.2	61.7	3.7	5.6	38.6	1	2	50	7,723
Month 10	1802	19.1	360	21969	33.2	61.7	3.7	-9.3	38.8	0	1	-	-
<b>Grand Total</b>											<b>1</b>	<b>\$63,970</b>	<b>\$63,970</b>

<sup>1</sup> A zero or positive z-score (Col. "I") indicates "statistical significance at the 95% confidence level, based on the specified "critical value" (Col. "H").

<sup>2</sup> The APAP payment is calculated by multiplying the value in Column "K" by the value in Column "M" (which is based on the Column "L" payment level in the APAP).

<sup>3</sup> The PO-6 metric contributes to the "Pre-Order" category in the summary table at the top of this page.

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*

2 combined company will somehow have additional market  
3 power and be able to act in an anticompetitive manner  
4 when the company will look exactly as it looks today.

5           The market in Utah is very competitive today.  
6 It will be competitive in the future. Competition is  
7 thriving. Qwest will not dom -- the post-merger  
8 company will not dominate the market just as Qwest  
9 does not dominate it today.

10           Briefly I'd like to talk a bit about the  
11 retail market. Mr. Gates argues that incumbent local  
12 exchange carriers such as Qwest control 70 percent of  
13 the market in the State of Utah today. And he argues  
14 that this means that Qwest has a lot of market power.

15           Essentially the problem with this is that  
16 market share is not a full indicator of the level of  
17 market power because first of all it's a historical  
18 snapshot of a point in time. It does not consider  
19 market trends.

20           In addition, it does not consider the fact  
21 that there may be all sorts of alternatives despite a  
22 particular market share. .

23           Now, I think that another major problem with  
24 Mr. Gates analysis is that he basically comes up with  
25 a wireline market share and ignores wireless service

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*  
2 entirely. As we're all aware wireless is a substitute  
3 for wireline service. Many people in fact 25 percent  
4 of Americans have dropped their wireline service.

5           I believe that no reasonable competitive  
6 analysis can ignore wireless substitution. Fact in  
7 Utah today, incumbent local exchange providers  
8 including Qwest have only 25 percent of the voice  
9 market.

10           I think it's important to realize that  
11 Mr. Coleman of the DPU also stated that, and I quote,  
12 customers have many different options. And those  
13 would include cable, such as Comcast, voice over  
14 Internet protocol providers, and wireless providers.  
15 I also point out that the legislature in Utah has  
16 determined that retail rates for Qwest would not be  
17 price regulated which is an acknowledgment that there  
18 is a high level of competition in addition the State of  
19 Utah and that's not going to change.

20           I'd also point out that broadband services,  
21 Qwest today provides service through DSL type  
22 technologies, and if you look at the share of the  
23 market that DSL has in Utah according to the FCC it's  
24 only a third of the market, as there's cable modem and  
25 there's wireless alternatives that are available. So

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*

2   providing service and being responsive to our CLEC  
3   customers.

4           In addition, one of the things that has come  
5   out recently within the last several weeks is we have  
6   made what we call Tier 2 staffing announcements, which  
7   are the direct reports to the president of the  
8   wholesale markets. There, there seems to be concern  
9   that you know we're going to abandoned Qwest personnel  
10   through this division.

11           What the Tier 2 position announcements  
12   clearly demonstrate is that we're committed to keeping  
13   both the expertise of CenturyLink and the expertise of  
14   Qwest in the new combined company. And in fact, three  
15   personnel were named to key positions within the  
16   combined company in regards to working with the CLECs  
17   and the wholesale customers. And those were in the  
18   years of product management, product development that  
19   will be a Qwest individual that will be leading that.

20           We also have a Qwest individual who will be  
21   leading our wholesale operations, including our  
22   operations support systems or OSS. And we also have a  
23   Qwest person that will be leading our provisioning  
24   group which will also, which will handle the provision  
25   of services for the CLEC customers.

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*

2           I think the bottom line is that CenturyLink  
3 wants the best of the best from an employee  
4 perspective, and we recognize that it is in our best  
5 interest to staff of the wholesale organization with  
6 employees from both companies not just from one  
7 company or the other. .

8           It's my, it's our want and certainly our  
9 direction that this philosophy will continue as we  
10 move through the organization regarding staffing  
11 decisions.

12           One thing I want to point out is that  
13 CenturyLink and Qwest's current wholesale  
14 organizations are not built on a state by state basis  
15 they're built on a national basis to handle orders and  
16 interact with our customers across a national scale  
17 not just in an individual state. .

18           As such the CLEC comparisons in their  
19 testimony failed to account for the volumes and for  
20 the service quality CenturyLink has provided on a  
21 national basis. As stated in my testimony CenturyLink  
22 has almost 2000 active interconnection and resale  
23 agreements from place today.

24           We're on pace to process almost 1 million  
25 orders through our operations support systems. And we

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*

2       there can -- we allow carriers to fax in orders. And  
3       when they fax in orders we have to take those and  
4       input them into the system for the carrier rather than  
5       the carrier being able to put them into the system  
6       directly.

7           Q.    Have you heard swivel chair used to describe  
8       a way of moving information that include -- that  
9       requires taking the information manually from one  
10      system and rekeying it into another system?

11          A.    That's what I was referring to there because  
12      again the orders are coming in a fax mode so they have  
13      to be look at a piece of paper and then take those and  
14      put them into the system.

15          Q.    But you don't know I take it whether any of  
16      the red dotted lines that connect any of these boxes  
17      are a fax communication or something else?

18          A.    I don't know whether they're fax  
19      communication, I don't know whether they apply in all  
20      cases because there's also green lined. This could be  
21      a very small percentage of, of what we're talking  
22      about. I have no knowledge of what, what that really  
23      represents.

24          Q.    You've heard of the concept flow through used  
25      in connection with OSS?

1           \*\*\*ROUGH DRAFT FORMAT. DO NOT CITE!\*\*\*

2           A.    Yes.

3           Q.    What does flow through refer to?

4           A.    Flow through is, means that the order comes  
5 into the system, and it goes into the system -- it'll  
6 flow through into other systems without human  
7 intervention.

8           Q.    And swivel chair is something that would not  
9 be flow through, correct?

10          A.    That, again, based on the fax order I think  
11 that's correct, yes.

12          Q.    Flow through is something that is desirable  
13 in OSS; is that right?

14          A.    Yes, we're always seeking to improve flow  
15 through and actually when we implemented the e-system  
16 last year in CenturyLink that is one of the most  
17 significant gauging factors that we were looking at  
18 what impact that has on flow through.

19          Q.    What has CenturyLink done thus far if  
20 anything to analyze how its OSS compares with Qwest in  
21 terms of flow through?

22          A.    I'm not aware of any analysis that's been  
23 done, but I wouldn't be privy to, that I wouldn't  
24 necessarily be privy to that analysis anyway.

25          Q.    Do you know whether LSRs submitted by CLECs



BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The  
Joint Application of Qwest  
Communications International,  
Inc. and CenturyTel, Inc.  
For Approval of Indirect  
Transfer of Control of Qwest  
Corporation, Qwest  
Communications Company, LLC,  
and Qwest LD Corporation. ) Docket No.:  
10-049-16 )  
VOLUME I OF III

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission  
160 East 300 South  
Salt Lake City, Utah  
DATE: October 26, 2010  
TIME: 9:02 a.m.  
REPORTED BY: Kelly L. Wilburn, CSR, RPR

(October 26, 2010 - Qwest/CenturyTel - 10-049-16, Vol. I of III)

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1 also addressing these issues.

2 Q. Ms. Stewart, Mr. Merz asked you -- I'm sorry,  
3 Mr. Peña asked you about terminating the Qwest/Level 3  
4 interconnection agreement. Can Qwest unilaterally  
5 terminate an interconnection agreement, or must it  
6 first request negotiations for a successor  
7 interconnection agreement?

8 A. It is my understanding that you would enter  
9 into negotiations if an interconnection agreement has  
10 expired.

11 Q. And absent any commitment, such as the  
12 commitment that the Joint Applicants have made in the  
13 settlement with the Division of Public Utilities,  
14 would Qwest today be able to request negotiations for  
15 a new interconnection agreement with Level 3?

16 A. Yes.

17 Q. And now that the Joint Applicants, the  
18 combined company, has committed to certain extensions  
19 of interconnection agreements in the settlement with  
20 the Department of Public Utilities, does that mean --  
21 can the new company immediately seek a new  
22 interconnection agreement as soon as the merger  
23 closes?

24 A. No, it cannot.

25 MR. DUARTE: Thank you. No further

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1 that was admitted into the record in the proceedings  
2 this morning as Exhibit JA-R...

3 A. Should be JA-R3.

4 Q. R3?

5 A. Yes.

6 Q. Does your rebuttal testimony have any  
7 exhibits?

8 A. No, it does not.

9 Q. Do you have any confidential or  
10 highly-confidential testimony in your rebuttal  
11 testimony?

12 A. No.

13 Q. Do you have any corrections to make to any of  
14 your rebuttal testimony?

15 A. No.

16 Q. Mr. Williams, are all of the answers in your  
17 rebuttal testimony true and correct to the best of  
18 your knowledge?

19 A. Yes.

20 Q. Finally Mr. Williams, if I were to ask you  
21 the same questions here as those in your rebuttal  
22 testimony would your answers be substantially the  
23 same?

24 A. Yes, they would.

25 Q. Mr. Williams, do you have any summary of your

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1 questions.

2 CHAIRMAN BOYER: Thank you.  
3 Thank you, Ms. Stewart, you are excused.  
4 Next witness?

5 MR. DUARTE: Next witness, your Honor? We  
6 call Mr. Michael Williams to the stand.  
7 (Mr. Williams sworn.)

8 CHAIRMAN BOYER: Please be seated.

9 MICHAEL WILLIAMS,  
10 called as a witness, having been duly sworn,  
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DUARTE:

14 Q. Good afternoon, Mr. Williams.

15 A. Good afternoon.

16 Q. Please state your full name and business  
17 address for the record, please.

18 A. My name is Michael Williams. And I work at  
19 1801 California in Denver, Colorado.

20 Q. Mr. Williams, who do you work for and what is  
21 your position?

22 A. I work for Qwest. And my position is senior  
23 director in public policy.

24 Q. Mr. Williams, did you prepare rebuttal  
25 testimony that was filed on September 30, 2010, and

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1 testimony?

2 A. Yes, I do.

3 Q. Can you please present that summary now?

4 A. Yes. Good afternoon. In my testimony I  
5 address wholesale performance assurance and the CLEC  
6 proposed additional performance assurance plan in  
7 response to Douglas Denney, of Integra, and to Timothy  
8 Gates, representing multiple CLECs.

9 Regarding wholesale service quality  
10 assurance, there's nothing in the merger transaction  
11 that would weaken the strong existing incentives for  
12 Qwest to continue to provide high-quality service.

13 Wholesale service quality in Utah has already  
14 been more than sufficiently addressed. First through  
15 the QPAP -- and that's the Qwest performance assurance  
16 plan -- and Utah's Wholesale Service Quality Rules,  
17 which were put in place in the vicinity of when the  
18 Qwest performance assurance plan was created.

19 As well as through the extensive lengthy  
20 workshops and proceedings that established them  
21 involving hundreds of people, ten -- thousands, even  
22 tens of thousands of hours. During a period 7 to  
23 10 years ago that was far more fraught with  
24 uncertainty than the present.

25 And secondly, really wholesale service

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1 quality is addressed more than sufficiently through  
2 the growth and maturity of the wholesale market, since  
3 the FCC determined that it was open when granting 271  
4 relief to Qwest over seven years ago.

5 All of this is in the context of the immense  
6 and rapidly-increasing market forces, as testified by  
7 Mr. Fenn and Mr. Brigham. And these will continue to  
8 provide strong incentives and very sufficient  
9 incentives to assure high service quality.

10 Further, Qwest has agreed with the Division  
11 of Public Utilities that we will, quote, not  
12 discontinue the performance assurance plan for  
13 36 months after the transaction closing.

14 Now regarding the CLEC proposed additional  
15 performance assurance plan, it is unnecessary,  
16 inappropriate, and unreasonable, for many reasons. In  
17 sum, the proposed additional PAP first creates an  
18 incorrect and unreasonable definition of performance  
19 degradation.

20 It defines it through a comparison of a  
21 single month of post-merger performance against a  
22 prior pre-merger 12-month average performance level.  
23 The point is that this can consider no changes that  
24 have nothing to do with the merger. Or that have  
25 nothing to do with what Qwest can be responsible for

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1 offer my surre -- reply to that surrebuttal, based off  
2 of his statement on page 10 that this merger would not  
3 be in the public interest without the APAP condition.  
4 To which I respond, in short, that the APAP itself is  
5 not in the public interest, for all of the reasons  
6 that I've given.

7 And I have documentation of an analysis that  
8 shows that even if post-merger performance for the  
9 year following a merger were exactly the same as the  
10 pre-merger year -- and I base this on 2009 data from  
11 the Utah performance assurance plan.

12 Basically you could say this analysis says,  
13 What if the merger happened -- closed at the end of  
14 2009. And that that first year, 2010, if that was  
15 exactly the same as 2009, using real-world 2009 data,  
16 that additional performance assurance plan would  
17 penalize the Company over seven times as much as the  
18 PAP itself for performance that was precisely the  
19 same, month for month, transaction for transaction.

20 Specifically, the analysis shows that  
21 where --

22 MR. MERZ: Your Honor, I, you know, I am  
23 gonna object because this, as I understood it, was to  
24 be a summary. Not a presentation of new evidence,  
25 which I understand this is.

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1 in the post-merger experience.

2 And no number of exclusions or waiver  
3 provisions in the additional performance assurance  
4 plan can offset this fatal flaw. And, in fact, that  
5 additional performance plan has nothing in it that  
6 would identify a particular performance decline as  
7 merger related.

8 It attempts to automatically declare not only  
9 that there was this performance degradation -- by the  
10 incorrect definition that I've already mentioned --  
11 but also that it is merger related, that it created  
12 CLEC harm, and that the magnitude of that harm can be  
13 automatically calculated and remedied by the same  
14 payment increments that were developed for the PAP,  
15 which has different purposes.

16 As a result, as I testified in my rebuttal  
17 testimony, even if post-merger performance were  
18 improving, the penalties under the additional  
19 performance assurance plan could be significant.

20 Now, to take that further in regard to  
21 Mr. Denney's surrebuttal about the APAP, there are  
22 numerous instances in that testimony in which he  
23 mischaracterizes my testimony or makes erroneous  
24 statements.

25 But suffice it to say -- I'll just kind of

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1 MR. DUARTE: Your Honor, may I respond?

2 CHAIRMAN BOYER: Yeah, let's hear what you  
3 have to say, Mr. Duarte.

4 MR. DUARTE: Sure. Your Honor, first of all,  
5 the CLECs had the opportunity to file surrebuttal to  
6 our testimony. This was one of the concerns that I  
7 raised with the Commission back in June, when we had  
8 the scheduling conference.

9 And it was assured to us that if there was  
10 something that was brought up for the first time in  
11 surrebuttal, that we would have an opportunity to  
12 submit very brief oral surrebuttal at the hearing.

13 And given that there is a number of things  
14 that Mr. Denney said, and had the last word, and  
15 mischaracterizes -- or Mr. Williams says  
16 mischaracterize his testimony, I think it's only fair  
17 that we be able to present this analysis that  
18 Mr. Williams has done.

19 (Pause.)

20 CHAIRMAN BOYER: Well, in the interest of  
21 having as complete a record as we can, we'll let you  
22 just very briefly discuss the impact of the additional  
23 PAP.

24 THE WITNESS: Okay. As I was saying, that  
25 based on that analysis, the -- whereas the current PAP

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1 in 2009 had about -- in Utah about \$50,000-plus in  
2 penalties, the additional performance assurance plan  
3 would have had almost \$390,000.

4 Again, for performance in the -- in this  
5 example-post-merger year, they were precisely the  
6 same. That, in response to Mr. Denney's testimony,  
7 there is nothing in that that is reasonable, fair, or  
8 in the public interest.

9 In conclusion, the Utah PAP that is currently  
10 in place does produce data, an enormous amount of  
11 data, that can be used to monitor trends and  
12 performance. If troubling trends appear, any party  
13 perceives harm, we can look behind the data to better  
14 understand the trends, and the causes, and the  
15 available solutions.

16 There's no evidence on the record that this  
17 merger transaction will increase the risk of service  
18 quality problems. Rather, the preponderance of  
19 evidence points to the fact that a combined company  
20 that is stronger both financially and competitively  
21 will be all the more able to continue to provide high  
22 service quality both to its retail customers, and  
23 further assured by the Utah performance assurance plan  
24 to its wholesale customers. That concludes my  
25 summary.

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1 MR. MERZ: Okay, thank you.

2 Q. (By Mr. Duarte) I just have one question.  
3 Mr. Williams, I just passed out what has been marked  
4 as Exhibit JA-R3.1. And is this document the analysis  
5 that you prepared?

6 A. Yes. It is the summary of that analysis,  
7 yes.

8 Q. And that's based on the information that you  
9 reviewed to come up with that analysis?

10 A. Yes.

11 MR. DUARTE: Your Honors, I move for  
12 admission into the record Exhibit JA-R3.1.

13 CHAIRMAN BOYER: Okay, let's hear objections  
14 to the admission of this --

15 MR. MERZ: Your Honor, I --

16 CHAIRMAN BOYER: -- piece of evidence.

17 MR. MERZ: -- object that it is new evidence.  
18 The APAP was described in detail in Mr. Denney's  
19 direct testimony. This is something that could have  
20 been put in long before now. We have no way at this  
21 point of being able to analyze this, do any discovery  
22 about it.

23 We can't, frankly, even interpret it and  
24 respond to it in a sufficient manner between now and  
25 tomorrow. And so we object to it as extremely

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1 Q. (By Mr. Duarte) Mr. Williams, you mentioned  
2 that you have some documentation. In response to  
3 Mr. Denney's surrebuttal testimony, and given the  
4 testimony that you just gave a minute ago, did you  
5 prepare a chart or analysis of the penalty payments  
6 that the combined company would have to pay under  
7 Integra's additional PAP proposal if the wholesale  
8 service performance for the first 12 months after the  
9 merger closes was exactly the same as the 12 months  
10 prior to the merger announcement?

11 A. Yes. I prepared an exhibit that's based --  
12 using 2009 real-world data, to give an example, I've  
13 provided an exhibit -- or I have prepared an exhibit  
14 that summarizes that analysis and also provides an  
15 example of the calculations.

16 MR. DUARTE: Your Honor, I'm gonna mark as  
17 Exhibit-JA-R3.1 Mr. Williams' one-page "Summary of  
18 Analysis - Proposed APAP Payments With Identical  
19 Pre-Merger and Post-Merger Merger Performance Levels  
20 (using 2009 data.)" And we'll pass that out.

21 (Pause.)

22 MR. MERZ: Your Honor, I assume at some point  
23 this will be offered, and I would renew my objection.

24 CHAIRMAN BOYER: The appropriate time would  
25 be when it's offered.

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1 prejudicial, inappropriate, and it should be excluded.

2 MR. DUARTE: Your Honor, nowhere does  
3 Mr. Merz say that it's not competent evidence. They  
4 can certainly cross examine Mr. Williams here today.  
5 They're the ones that raised these issues in  
6 surrebuttal. We didn't have an opportunity to reply  
7 to surrebuttal until this morning.

8 It's competent evidence. It's in the sake  
9 of -- the interest of a complete record. We've had  
10 over 50 exhibits propounded -- or marked and admitted  
11 into the evidence from the CLECs, including just 700  
12 pages of documents from a Minnesota litigation.

13 To say that this one-page document, because  
14 they don't like the results of it or the evidence  
15 that's in it, is inappropriate is just not  
16 appropriate. So we believe that it should be  
17 admitted. And then Mr. Merz can certainly conduct  
18 whatever discovery -- or conduct whatever cross  
19 examination of Mr. Williams.

20 MR. MERZ: Every single exhibit we've offered  
21 has been consistent with the schedule that was  
22 established. This document has not been.

23 And to drop something on me literally five  
24 minutes ago and say that I now can cross examine on it  
25 so it should come in is just not appropriate. It's

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1 not the way things are done in these sorts of cases.

2 Mr. Denney talked about the APAP. There's no  
3 reason in the world why this couldn't have been put in  
4 long before now.

5 MR. DUARTE: Your Honor, they will have an  
6 opportunity to file their brief. They will certainly  
7 be able to make whatever arguments they can. And  
8 again, it goes to the complete record. And it also  
9 goes, if they have any concerns, the Commission will  
10 give it the weight that it merits.

11 CHAIRMAN BOYER: Well, we think that  
12 Mr. Merz's objections are well taken, and we're not  
13 going to admit it at this late date.

14 (Exhibit JA-R3.1 was not admitted.)

15 MR. DUARTE: Thank you. Your Honor, with  
16 that, I do not have any further questions for  
17 Mr. Williams. And I will tender Mr. Williams for  
18 cross examination and any questions that your Honors  
19 might have.

20 CHAIRMAN BOYER: Thank you.

21 Ms. Schmid, questions for Mr. Williams?

22 MS. SCHMID: No questions.

23 CHAIRMAN BOYER: Mr. Spann?

24 MR. SPANN: No questions, sir.

25 CHAIRMAN BOYER: Very well. Mr. Peña?

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1 Well, let's go to Mr. Merz first and then  
2 we'll let Mr. Peña backup.

3 CROSS EXAMINATION

4 BY MR. MERZ:

5 Q. Good afternoon, Mr. Williams.

6 A. **Good afternoon.**

7 Q. Are you familiar with CenturyLink's, what  
8 would be the equivalent of the QPAP?

9 A. **No, I'm not.**

10 Q. Are you aware that there is one?

11 A. **I understand there is one at least in, in  
12 Nevada.**

13 Q. In Nevada? You don't know anything about how  
14 that -- how the requirements of that performance  
15 assurance plan compare with Qwest's performance  
16 assurance plan, I take it?

17 A. **That's correct.**

18 Q. You are aware of operational functions within  
19 Qwest that impact the quality of service that Qwest  
20 provides to CLECs, correct?

21 A. **Yes.**

22 Q. Those functions would include preordering  
23 processes, correct?

24 A. **Yes.**

25 Q. Receiving orders, correct?

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1 A. **Yes.**

2 Q. Processing orders?

3 A. **Yes.**

4 Q. Repairs?

5 A. **Yes.**

6 Q. Billing?

7 A. **Uh-huh (affirmative.)**

8 Q. And you would agree with me if there was a  
9 decline in the service quality of any of those areas,  
10 that could have an adverse impact on CLECs?

11 A. **It could.**

12 Q. Qwest has its own OSS to perform the  
13 functions that we've just been talking about; is that  
14 right?

15 A. **Yes.**

16 Q. Are you familiar, to any extent, with the  
17 functionalities of Qwest's OSS?

18 A. **I have some familiarity. I'm not a  
19 subject-matter expert on each of them.**

20 Q. I appreciate that. Are you familiar with how  
21 the functionalities of Qwest's OSS compare with the  
22 functionalities of CenturyLink's OSS?

23 A. **No.**

24 Q. You are aware, however, that CenturyLink  
25 performs, for its own wholesale customers, the same

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1 kinds of functions -- preordering, receiving orders,  
2 processing, repairs, billing -- correct?

3 A. **That's my understanding.**

4 Q. You are aware that one of the ways that  
5 post-merged company intends to take advantage of  
6 synergies is to eliminate duplicate systems, correct?

7 A. **Elimination of duplication is among the  
8 synergies, yes.**

9 Q. And that duplication includes duplication in  
10 OSS that is used to provide service to wholesale  
11 customers?

12 A. **Right now it's not a strict duplication,  
13 because Qwest's OSS are serving Qwest entities, and  
14 CenturyLink's OSS are serving CenturyLink entities.**

15 Q. And I'm really focussing more on duplication  
16 in terms of the functions performed by those systems  
17 as opposed to customers they serve. In other words,  
18 Qwest has a system that handles the preordering  
19 process, correct?

20 A. **Yes.**

21 Q. And CenturyLink does too?

22 A. **Yes.**

23 Q. And in that sense those would be duplicate  
24 systems, correct?

25 A. **They're doing the same functions for**

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1 different customers. And question is, Do you want to  
2 use one system to serve all the customers, or keep  
3 using multiple systems?

4 Q. And you heard Mr. Hunsucker tell us this  
5 morning that ideally the Company will just have one  
6 system that it utilizes rather than two systems, one  
7 for each company?

8 A. Over time I believe that's what I understood  
9 he's -- him to say.

10 Q. And you also understand that in terms of kind  
11 of the amount of cost savings, the sooner that  
12 duplication is eliminated the better for the Company,  
13 because it'll begin to realize that savings sooner?

14 A. I don't recall him saying that specifically.  
15 In fact, I think he emphasized that we don't have to  
16 rush into it. Too soon could be a problem.

17 We have the benefit, because this merger's  
18 different than other mergers that we're not acquiring  
19 whole entities as this one is, we have the benefit of  
20 being able to give them a methodological review to  
21 take the time that's needed.

22 But certainly if costs are to be saved it's  
23 better to obtain the cost savings sooner than later if  
24 you -- without sacrificing service quality.

25 Q. Another way that CenturyLink intends to

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1 obtain synergies from the merger is to reduce head  
2 count, the number of employees, correct?

3 A. Well, to, to reduce or eliminate duplicate  
4 functions, yes. But not just solely on the basis of  
5 lowering numbers.

6 Q. Eliminate employees who are performing  
7 duplicate functions?

8 A. Yes.

9 Q. Is that fair to say?

10 A. Yes.

11 Q. And again, to the extent there's a cost  
12 savings to be realized from that, it's of a benefit to  
13 the Company to realize that cost saving sooner rather  
14 than later?

15 A. Again, subject to doing it in a sensible,  
16 careful way.

17 Q. Now, in your testimony you describe CLECs as  
18 valued customers, correct?

19 A. Yes.

20 Q. And you are aware as well that CLECs compete  
21 with Qwest to provide retail services to customers,  
22 correct?

23 A. Yes.

24 Q. And you would agree with me that, given a  
25 choice between providing retail service to a customer

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1 on one hand or providing wholesale service to a CLEC  
2 to provide retail service to that same customer, Qwest  
3 would rather be providing the retail service to the  
4 customer, correct?

5 A. Not at the expense of the wholesale market.  
6 The point being that we're not gonna win all of the  
7 market. We are -- we don't have that power. And of  
8 all of the alternatives where we may lose customers,  
9 the CLEC part of the market that's particularly  
10 addressed by the QPAP are the only ones that allow  
11 customers to stay on our network.

12 All the others -- wireless, and cable, and so  
13 forth -- the customers are not on our network. And so  
14 we -- certainly, yes, our retail service delivery, and  
15 marketing, and product compete and try to win the  
16 retail customer.

17 But we don't do that at the expense of the  
18 wholesale market. And we are required by law to not  
19 discriminate, and we also do not discriminate. And  
20 therefore it's -- you can't take that question totally  
21 in isolation.

22 Q. And you've said -- and I think you said this  
23 in your written testimony as well -- that the way to  
24 keep those customers that are being served by the CLEC  
25 on the Qwest network is to provide CLEC customers a

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1 quality service; is that correct?

2 A. I think that's what I said, yes.

3 Q. But another way to keep those customers on  
4 Qwest's network is for Qwest to be providing the  
5 retail service to those customers, right?

6 A. Yes. And as I say, we'll win some and we'll  
7 lose some.

8 Q. And all things considered, you'd rather be  
9 providing the retail service than the wholesale  
10 service that someone else is using to provide retail  
11 service to that customer?

12 A. Again, not to the expense of serving CLEC  
13 customers well.

14 Q. I think you've answered this, so I'm just  
15 gonna try one more time. Given a choice between  
16 providing retail service and wholesale service, you'd  
17 rather provide retail service. That's a more  
18 profitable business for Qwest, is it not?

19 MR. DUARTE: Your Honor, I'm gonna object to  
20 the question. It's been asked and answered twice  
21 already.

22 CHAIRMAN BOYER: Actually, the last question  
23 is the way I would have phrased it, so let's let him  
24 answer that.

25 THE WITNESS: Could you phrase that again?

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1 I'm sorry.

2 **Q.** (By Mr. Merz) As between retail and  
3 wholesale service you'd rather provide the retail  
4 service because retail is a more profitable business  
5 for Qwest?

6 **A.** Again, I testified just a moment ago that I  
7 would not take that question in isolation. But if we  
8 have the whole retail customer, yes, we would earn  
9 more off of it. But we would not do that at the  
10 expense of wholesale service. That would not be in  
11 our interest.

12 MR. MERZ: I have nothing further, thank you.

13 CHAIRMAN BOYER: Thank you, Mr. Merz.

14 Now, we'll turn now to Mr. Peña.

15 MR. PEÑA: I don't have any questions.

16 CHAIRMAN BOYER: No questions, okay.

17 Commissioner Allen, any questions of

18 Mr. Williams? Commissioner Campbell? Nor do I.

19 Any redirect?

20 MR. DUARTE: No, your Honor.

21 CHAIRMAN BOYER: Okay. Thank you,

22 Mr. Williams, you're excused.

23 Mr. Zarling, are you gonna examine the next  
24 witness?

25 MR. ZARLING: Yes. CenturyLink calls Jeremy

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1 Ferkin.

2 (Mr. Ferkin was sworn.)

3 CHAIRMAN BOYER: Thank you, please be seated.

4 JEREMY FERKIN,

5 called as a witness, having been duly sworn,  
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ZARLING:

9 **Q.** Good afternoon, Mr. Ferkin. Would you please  
10 state your full name and business address for the  
11 record? And you might want to spell your name for the  
12 court reporter.

13 **A.** Jeremy Ferkin. J-e-r-r-e-m-y, Ferkin,  
14 F-e-r-k-i-n. Business address is 290 North Main  
15 Street, Kalispell, Montana, which is spelled  
16 K-a-l-i-s-p-e-l-l, Montana 59901.

17 **Q.** Mr. Ferkin, who do you work for and what is  
18 your position?

19 **A.** I work for CenturyLink. And my position is  
20 vice president and general manager of the Rocky  
21 Mountain market.

22 **Q.** And Mr. Ferkin, did you cause to be filed the  
23 direct testimony that's been marked as JA Exhibit 3,  
24 with five exhibits, Exhibit 3.1 through 3.5, that was  
25 admitted earlier today?

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(October 26, 2010 - Qwest/CenturyTel - 10-049-16, Vol. I of III)

1 **A.** Yes.

2 **Q.** And did you also cause to be filed rebuttal  
3 testimony, that I believe has been marked as JA  
4 Exhibit R6, with one exhibit --

5 **A.** Yes.

6 **Q.** -- in this proceeding? And do you have any  
7 corrections to your direct testimony?

8 **A.** Other than the errata filing we did  
9 yesterday, no.

10 MR. ZARLING: Your Honor, we did make an  
11 errata filing yesterday which corrected Mr. Ferkin's  
12 testimony by adding in a map that was an exhibit that  
13 hadn't made it into the file copy. And I have copies  
14 I can distribute that --

15 CHAIRMAN BOYER: Go ahead, Mr. Zarling. We  
16 did receive that and it's in the record, so. Or it's  
17 in our file anyway.

18 MR. ZARLING: Okay. Would you like me to  
19 distribute copies if you all have it?

20 CHAIRMAN BOYER: Yes, please do.

21 (Pause.)

22 **Q.** (By Mr. Zarling) And I'm sorry Mr. Ferkin,  
23 just so the record is clear. Other than the errata  
24 that was filed yesterday, do you have any other  
25 changes or corrections to your direct testimony?

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1 **A.** That is correct, none.

2 **Q.** And do you have any changes or corrections to  
3 your rebuttal testimony?

4 **A.** None.

5 **Q.** And if I were to ask you the questions in  
6 your direct testimony today would your answers be  
7 substantially the same?

8 **A.** Yes.

9 **Q.** And would those answers be true and correct?

10 **A.** Yes.

11 **Q.** And if I asked you the same questions that  
12 are in your rebuttal testimony today would your  
13 answers be substantially the same?

14 **A.** Yes.

15 **Q.** And would they be true and correct?

16 **A.** Yes.

17 **Q.** Have you prepared a summary of your direct  
18 and rebuttal testimony?

19 **A.** A brief summary, yes.

20 **Q.** Okay. Would you please present that?

21 **A.** Gladly. My name is Jeremy Ferkin. I am  
22 CenturyLink's vice president and general manager for  
23 Montana, Idaho, Colorado, New Mexico, and Wyoming.  
24 When I joined CenturyTel in 2003, the Company had  
25 approximately 2.4 million access lines. Now we have

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The  
Joint Application of Qwest  
Communications International,  
Inc. and CenturyTel, Inc.  
For Approval of Indirect  
Transfer of Control of Qwest  
Corporation, Qwest  
Communications Company, LLC,  
and Qwest LD Corporation. ) Docket No.:  
10-049-16  
VOLUME II OF III

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission  
160 East 300 South  
Salt Lake City, Utah

DATE: October 27, 2010

TIME: 9:04 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

(October 27, 2010 - Qwest/CenturyTel - 10-049-16, Vol. II of III)

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1 with the HSR documents file by the 28th, and then two  
2 days hence responses by the other parties.

3 Is that satisfactory?

4 MS. SCHMID: Yes.

5 CHAIRMAN BOYER: Mr. Roberts, is that gonna  
6 be okay for the Office?

7 MR. ROBERTS: Yes, it is. It's my  
8 understanding that I do not know -- I no longer have a  
9 set time, but I just will be appearing in rotation  
10 this morning.

11 CHAIRMAN BOYER: Someone volunteered your  
12 schedule flexibility, Mr. Roberts. And so that's --

13 MR. ROBERTS: No, that's fine.

14 CHAIRMAN BOYER: Unless you have a specific,  
15 you know, problem that we can accommodate, we'll just  
16 do that. We'll just go through the witnesses as  
17 listed on the prehearing conference report.

18 MR. ROBERTS: That'll be fine by me.

19 CHAIRMAN BOYER: Okay, thank you.

20 MR. DUARTE: So your Honor, so there will not  
21 be an oral argument then on November 4th, it's gonna  
22 actually be live witnesses? Or -- I thought it was  
23 gonna just be an oral argument regarding the testimony  
24 that will have been filed.

25 CHAIRMAN BOYER: Well, what we heard here was

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1 think this is as efficient as what I announced  
2 earlier, but this is the way we'll do it. In an  
3 attempt to be even more fair than we've been to this  
4 point.

5 MR. MERZ: And to be clear, we were prepared  
6 to do what I understood you to be telling us yesterday  
7 we were gonna do.

8 CHAIRMAN BOYER: I understand. I understand.

9 So are we okay with that now? Does everyone  
10 understand what we're doing?

11 MS. SCHMID: Yes.

12 CHAIRMAN BOYER: Okay. Let's proceed then  
13 with the next witness, Mr. Merz.

14 MR. DUARTE: Your Honor, before we get to  
15 Mr. Denney, we do have one other housekeeping matter.

16 CHAIRMAN BOYER: Yes.

17 MR. DUARTE: And that is we wanted to  
18 announce that the Joint Applicants and the Department  
19 of Defense have reached a settlement. And we have a  
20 signed settlement that was executed this morning and  
21 that we will be filing with the Commission today. And  
22 we wanted to pass out a copy of that settlement as  
23 well.

24 CHAIRMAN BOYER: Okay, that would be great.  
25 Have the other parties had an opportunity to look at

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1 that the parties didn't want two bites at the apple  
2 and so on. So yes, I assumed that the parties wanted  
3 to present live testimony on the 4th.

4 MR. DUARTE: Well, your Honor, maybe there  
5 was a misunderstanding. I mean, we are fine with  
6 doing that today, and then have oral argument on the  
7 4th regarding anything that's submitted afterwards.  
8 We just didn't want two bites at the apple.

9 But, you know, we believed that, based on  
10 what your Honors were saying ten minutes ago, that we  
11 would have the witnesses here testify about the  
12 settlements, and then, and then have the testimony  
13 filed, you know, about that, and then have an oral  
14 argument, that that would be appropriate.

15 CHAIRMAN BOYER: Well, then that puts the  
16 Joint CLECs and Level 3 at a disadvantage, I think, in  
17 terms of their preparation for cross examination and  
18 so on. So I think we ought to have the DPU testimony,  
19 both for and again, on the 4th. And then, you know,  
20 legal arguments as appropriate.

21 MR. MERZ: And Mr. Chair, I'm sure this goes  
22 without saying, but I just want to make sure we're  
23 absolutely clear that on the 4th the witnesses will be  
24 available for cross examination.

25 CHAIRMAN BOYER: Exactly. Exactly. I don't

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1 it?

2 MR. DUARTE: No, we just signed it this  
3 morning.

4 CHAIRMAN BOYER: And so Mr. Spann, would it  
5 be your intention to put on testimony through Mr. King  
6 regarding the stipulation?

7 MR. SPANN: That's correct, your Honor.

8 CHAIRMAN BOYER: Okay. Very well, thank you.  
9 Let's pass that out, and then we'll have Mr. Merz call  
10 his first witness. His last witness.

11 (Pause.)

12 CHAIRMAN BOYER: Mr. Merz, we're ready.

13 MR. MERZ: The Joint CLECs would call Douglas  
14 Denney to the stand.

15 CHAIRMAN BOYER: Morning, Mr. Denney.

16 (Mr. Denney was sworn.)

17 CHAIRMAN BOYER: Thank you, please be seated.

18 DOUGLAS DENNEY,

19 called as a witness, having been duly sworn,  
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MERZ:

23 Q. Morning, sir.

24 A. Good morning.

25 Q. By whom are you employed?

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1 A. Integra Telecom.

2 Q. And you have filed on behalf of Integra  
3 Telecom in this action direct testimony that has been  
4 marked and admitted as Integra Exhibit 1, which  
5 includes an exhibit, Integra Exhibit 1.1; is that  
6 correct?

7 A. Yes, that's correct.

8 Q. And you've also filed surrebuttal testimony  
9 in this action on behalf of Integra, which has been  
10 marked and admitted as Integra 1SR; is that correct?

11 A. That's correct.

12 Q. And there are no confidential or  
13 highly-confidential portions of either part of that  
14 testimony?

15 A. That's true.

16 Q. Is the information contained in your direct  
17 and surrebuttal testimony true and accurate, to the  
18 best of your knowledge?

19 A. Yes, it is.

20 Q. Do you have a summary of your testimony that  
21 you are prepared to give today?

22 A. Yes, I do.

23 Q. Would you please provide that?

24 A. My name is Douglas Denney, and I work for  
25 Integra Telecom. And I'm our director of costs and

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1 policies. And my testimony focuses on three areas  
2 which I'm directly involved with on behalf of my  
3 company. And it also -- it supports the testimony of  
4 Mr. Gates and Dr. Ankum.

5 And one of those areas is kind of just the  
6 history of ICA negotiations. The difficulty of, you  
7 know, of entering into negotiations. The long and  
8 detailed process that's contained in negotiations.  
9 I'm involved directly in the negotiations that take  
10 place between Integra and any other ILEC in terms of  
11 interconnection agreements, including Qwest.

12 And this is really trying -- the purpose of  
13 this testimony is to try to support those conditions  
14 about having some stability with the current ICAs that  
15 are in place so that when the companies, you know, if  
16 the merger's approved that there's -- while they're  
17 going through this integration process we're not in  
18 the midst of having to arbitrate all new ICAs.

19 Or uproot contracts that have been -- in many  
20 cases have been in place for years. And that's kind  
21 of the purpose of that portion of the testimony. And  
22 Mr. Gates talks in detail about, you know, about that  
23 condition.

24 The second part of my testimony verifies some  
25 of the documents you heard discussion about yesterday

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1 that are in Ms. Johnson's testimony that are related  
2 to the UNE provision -- the Minnesota case, which is  
3 the UNE Provisioning and Marketing Practices Docket.

4 And the purpose of putting all these  
5 documents in there is to support these conditions that  
6 require compliance with specific laws. And the  
7 Commission doesn't need to find that the Joint  
8 Applicants are in violation of these laws, but that --  
9 but the purpose of these documents is to show that  
10 there are issues surrounding these.

11 And it's common practice for putting  
12 conditions that relate to, you know, say, Here is a  
13 law that we expect you to follow that's, you know, as  
14 you go forward. And that's what a lot of these  
15 conditions are. Just to say, Here is what the law is  
16 and this is what we expect you to follow going  
17 forward.

18 And it's just kind of put on notice. And  
19 it's a common practice when there's -- when carriers  
20 have raised issues that these types of conditions get  
21 put into -- in merger agreements.

22 And then the third part of my testimony deals  
23 with wholesale service quality. And wholesale service  
24 quality, you know, obviously is crucial to Integra and  
25 other CLECs like Integra who rely, in part at least,

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1 on the ILEC network in order to do business. We buy,  
2 you know, predominantly we buy the last mile  
3 facilities. Kind of the connections to the customer  
4 premise from the ILECs.

5 And so, you know, while these companies --  
6 you heard about kind of integration efforts. And  
7 potentially, you know, integrating OSS. And the kind  
8 of pressures to achieve synergy. And our just concern  
9 is that all of those things shouldn't come at the cost  
10 of wholesale service quality.

11 And I -- and you heard all through testimony  
12 and, you know, through this -- through the --  
13 yesterday that the Joint Applicants appear to agree.  
14 You've heard them say how important wholesale service  
15 quality is. And how they plan on not, you know, there  
16 shouldn't be any impact on wholesale service quality.

17 And so kind of the question that came up to  
18 the Joint CLECs was really how can we, how can we kind  
19 of effectuate this commitment? How can we make sure  
20 that, if there are declines in wholesale service  
21 quality, that they will be remedied quickly, they will  
22 be addressed quickly, and be resolved quickly?

23 And this is where we came up with a kind of a  
24 plan that was called the additional performance  
25 assurance plan. And the reason the current -- the

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1 QPAP or the Qwest performance assurance plan that's in  
2 place today doesn't, doesn't quite -- doesn't cover  
3 you there is because that's a plan that compares  
4 really your wholesale performance to your retail  
5 performance.

6 And so it's really a nondiscrimination test  
7 is what the plan that's in place today is. And what  
8 we're looking at is trying to compare pre-merger  
9 performance with post-merger performance. So it's a  
10 different, it's a different comparison.

11 So under the QPAP you could have a decline in  
12 both retail and wholesale service quality and you  
13 would never make a payment under the plan that's in  
14 place today, the QPAP. But the additional PAP, the  
15 thing is, if you decline from your pre-merger  
16 performance, you know, then there would be remedy  
17 payments to try to get that resolved as quickly as  
18 possible. And this is why we came up with this  
19 alternative plan.

20 So yesterday Mr. Williams raised a concern  
21 that random fluctuations in data could come -- could  
22 cause payments in the APAP, you know, just through  
23 normal random fluctuations. And in my mind this is a  
24 non-issue, for some reasons that I'm not gonna get  
25 into.

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1 But what I am gonna try to do is make this  
2 issue go away. And I'm gonna do that by offering up  
3 some language -- an additional part to Condition No. 4  
4 that we proposed to try and make this a non-issue.  
5 Because the CLECs' goal isn't to try to collect money  
6 from the, you know, from the Joint Applicants in terms  
7 of plan.

8 Our CLEC goal is really just to -- we hope  
9 that they never make a payment. We just want to  
10 assure wholesale service quality doesn't decline as a  
11 result of the merger, and want the incentives in  
12 place.

13 And so this would be a, like a subpart to  
14 Condition 4 regarding the APAP. And what we would say  
15 is that APAP remedy payments to a CLEC for a specific  
16 PID in some measure will not occur until the remedy  
17 payments exceed the remedy credit.

18 And for each CLEC and each PID, product, and  
19 disaggregation in the APAP, a remedy credit will be  
20 calculated as described in this paragraph. The remedy  
21 credit is calculated as follows for each PID, product,  
22 and disaggregation:

23 For each month one year prior to the merger  
24 filing date monthly performance will be compared to  
25 the average wholesale performance provided by Qwest to

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1 each CLEC for one year prior to the merger filing  
2 date.

3 If monthly performance, as described in the  
4 preceding sentence, would result in a remedy payment  
5 calculated using the methodology in the APAP to  
6 determine remedy payments, then the calculated amount  
7 will be a remedy credit for the PID, product, and  
8 disaggregation.

9 So what this really gets to is if under,  
10 under Mr. Williams', you know, concern that just  
11 performance in the past would have caused payments  
12 under the APAP, well, payments won't start until you  
13 go beyond -- I mean, you go beyond that level.

14 So let's just make sure that we're really  
15 capturing a deterioration in wholesale service  
16 quality, you know, before there would be any remedy  
17 payments under the plan.

18 But at the same time there'll be calculations  
19 and the information will be going forward so the Joint  
20 Applicants will see that they're facing a risk of  
21 potential payments coming forward. And they will be  
22 still incented to try and correct any problems as  
23 quickly as possible. To minimize, you know, to make  
24 sure that wholesale service quality is maintained.

25 And so we hope that this can kind of close

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1 out this issue, because you've heard them, you know,  
2 make guarantees and -- or, I mean, not guarantees.  
3 That's too strong of a word. But make -- you've heard  
4 them talk about the importance of wholesale service  
5 quality and how it's gonna stay after the, you know,  
6 after the merger.

7 And so I think we've got a plan that's in  
8 place that should be acceptable to do that. And that  
9 concludes my summary.

10 MR. MERZ: Thank you, Mr. Denney.

11 The witness is now available for questioning.

12 CHAIRMAN BOYER: Thank you, Mr. Denney.

13 Let's begin with Mr. Roberts. Have you any  
14 cross examination of this witness?

15 MR. ROBERTS: No, your Honor.

16 CHAIRMAN BOYER: Ms. Schmid?

17 MS. SCHMID: No questions.

18 CHAIRMAN BOYER: Mr. Spann?

19 MR. SPANN: No, sir.

20 CHAIRMAN BOYER: Mr. Duarte?

21 MR. DUARTE: Yes, your Honor, thank you.

22 CROSS EXAMINATION

23 BY MR. DUARTE:

24 Q. Good morning, Mr. Denney.

25 A. Good morning.

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1 Q. It's a little late to bring up new language  
2 here on the fly to try to remedy the issues with your  
3 PAP, wouldn't you agree?

4 A. Well, there's so many things that I disagree  
5 with the statement you made, so. I mean, I don't  
6 think we made up language on the fly. I think we're  
7 trying to address a concern that you raised at the  
8 last minute yesterday during the hearing.

9 And third, if the parties would actually  
10 enter into discussions with us in Utah, I mean, we  
11 probably could have had this discussion much earlier  
12 time frame. If you hadn't cut us out of negotiations  
13 that took place in the state.

14 Q. Well now, let's be fair now. The parties  
15 have discussed settlement negotiations quite a bit,  
16 the negotiations quite a bit over the last few months,  
17 haven't they?

18 A. I'm aware of negotiations that took place in,  
19 took place in Oregon. And there's been -- that's  
20 about the most active state that's going on. There's  
21 been a few other states where some proposals have  
22 been, have been involved and the companies have  
23 contacted.

24 But it is -- as I'm aware, we were not  
25 invited to the negotiations here in the State of Utah.

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1 And when you are working on, you know, kind of your  
2 settlement here that did not involve, you know, the  
3 Joint CLECs, and it didn't involve Integra.

4 Q. And we'll certainly talk about those things  
5 on November 4th. But you agree with me then, since  
6 we're talking about settlements here, that the parties  
7 met for two days in Portland, high-level executives  
8 between the parties, to discuss all of these  
9 conditions from a global standpoint, correct?

10 A. Yep, that's correct. And nothing's been  
11 resolved at this point in time.

12 Q. And there's been five settlement conferences  
13 in Oregon, correct?

14 A. I haven't counted the conferences in Oregon,  
15 but there's been, there's been numerous conferences  
16 there. And, I mean, the problem there too is we have  
17 a hard time getting the Joint Applicants to respond  
18 directly to our proposals.

19 Q. Sir, you will agree with me that it took 37  
20 days in Oregon to even submit a red line to our red  
21 line proposals?

22 A. No. I disa -- you didn't red line any of our  
23 proposals.

24 Q. Sir, have you been involved in the Oregon  
25 settlement discussions?

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1 A. Yes. The document we got back from you in  
2 Oregon, if you want to talk about that, was just x's  
3 through our 31 conditions.

4 Q. Okay. And didn't --

5 A. That's not a red line. That's not a  
6 negotiation.

7 Q. Well, I won't get into the settlement  
8 discussions. But you'll agree with me that you were  
9 supposed to get a proposal to us prior to like the  
10 third settlement agreement conference, and we did not  
11 receive it for 37 days. Do you agree with me?

12 A. I don't agree with -- you've had our proposal  
13 from early on in the time period. So I don't agree  
14 that -- and I don't know what time -- what 37-day time  
15 frame you're talking about. But you've had our  
16 proposal long before -- you know, pretty early in this  
17 process, in all of the states, what the proposal is.

18 Q. From September 1st to October 8th you don't  
19 agree that the CLECs were -- had promised a red line  
20 to our red lines in 7 days, and it took 37 days to get  
21 that back?

22 A. I'm not, I'm not knowledgeable of those time  
23 frames.

24 Q. We'll move on.

25 A. I don't -- I'm not even gonna acknowledge

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1 that you made red lines to our initial proposals. I  
2 know you didn't do that. You may have responded to  
3 some staff proposals, but not to ours.

4 Q. Mr. Denney, we'll move on then to the issues  
5 here in Utah. Sir, to start our discussion here, you  
6 agree with me that in Utah Qwest has 46  
7 interconnection agreements with CLECs that have the  
8 Qwest performance assurance plan, or PAP, as part of  
9 their agreement?

10 A. Well, I agree that that's what Mr. Williams  
11 said in his testimony.

12 Q. Well, you don't have any reason to dispute  
13 that it's 46 ICAs with the PAP here in Utah?

14 A. I did not go through the ICAs here, so. I  
15 mean, so I agree that's what's in Mr. Williams'  
16 testimony.

17 Q. And you reviewed the interrogatory responses  
18 from the Joint Applicants. The 160 -- or the 91 data  
19 requests that were sent by Integra in this case?

20 A. Yes.

21 Q. Okay. And you saw that we responded that it  
22 was 46 ICAs?

23 A. Right. I saw that in Mr. Williams'  
24 testimony, too.

25 Q. All right. We'll move on. Now Mr. Denney,

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1 you're very experienced when it comes to PAPs, aren't  
2 you?

3 A. Yes.

4 Q. And you would agree with me that any  
5 performance assurance plan for an incumbent telephone  
6 company is a pretty complex endeavor?

7 A. I wouldn't, I wouldn't agree with that in an  
8 unqualified statement. I think setting up the initial  
9 plans was, you know, was a fairly complex endeavor.  
10 But we have -- now we have those plans in place. We  
11 have measures, we have data.

12 So using that information, you know, to look  
13 at how performance has changed over time, I don't  
14 think that is very complex at all.

15 Q. And if you go to a different standard of what  
16 you're measuring, that would be a pretty complex  
17 matter, wouldn't it?

18 A. No, I don't think it's very complex at all to  
19 measure pre-merger performance with post-merger  
20 performance. We have -- all of that data is there.  
21 It's been, you know, it's sitting out there. It's --  
22 Qwest has it, and a lot of the CLECs have that data.  
23 And so to compare pre-and-post-merger performance is a  
24 fairly simple, fairly simple task.

25 Q. Well Mr. Denney, you and I can at least agree

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1 that there's a lot of statistical analysis that is  
2 needed in order to really understand a PAP?

3 A. There, there's statistical analysis that goes  
4 into setting up the statistical test. I disagree  
5 there's statistical analysis needed to understand the  
6 PAP. I think the PAPs are pretty basic.

7 It's really about can we measure, can we  
8 measure whether there's, you know, if you're talking  
9 about the QPAP, is their performance on retail and  
10 wholesale, or performance compared to a benchmark, how  
11 do those compare. That's fairly simple.

12 The statistics may be complicated, but the  
13 statistics are pretty well worked out over, you know,  
14 over time. And that's not really the big part of our  
15 dispute. And so comparison of performance isn't that  
16 difficult.

17 Q. And sir, and in fact in your previous life as  
18 an employee with AT&T back in the Section 271 days in  
19 the early part of this decade, you were personally  
20 involved in the effort to come up with what is known  
21 as the Qwest PAP in the Qwest ILEC region; is that  
22 correct?

23 A. No, that's actually incorrect. I didn't get  
24 involved in the performance plans until, until I  
25 worked for Eschelon Telecom. And starting kind of

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1 with the three-year review that took place in  
2 Colorado.

3 Q. Okay. But then you're familiar, though, with  
4 the process that did take place with the Section 271  
5 PAP development between, what, 1999 and 2003; would  
6 you agree with me on that?

7 A. I mean, I wasn't involved in that process, so  
8 I -- so what I know about it's either what I've read  
9 through Commission orders or, you know, reports that  
10 maybe were available at one time or another. People's  
11 discussions. Discussions with people that were  
12 involved in it.

13 Q. And based on what you know and what you've  
14 read, you'll agree with me that there was a 13-state  
15 collaborative process that dealt with the PID  
16 negotiations, OSS testing, and the PAP development,  
17 correct?

18 A. That's correct.

19 Q. And this Commission was part of that 13-state  
20 process?

21 A. I believe that's correct.

22 Q. And you'd agree that Arizona had its own  
23 separate process?

24 A. I believe that's correct.

25 Q. And you agree with me that, based on

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1 everything you've read and everything that you know  
2 today about the PAPs, that that process took about  
3 four years, from about 1999 through the end of 2002,  
4 when Qwest was given -- was granted 271 approval from  
5 the FCC?

6 A. Right. I don't know the exact time frame,  
7 but I, I think it took place over a number of years.  
8 And it dealt, I mean, it dealt not just with the  
9 QPAPs, is my understanding, but with, you know, with  
10 making sure, you know, testing of systems was a big  
11 part of that as well.

12 Q. And based on your involvement, and research,  
13 and reading of things that happened in the past, you  
14 would agree with me that, based on the 13-state  
15 collaborative plus Arizona's own process, that there  
16 were easily more than a hundred people from various  
17 State Commissions, staffs, auditors, CLEC  
18 representatives, and Qwest representatives who worked  
19 on this process for those four years; is that correct?

20 A. Well, I don't know how many people there  
21 were, but that wouldn't surprise me.

22 Q. Okay. And based on that many people that  
23 you're not surprised worked on this, and four years of  
24 development, you'd agree with me that there was at  
25 least -- there were tens of thousands of people hours

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1 involved in the development of the PAP process?

2 **A. I mean, I can't, I can't agree with that. I**  
3 **have no basis to know that. But I'm sure there was a**  
4 **lot of effort put into that. And what we're trying to**  
5 **do here with our proposal is really leverage that**  
6 **effort that's already been done.**

7 **Q. And --**

8 **A. We're not trying to create something that's**  
9 **completely new. But we're trying to use that effort**  
10 **that's been done and say, Now let's use this for**  
11 **something that's just slightly different. Which is**  
12 **comparing pre-merger performance with post-merger**  
13 **performance.**

14 **Q. And you agree with me, sir, that various**  
15 **state utility commissions, including this Commission,**  
16 **reviewed the PIDs and the PAP. And after Qwest**  
17 **voluntarily agreed to the PAP, this Commission**  
18 **recommended to the FCC that it grant Qwest's**  
19 **Section 271 application; is that correct?**

20 **A. Well, I think that the Commission's decision**  
21 **to grant 271 application was much broader than Qwest**  
22 **agreeing to the, to the PAPs.**

23 **Q. That was not my question, sir. Let me ask my**  
24 **question again. After the various commissions,**  
25 **including this Commission, reviewed the PIDs and the**

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1 **was kind of, I mean, I got involved starting around**  
2 **the three-year review in Colorado, so I'm not real**  
3 **familiar with that process. I wasn't, I wasn't**  
4 **involved in that process.**

5 **Q. Okay. And this Colorado three-year review,**  
6 **that meant three years after the granting of 271**  
7 **relief for Qwest; is that correct?**

8 **A. That's correct.**

9 **Q. And that process took approximately 18 months**  
10 **or so?**

11 **A. You know, I'm not sure that I was involved in**  
12 **that process. I don't recall the, you know, how long**  
13 **that took. We went through, I mean, there was a**  
14 **mediator that was involved in that. And we went**  
15 **through a number of kind of proposed changes that**  
16 **people had to the, to the PIDs.**

17 **And we worked through that for, you know, I**  
18 **mean, it was quite a while working through issues and**  
19 **exchanging of data. And we were able to come to kind**  
20 **of an agreed-upon resolution of what to do. What to**  
21 **do next there.**

22 **Q. Okay. Well, whether it took 18 months, or**  
23 **16 months, or 12 months, you were involved. And it**  
24 **was a fairly substantial process in which different**  
25 **negotiations, and refinements, and analysis was**

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1 **PAP, and after Qwest voluntarily agreed to the PAP --**  
2 **so we're talking point in time -- this Commission**  
3 **recommend to the FCC that it grant Qwest's Section 271**  
4 **application?**

5 **A. Right, that's correct. And I just wanted to**  
6 **make clear that there were many other aspects to**  
7 **that --**

8 **Q. Sure.**

9 **A. -- to that order that took place.**

10 **Q. Okay. And even after Qwest was granted**  
11 **Section 271 relief, you talked about an effort -- a**  
12 **post-271 effort. And that was called the Long-Term**  
13 **Proposed, Proposed Administration, the LTPA; is that**  
14 **correct?**

15 **A. Well, it was called the LTPA, but you're -- I**  
16 **don't think you've got the --**

17 **Q. I may have gotten it wrong.**

18 **A. -- the words right. I think it was Long-Term**  
19 **PID Administrator, or.**

20 **Q. Right, PID administrator.**

21 **A. Right.**

22 **Q. Right. Okay. And that was to provide a**  
23 **forum to deal with PID refinements and changes; is**  
24 **that correct?**

25 **A. Yeah, you know, that, I mean, that process**

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1 **conducted, correct?**

2 **A. Right, that's correct. There weren't**  
3 **hundreds of people or 10,000 hours involved in that.**  
4 **There was maybe a handful of, a handful of people that**  
5 **were working that.**

6 **Q. Sir, the standard that the QPAP measures is**  
7 **whether Qwest is providing services to CLECs in a**  
8 **nondiscriminatory or parity manner; is that correct?**

9 **A. I generally agree with that, yes.**

10 **Q. And that standard is based on requirements in**  
11 **the Telecom Act that Qwest treat its wholesale**  
12 **customers in a nondiscriminatory and/or parity manner,**  
13 **correct.**

14 **A. Well, I think it says that they have to**  
15 **provide service that is at least as good as what Qwest**  
16 **provides to itself.**

17 **Q. And that would be a nondiscriminatory or**  
18 **parity manner?**

19 **A. Right. I mean, I think the standard really**  
20 **is at least as good as. Which is -- which I'd say is**  
21 **a little bit different from just a nondiscriminatory.**

22 **Q. Okay. And you would agree with me that**  
23 **performance deterioration or performance degradation**  
24 **is not a standard in the Telecom Act?**

25 **A. Right. We're -- right. And I -- we're --**

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1 here we're talking about a merger case and looking at,  
2 looking at whether there's kind of harm as a result of  
3 a merger. So the standard -- that's why the  
4 standard's different from what we used when we did 271  
5 approval.

6 Q. And you'll agree with me, sir, that you're  
7 not aware of any case in which the FCC or a state  
8 utility commission has ever ordered a PAP that was  
9 based on a standard such as performance degradation or  
10 performance deterioration as a result of a merger; is  
11 that correct?

12 A. I don't think I would go that far. I think  
13 in the Embarq-CenturyLink or CenturyTel merger the, I  
14 mean, the FCC put in a plan that was basically to  
15 compare pre-merger and post-merger performance for a  
16 number of measures, so.

17 There weren't remedy payments associated with  
18 that plan, but there was definitely a plan and  
19 measurement put in place which does similar to what,  
20 what we've asked to do here. And that's in Mr. Gates'  
21 testimony.

22 Q. And you're claiming that it's similar to what  
23 is happening here? Is that your testimony?

24 A. There's some similarities. They took a  
25 number of -- I mean, the measures weren't as developed

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1 for, you know, for CenturyLink and Embarq's. They  
2 took a number of measures. They took a one-year  
3 average prior to, and they compared it with kind of a  
4 three-months average afterwards. And they looked to  
5 see whether there was deterioration in performance.

6 They used a tighter standard than what we --  
7 we proposed kind of using a standard out of the QPAP.  
8 I think they used a single standard deviation in their  
9 standard to determine whether there's a deterioration.  
10 And I believe there were, you know, things the Company  
11 had to do, you know, in terms of reporting or  
12 explaining if there was a deterioration.

13 But this is in Mr. Gates' testimony. He's  
14 probably more familiar with that than I am.

15 Q. And you agree with me, sir, that you're not  
16 aware of any state commission that has ever ordered a  
17 PAP based on a standard other than -- a standard such  
18 as performance degradation or performance  
19 deterioration as a result of a merger; is that  
20 correct?

21 A. Right. As I'm aware -- and I'm mostly aware  
22 in the Qwest states and, I mean, California, Nevada,  
23 where my company does business. I'm not aware that  
24 this decision has come before, you know, come before  
25 the states, really, until this case here.

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1 So the states haven't rejected this idea or,  
2 you know, or approved a plan yet.

3 Q. Okay. So then you would agree with me, then,  
4 that if this Commission were to entertain your APAP  
5 proposal, and thereafter order it in this proceeding,  
6 it would be the first state utility commission that  
7 you're aware of that has ordered a PAP that was based  
8 on the concept of performance degradation or  
9 performance deterioration as a result of a merger?

10 A. Well, I mean, you're -- so you're assuming  
11 Utah orders before anybody else --

12 Q. Yes.

13 A. -- and no other state approves it?

14 Q. Yes, I am.

15 A. That would be true.

16 Q. And you would agree with me that this  
17 Commission, if it adopted your APAP concept, would be  
18 the first state utility commission to ever order a PAP  
19 that was based on a standard other than parity or  
20 nondiscrimination?

21 A. I mean, from what I'm aware of, which is  
22 really -- which is the territory out here in the West,  
23 I mean, that's, that's probably true. I'm not aware  
24 of any other plans at this point in time.

25 I do know as a result of the Verizon-Frontier

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1 merger dockets which I was involved in, you know, the  
2 commissions in Oregon and the -- in Washington opened  
3 up cases to look at kind of establishing some  
4 wholesale service quality standards, which didn't  
5 exist.

6 So they're -- so wholesale service quality is  
7 certainly an issue that's dealt with as a part of  
8 merger proceedings.

9 Q. And you are aware that Utah has its own  
10 specific service quality standards and requirements in  
11 Utah?

12 A. Right. The Wholesale Service Quality Rules  
13 you're referring to?

14 Q. Yes.

15 A. Right. They're kind of -- I would call them  
16 more "guidelines," I think is the word that's used in  
17 the, you know, in the rules.

18 Q. And sir, you'll agree with me that you are  
19 not aware of any case in which the FCC or a state  
20 utility commission has ever forced on an ILEC a PAP  
21 with self-effectuating penalties that the ILEC did not  
22 otherwise voluntarily agree to as a result of a  
23 merger?

24 A. Well, I mean, your question confuses me  
25 regarding "forced," because, I mean, I think usually

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1 what happens is that the commissions would offer up  
2 conditions. And the Joint Applicants have an option  
3 to accept them or basically not go ahead with the  
4 merger.

5 So I don't know how -- I don't -- I disagree  
6 with that word being "forced" upon. I mean, I did  
7 talk about the FCC had a plan that was -- it was  
8 agreed to by the parties.

9 Q. And that's a key point. It was agreed to by  
10 the parties there, correct?

11 A. Right. And I think if they hadn't agreed to  
12 that, they wouldn't have been able to go ahead with  
13 their merger.

14 Q. Well, we can speculate what the FCC would  
15 have done if they hadn't. But the point I'm making  
16 is -- that I want you to make and confirm for me is  
17 that those parties actually agreed to that -- those  
18 self-effectuating penalties as part of that process?

19 A. As far I'm aware of, every merger proceeding,  
20 when there's conditions involved, parties either agree  
21 to them or they don't merge.

22 Q. Okay. So let's get back to my point then.  
23 You are not aware of anytime where the Commission has  
24 forced a party, without their consent, to adopt a PAP  
25 with self-effectuating penalties; is that correct?

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1 thought if I put something specific on the table, that  
2 would facilitate the process.

3 Q. And you did a lot of research and analysis  
4 for it; is that correct?

5 A. I don't know that I did -- I don't know what  
6 you mean "research and analysis." I didn't, I didn't  
7 run any numbers, if that's what you're talking,  
8 because I don't really know what post-merger  
9 performance is.

10 I -- what I looked at was seeing how -- the  
11 question we really asked ourselves is, What can we put  
12 in place to try to assure that performance doesn't  
13 deteriorate after the merger?

14 And so we took, I mean, the analysis was  
15 really how do the current QPAPs work, and is there  
16 things that we -- and how do the current PIDs work.  
17 And can we use that information, you know, in a way to  
18 compare pre-merger and post-merger performance.

19 So I'm not sure what you mean by "research  
20 and analysis," but, you know.

21 Q. Okay. I'm not trying to make this difficult.  
22 I'm just -- I'd like you to just confirm that you --  
23 let's just say you chose and put together your  
24 measures very carefully, didn't you?

25 A. Yes.

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1 A. I don't know how that could happen, because  
2 you just wouldn't -- if you didn't like a condition  
3 you wouldn't go ahead with the merger.

4 Q. And then so you would agree with me, then,  
5 that if this Commission were to entertain your APAP  
6 concept and force self-effectuating penalties without  
7 the Joint CLECs' consent -- I mean the Joint  
8 Applicants' consent, it would be the first state  
9 commission to do so?

10 A. No, I, I mean, there's -- no, I don't agree  
11 with, I don't agree with that -- with the way you're  
12 posing that question.

13 Q. All right.

14 A. I think I've made it clear.

15 Q. Let's move on then. Now, in preparing for  
16 your APAP concept you worked very hard on that plan,  
17 didn't you?

18 A. I mean, I -- yeah. I work hard on everything  
19 I do, so I'm not sure what "very hard" means.

20 Q. Okay. Well, you tried to be very precise in  
21 putting together that plan, correct?

22 A. I tried to put something specific together  
23 that could be analyzed, criticized, hopefully talked  
24 about. We could try to come to some resolution to  
25 find a way to assure wholesale service quality. I

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1 Q. And you established the standards for the  
2 plan very carefully? I mean, when you looked at the  
3 standards that you wanted to do, you were deliberate  
4 about that process?

5 A. I was deliberate. And I, I mean, I used the  
6 same process that was used in the QPAP. So I didn't  
7 try to, I didn't try to create something new, or  
8 correct problems that I thought already existed in the  
9 QPAP.

10 I used kind of what has been there and what  
11 parties have been using for, you know, for a number of  
12 years in the QPAP. That kind of process to measure  
13 whether there was a change in service quality. Or a  
14 difference, I should say, in service quality.

15 Q. Okay. And when you put together your 18-page  
16 proposal you chose your words, and definitions, and  
17 terms -- and conditions very carefully, didn't you?

18 A. Yes, I chose them carefully. And al -- but a  
19 lot of them I took as much as possible, just the words  
20 and kind of the methodology, right out of the QPAP. I  
21 was trying to minimize the creation of, you know,  
22 something new. And trying to use what we already had  
23 in place and just apply it in a slightly different  
24 manner.

25 Q. And you wanted to make sure that this plan

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1 would measure what you testified to as performance  
2 deterioration or performance degradation as a result  
3 of the merger, didn't you?

4 A. That's correct.

5 Q. And now, throughout your testimony you seemed  
6 to interchangeably use the terms "performance  
7 deterioration" and "performance degradation." But we  
8 can agree here that both terms mean roughly the same  
9 thing; is that correct?

10 A. That's correct.

11 Q. Okay. So I can refer to either term and  
12 we'll know what we're talking about?

13 A. Yes.

14 Q. But you never defined the terms "performance  
15 deterioration" or "performance degradation" in your  
16 APAP plan, did you?

17 A. No, I think they are defined by the  
18 statistical test that would apply to pre-merger and  
19 post-merger performance. And I think it's  
20 determined when there's a significant deterior -- I  
21 mean, "deterioration" just means "decline."

22 But the test in the APAP is when there's a  
23 statistically-significant deterioration, then a remedy  
24 payment would kick in. And I think those are very  
25 clearly defined.

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1 measure -- to directly measure whether it was a result  
2 of the merger. But I did include provisions in the  
3 QPAP that are -- like the *force majeure*-type  
4 provisions that are in some of the QPAPs that would --  
5 which would basically say if the Company can come  
6 forward and say, Look, this was a result because of  
7 really bad weather, that they wouldn't have to make a,  
8 you know, a payment in that regard.

9 Or if this is a result of a work stoppage.

10 So that they would kind of have that opportunity to  
11 come forward and show why, why performance degradation  
12 was not, you know, was not a result of the, of the  
13 merger. But I didn't, I didn't specifically -- I'm  
14 using the data that exists today.

15 So I didn't specifically measure, you know,  
16 to say this is directly a result of the merger. But  
17 we've had a -- over a period of time we've seen -- I  
18 mean, Qwest's performance has slightly improved over a  
19 period of time.

20 And if it suddenly declined after the merger  
21 I would certainly, I would certainly -- that would be  
22 the first place I would look, is the -- and I would  
23 expect that it would be a result of the merger.

24 Q. So in essence you're trying to shift the  
25 burden, then, that if there's any kind of service

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1 Q. In fact, sir, you've never even used the  
2 terms "performance deterioration" or "performance  
3 degradation" in the APAP? I mean, I did a search and  
4 I couldn't find them.

5 A. Oh, that's quite possible.

6 Q. Okay. But when you went about drafting the  
7 APAP you were careful with it and wanted to make sure  
8 that you got it right for the right public policies,  
9 correct?

10 A. Right. I wanted to put a proposal forward  
11 that would incent wholesale service quality  
12 post-merger. Make sure that the Company had the  
13 incentives to respond to deteriorations in wholesale  
14 service quality in a timely manner.

15 And using data that was already available and  
16 already out there to compare what was pre-and-  
17 post-merger wholesale service quality.

18 Q. Okay. And in that process when you put  
19 together the APAP concept you wanted to measure two  
20 things: You wanted to measure whether there was  
21 performance degradation or performance deterioration  
22 after the merger, and two, that such performance  
23 degradation was a result of the merger; is that  
24 correct?

25 A. Well, I didn't, I didn't attempt to

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1 degradation, whether it's related to the merger or  
2 not, Qwest and -- or the post-merger company would  
3 have to come back and prove that it wasn't the result  
4 of the merger; is that correct?

5 A. And that's an important point. I think  
6 clearly, clearly we think the burden should be on the  
7 Joint Applicants regarding the wholesale service  
8 quality. The burden -- because of their merger the  
9 burden shouldn't be shifted to -- somehow to CLECs to  
10 have to come in and demonstrate, you know, demonstrate  
11 this.

12 The CLECs didn't ask for the merger, the  
13 Joint Applicants did. And so I think it's appropriate  
14 that the burden be on the Joint Applicants.

15 Q. Well, sir, you would agree with me that there  
16 could be performance degradation post-merger and it  
17 may not be a result of the merger itself; is that  
18 correct?

19 A. Right. I think I just talked about a few of  
20 those. If some, you know, if something was weather  
21 related or you had a work stoppage. And we tried to  
22 account for those things by putting into the plan, you  
23 know, methods for the, for the Company to come in and  
24 say this wasn't a result of the merger.

25 We also put another provision in the plan

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1 that's kind of called a "root-cause analysis" so you  
2 can say, Look, this PID's just not working as it was  
3 intended for this. And they can come to the, you  
4 know, kind of come to the Commission and say, We want  
5 to investigate this particular measure. It's not  
6 working as intended.

7 And the Commission would have the authority  
8 to change that or even eliminate that measure.

9 Q. So based on what you're telling us, then,  
10 you're telling us there is no component in the APAP  
11 that measures, either from a quantitative standpoint  
12 or a qualitative standpoint, whether any performance  
13 degradation is a result of the merger?

14 A. The -- right. It measures what -- it  
15 measures changes in performance pre-merger and  
16 post-merger. That's what we can see with the data  
17 that's out there.

18 Q. Now sir, you would agree with me ultimately  
19 that if there is not performance degradation at all  
20 post-merger there should not be any penalties,  
21 correct?

22 A. Correct. I agree.

23 Q. And it wouldn't be --

24 A. With regard --

25 Q. I'm sorry.

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1 A. Sorry. Just to clarify. With regard to the,  
2 I mean, the additional performance assurance plan. I  
3 mean, the QPAP is a different, different standard by  
4 which if you -- you know, which measures the -- kind  
5 of your parity. Which I think is the word you used  
6 before.

7 And so there could be payments in that regard  
8 if you don't meet those standards.

9 Q. I understand. Because it wouldn't be fair to  
10 penalize the merged company if there was no  
11 performance degradation at all post-merger, correct?

12 A. Right.

13 Q. And in order to impose penalties in the PAP  
14 you would need not only performance degradation, but  
15 also that such performance degradation was actually a  
16 result of the merger?

17 A. I mean, I think the presumption, the  
18 presumption should be that -- and this is what we  
19 talked about as the burden of proof, is the  
20 presumption should be if there's a deterioration in  
21 whole -- a significant deterioration in wholesale  
22 service quality post-merger, the presumption should be  
23 that it's a result of the merger. And it should be --  
24 the burden should be on the Company to demonstrate  
25 that that's not the case.

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1 Q. Sir, and ultimately if your APAP did result  
2 in penalties when there was no performance  
3 degradation, you agree with me that the APAP would not  
4 have served its essential purpose; is that correct?

5 A. Well, that's not, I mean, that's not  
6 necessarily correct. The goal of the APAP isn't the  
7 result you mentioned there. But the goal is to incent  
8 performance to make sure that, to make sure that you,  
9 I mean, you have that incentive to perform pre-merger  
10 and post-merger.

11 And to get a little into some of the  
12 statistics, every time you do a statistical test  
13 there's two types of errors that occur. There's  
14 Type 1 errors, which is kind of a false positive, and  
15 there's Type 2 errors, which is, I guess that's the  
16 false negative.

17 And what Mr. Duarte is talking about is  
18 Type 1 error, which is the case where you find there's  
19 a degradation when it didn't exist. And that's a  
20 possibility when you do statistical measures.

21 But he's -- what he's not mentioning, there's  
22 another type of errors where performance did  
23 deteriorate, but because you put in these stringent  
24 statistical tests you didn't count it as a  
25 deterioration because it didn't, it doesn't pass over

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1 that threshold. And that's a Type 2 error.

2 And any type of statistical analysis you do  
3 is a balance between Type 1 and Type 2 errors. And  
4 they always exist in any type of statistical analysis.  
5 And you can make the Type 1 error smaller, but by  
6 default then you make the Type 2 error bigger. And if  
7 you make the Type 2 error very small, then by default  
8 you make the Type 1 error bigger.

9 And what's why in statistics they usually use  
10 like that 95 percent threshold. That it's  
11 statistically significant, you know, to a 95 percent  
12 degree. So, I mean, just focussing on one side of the  
13 equation I think is a mistake.

14 Q. Mr. Denney, you're giving much too cred --  
15 much too much credit about what -- Type 1 and Type 2  
16 errors in my statistical analysis here.

17 My -- I don't think you understood my  
18 question, so I'm gonna just read it real slowly so  
19 that you can understand it, because it's very clear  
20 you didn't.

21 Ultimately, if your APAP did result in  
22 penalties when there was no performance degradation at  
23 all, you agree with me that the APAP would not have  
24 served its essential purpose?

25 A. No, I, I don't, I don't agree with that. And

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1 that's not -- I mean, first, that's not the goal of  
2 the APAP isn't to cause penalties when there's not  
3 a -- when there's not performance degradation. But  
4 you could have a case where, you know, if the plan  
5 over-penalized, that doesn't mean the incentives  
6 aren't still for them to perform -- you know, to try  
7 to meet wholesale performance.

8 They may even be stronger to -- for the  
9 incumbent to try to even, you know, improve  
10 performance post-merger. But that's not the goal of  
11 the plan. I just disagree with the, you know, that if  
12 you made a payment sometimes when it wasn't necessary,  
13 that the plan wouldn't work. Because I think you  
14 could still -- it can still work.

15 That's just the -- that's not what we're  
16 trying to do with the plan.

17 Q. When you make a payment that you didn't have  
18 to, it doesn't mean the plan didn't work; is that what  
19 you said?

20 A. What I -- in response to your question was,  
21 Does that mean that you don't have the incentives to  
22 perform wholesale service quality?

23 And if you made a payment in some instances  
24 when there wasn't a deterioration but you also made  
25 payments when there was a deterioration, then I don't

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1 agree that you don't have an incentive to provide  
2 wholesale service quality.

3 You just -- that's a Type 1 error. That's  
4 why I got in the discussion of Type 1 errors. And  
5 Type 1 errors is some -- is kind of this false  
6 positive. You measured an error -- you measured a  
7 performance degradation when one didn't exist.

8 Q. Well, let me ask you the flip side of the  
9 coin, then. So you're saying that the APAP would have  
10 served its essential purpose if the Joint Applicants  
11 would pay penalties despite the fact that there was no  
12 performance degradation, which is what you're trying  
13 to avoid to begin with; is that correct?

14 A. Well, you lost me on the question, but --

15 Q. Okay, I apologize.

16 A. It's like you started with something, and I  
17 didn't --

18 Q. Okay. I'll --

19 A. -- I didn't say it to start with, but.

20 Q. The flip side of the coin, then, is that  
21 you're saying that it's okay for there to be  
22 penalties, even if there was no performance  
23 degradation?

24 A. No, I'm not, I'm not saying that. And that's  
25 why, I mean, that's why we put this plan on the table

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1 as we did. And why we even offered this additional  
2 language to try to get at the, you know, the big  
3 concern you had.

4 The goal -- that's not the goal of the plan.

5 The goal of the plan is to try to incent performance.

6 But that's why I got into this discussion about Type 1  
7 and Type 2 errors. Anytime you do a statistical test  
8 there are some instances where you err -- you make an  
9 error and you say there was a payment when it wasn't  
10 really justified.

11 There are also a lot of instances where there  
12 was a deterioration of performance and you never made  
13 a payment. And you can look in my -- in my direct  
14 testimony I had some kind of examples of some cases of  
15 how these PIDs would measure.

16 And you can see how much performance of --  
17 for some of these would have to deteriorate before a  
18 payment would kick in. So you could have like a  
19 50 percent deterioration in performance and maybe  
20 never make a payment because the statistical test is  
21 so stringent.

22 And that's why that's a Type 2 error. And  
23 any statistical test is a balance between those two  
24 things.

25 Q. Let's move on to the period of the APAP here.

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1 The period of time that you use as the base period to  
2 determine if performance has degraded or deteriorated  
3 after the merger is the 12-month period prior to the  
4 announcement of the merger, right?

5 So in other words you're looking at -- you're  
6 comparing post-merger performance with the time period  
7 of May 2009 to April 2010; is that correct?

8 A. That's correct. And, I mean, we -- I chose  
9 that period as just a kind of a period that the -- no  
10 party would have any -- you know, it's kind of before  
11 anything took place. And no party would have any  
12 incentive to say, Oh, prior to the merger we can just  
13 put out really crummy performance, and then we'll be  
14 fine after the merger. And, you know, you can game  
15 the system.

16 So it's trying to set a time period which was  
17 in the, in the past, prior to the merger announcement  
18 date. So that you couldn't try to game, you know, the  
19 system prior -- you know, pre -- so your pre-merger  
20 performance is already set at that time.

21 Q. Since I don't think I'm gonna be able to have  
22 you agree that Qwest's performance during that time  
23 period was good, you'll at least agree that the  
24 penalties that Qwest paid during that time period were  
25 less than 20 percent of what they -- of what we paid

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1 five years earlier, correct?

2 **A. I, I mean, I didn't look at those numbers,**  
3 **so. But I think Qwest's pay -- Qwest's performance or**  
4 **the payments that they've made under the QPAP have**  
5 **declined over time. And I think that's because the**  
6 **QPAP has been very effective at incenting, you know,**  
7 **incenting performance.**

8 **Q. Well, you read Mr. Williams' direct**  
9 **testimony, did you not?**

10 **A. Yes, I did.**

11 **Q. And you saw that he said that the payments**  
12 **were in about the \$50,000 range, and it was less than**  
13 **20 percent of what it was in 2004; is that correct?**

14 **A. I don't recall that specific number, but that**  
15 **doesn't surprise me.**

16 **Q. Okay. Did you verify that?**

17 **A. No.**

18 **Q. Okay. Now, you compare a single month's**  
19 **performance post-merger with the 12-month average from**  
20 **May 2009 to April 2010, correct?**

21 **A. That's correct.**

22 **Q. And now Mr. Denney, again, I'm no**  
23 **statistician. And you gave me a lot more credit about**  
24 **Type 1 and Type 2, which I didn't follow. But even**  
25 **if -- even I know that comparing a sample of 1 month**

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1 to a sample of 12 months average can lead to disparate  
2 or inconsistent results, can't it?

3 **A. That's not necessarily the case. I think**  
4 **they're -- I mean, part of the reason I did that**  
5 **comparison is the QPAP has something already similar**  
6 **in it. Where it compares, I believe it might be a**  
7 **six-month prior average to kind of a current, to a**  
8 **current month.**

9 **And the FCC had done something similar, where**  
10 **it compared -- for the Embarq-CenturyLink, where it**  
11 **compared a 12-month prior with a kind of a 3-month**  
12 **post. So I don't agree that it necessarily results in**  
13 **disparate remarks. One -- I mean, the problem if you**  
14 **just compared month to month, I think, then you much**  
15 **greater run that risk.**

16 **So I was trying to get what's your overall**  
17 **average performance. Which should account for, you**  
18 **know, if you had months that were really good or**  
19 **months that were really bad, you'd capture on average**  
20 **what was your performance in that year prior. And**  
21 **that's what we were trying to compare it with.**

22 **Q. Let's talk about that, Mr. Denney. Can you**  
23 **go to page 16 of your surrebuttal testimony? Lines 1**  
24 **through 2, please? Now, you say that:**

25 "Comparing monthly performance to an

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1 average performance over multiple months  
2 is common in Qwest's performance  
3 assurance plans."

4 Is that what you said?

5 **A. Yes.**

6 **Q. And you drop down to a footnote in --**  
7 **Footnote 41 on that page, and you say: "See, for**  
8 **example, Exhibit K of the Qwest Utah SGAT." Which is,**  
9 **of course, the Utah PAP; is that correct?**

10 **A. Well, the Utah SGAT isn't the Utah PAP. But**  
11 **I did -- but I'm referencing the Utah PAP.**

12 **Q. Right. Well, Exhibit K -- I'm sorry.**

13 **A. Right.**

14 **Q. Okay. So we took -- you're referencing the**  
15 **Utah PAP, correct?**

16 **A. Correct.**

17 **Q. But in fact the Utah PAP doesn't have the**  
18 **provision that you're talking about, does it?**

19 **A. I thought that it, I thought that it did.**  
20 **That I went through and, through and checked that.**

21 **Q. Isn't it true that this is a holdover from**  
22 **your testimony in Minnesota?**

23 **A. I mean, I did, I did look at that case in**  
24 **Minnesota as well. But I thought I went through and**  
25 **verified that the Utah PAP did that. But quite a few**

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1 **of the Qwest PAPs do that in the -- in its**  
2 **territories. And I didn't bring the Utah, Utah PAP**  
3 **with me, but.**

4 **Q. And how many are "quite a few"?**

5 **A. Well, I know, I know at least Minnesota does.**  
6 **I believe that, you know, Colorado did. I think**  
7 **that -- I think others may have done that at some**  
8 **period of time as well. Used that six-months average.**

9 **Q. And you'll agree with me that it is only**  
10 **Minnesota and Colorado that do that?**

11 **A. Well, I wouldn't -- I'd have to look at each,**  
12 **each PAP to determine that.**

13 **Q. So you don't know?**

14 **A. Right.**

15 **Q. So the only ones you do know are Colorado and**  
16 **Minnesota, but you said that these things are common;**  
17 **is that correct?**

18 **A. Right.**

19 **Q. And you cited the Utah one, but you didn't**  
20 **even check the Utah one to see if that was in that**  
21 **plan?**

22 **A. Right. My intent was to -- that I went**  
23 **through and checked that. But if I -- you know, and I**  
24 **don't have the Utah PAP here in front of me. But it**  
25 **is a provision that's used in some of the PAPs. And**

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1 as I explained, was used in the FCC, you know, with  
2 the CenturyLink-Embarq merger.

3 Q. Well, you don't say that in your testimony  
4 here.

5 A. No. I said it right now, just a minute ago.

6 Q. Okay. So, but I just want to confirm that  
7 you did not look at the Utah PAP when you prepared  
8 this testimony to make this statement?

9 A. Well, I, I don't have the Utah PAP in front  
10 of me, so I -- so first I'd have to go through and  
11 confirm. But I did go through the Utah PAP when I  
12 prepared this testimony.

13 Q. And --

14 A. Is it possible that I missed this reference?  
15 That's possible. But I'd have to look at the Utah PAP  
16 to confirm that. But I did go through that PAP  
17 preparing this testimony.

18 Q. You'd agree with me that there can be wild  
19 fluctuations in one month compared to a 12-month  
20 period, correct?

21 A. What type of fluctuations?

22 Q. Well, there could be, you know, unusual  
23 fluctuations in one month compared to when you look at  
24 something spread over a 12-month period.

25 A. I mean, I agree, a single month's performance

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1 can be different than a 12-month average.

2 Q. Well, let's cut to the chase then. Some  
3 months can be higher and some months can be lower?

4 A. Right.

5 Q. Okay. And that's why statisticians like to  
6 use a larger sample than a smaller sample to get a  
7 more accurate result, correct?

8 A. I mean, that's one benefit of a larger  
9 sample. That's correct.

10 Q. So, for example, let's say that because of  
11 snowy weather in Northern Utah in January, January is  
12 a really bad month. And thus the APAP results for  
13 that month are really bad. Now, suppose that after  
14 January things settled for the rest of the year.

15 You'd agree with me that the average for the  
16 whole year would be more indicative of Qwest's  
17 performance than the results in that one bad month of  
18 January?

19 A. And that, I mean, that's the reason we put in  
20 the force majeure provisions -- that don't exist in  
21 every state PAP -- is to say, Here there is a reason --  
22 here is a reason, like bad weather, that we shouldn't  
23 have to make that payment this month. That's why we  
24 put that into the plan.

25 Q. Well, and it doesn't have to be something

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1 severe like bad weather. I mean, let's put it this  
2 way. Suppose you play golf, and your average is 90.  
3 And you only golfed ten times in the whole year, and  
4 then half your scores were 85 and half were 95.

5 You agree with me that it wouldn't be fair to  
6 penalize you for the five rounds where you shot 95,  
7 but not get credit for the five rounds where you shot  
8 85; correct?

9 A. Well, I don't necessarily agree with that,  
10 and I think that's why we do statistical tests. But  
11 that is one of the complaints you've made that we've  
12 tried to address with this additional language saying,  
13 Let's create this kind credit, a buffer zone, to  
14 account for that very problem you're raising.

15 Because this shouldn't be the fight we're  
16 having about this. We're -- the Company's been  
17 promising wholesale service quality, and we're trying  
18 to find a way to kind of put something in place that  
19 puts some meat around those assurances.

20 And so we're willing to -- we've been willing  
21 to talk about these plans in discussions. And we've  
22 tried to put something forward that resolves that  
23 concern of yours.

24 Q. Sir, let's get to the penalties under the  
25 APAP, please. You agree with me that if there is

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1 performance deterioration or performance degradation  
2 as a result of the merger, Qwest would have to pay  
3 penalties to CLECs like Integra, correct?

4 A. If there's statistically-significant  
5 differences in post-merger performance to pre-merger  
6 performance under the APAP as written here, Qwest  
7 would pay penalties to -- kind of a remedy payment to  
8 the CLECs.

9 Now, with the new proposal that I put forth,  
10 that may not be the case. Because you have a kind of  
11 a, what I call the "remedy credit" kind of built in  
12 there before you would make a payment.

13 Q. And you just said "significant," but  
14 significant is not defined in the APAP, is it?

15 A. Well, I mean, it is in a sense, because  
16 that's what -- when you do a statistical test that's  
17 what the statistical test is trying to capture is a  
18 significant change in the -- or a significant  
19 difference in the things that you're comparing.

20 And so the term "significant" may not be used  
21 in the, you know, in the APAP, but I'm using it in  
22 the, basically the statistical sense, saying we're  
23 doing a test to see whether performance has  
24 significantly changed pre- and post-merger.

25 Q. So it's defined, in a sense; is that what

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1 you're saying? In a sense?

2 **A. No, it's defined in there as the -- it's**  
3 **defined as a statistical -- form of a statistical**  
4 **test. Significant in a statistical -- in statistics**  
5 **means, it basically means a statistical test to**  
6 **determine whether you're, you know, kind of beyond a**  
7 **threshold that would require a remedy.**

8 **Q. And indeed, these penalties can be very**  
9 **substantial, can't they?**

10 **A. The greater the deterioration in performance,**  
11 **the greater the payments can be. And the longer that**  
12 **it takes to fix performance, the payments escalate**  
13 **kind of over time when, when you don't fix**  
14 **performance.**

15 **Q. Let's go to page 11 of your APAP proposal,**  
16 **Exhibit 1.1. And specifically Section 13.9. I see**  
17 **that you took out 13.8; is that correct?**

18 **A. That's correct.**

19 **Q. Okay. And according to Section 13.9, the**  
20 **penalties can exceed \$3 million in only one month; is**  
21 **that correct?**

22 **A. Right. And this -- I took this section out**  
23 **of the, out of the QPAP. And, you know, I can't**  
24 **figure out how you can get to that 3 million. But**  
25 **this is one of those things where I actually debated**

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1 **whether to delete that provision entirely.**

2 **Then I thought the Company would come in and**  
3 **complain there were no caps on payments, so I just**  
4 **left in the payment caps that existed in the current**  
5 **QPAP.**

6 **Q. And under this provision, sir, that would be**  
7 **up to \$3 million in one month -- or could exceed**  
8 **\$3 million in one month to only one CLEC, like**  
9 **Integra; is that correct?**

10 **A. That is, that is correct. But I can't figure**  
11 **out how you can get to that level like in a single**  
12 **month under this.**

13 **Q. And the concept of the APAP is that these**  
14 **penalties are essentially liquidated damages. Such**  
15 **that a CLEC does not have to prove any harm to it as a**  
16 **result of service degradation as a result of the**  
17 **merger; is that correct?**

18 **A. No, I don't think I agree with that. I think**  
19 **the purpose is really to set up a, you know, kind of**  
20 **set up a way that incents performance that it does**  
21 **make a remedy payment to the CLEC. I don't know if I**  
22 **would say it's liquidated -- go so far as to say it's**  
23 **liquidated damages.**

24 **Q. But sir, doesn't your APAP talk about**  
25 **liquidated damages all over the plan?**

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1 **A. For example?**

2 **Q. Okay. If you want me to go look through it**  
3 **we'll -- it'll take me a minute here, but. I wish I**  
4 **had my computer where I could do a global search.**  
5 **(Pause.)**

6 **Q. (By Mr. Duarte) Thirteen dot four, the**  
7 **implementation of these enforcement terms -- actually,**  
8 **I'll have you read it instead. Thirteen dot four on**  
9 **page 10?**

10 **A. Right. That's the -- that's one provision I**  
11 **was looking at here.**

12 **Q. So these -- well, how about 13 -- why don't**  
13 **you just read it for the record so the record is**  
14 **clear?**

15 **A. All right. Well, it says:**

16 "The implementation of these  
17 enforcement terms, and specifically  
18 Qwest's payment of any 'liquidated  
19 damages' hereunder, will not be  
20 considered as an admission against  
21 interest or an admission of liability in  
22 any legal, regulatory, or other  
23 proceeding relating to the whole or in  
24 part of the same performance."  
25 And --

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1 **Q. And 13 -- I'm sorry, I didn't mean to**  
2 **interrupt you.**

3 **A. And then 13.4.1 just talks about kind of what**  
4 **you can use with this evidence. I mean, what you can**  
5 **use with the evidence kind of out of the QPAP.**

6 **But, I mean, the way I've read these**  
7 **provisions is that, is that if you went to court to**  
8 **try to obtain kind of liquidated damages for a, you**  
9 **know, for this, that these payments aren't -- if I say**  
10 **this correctly -- that this can't really be considered**  
11 **as evidence of, you know, in a court case of whether**  
12 **there was harm or something -- you know, direct harm**  
13 **to the CLEC. That's the way I kind of read these**  
14 **provisions in here.**

15 **Q. So you didn't quite understand what was meant**  
16 **by "liquidated damages"?**

17 **A. No, I think I know the term. It's using**  
18 **liquidated damages in quotes, which I take to mean it**  
19 **doesn't mean exactly liquidated damages. It's**  
20 **saying -- kind of saying, Well, you know, for lack of**  
21 **a better term, liquidated damages.**

22 **But I don't think -- I mean, in my mind --**  
23 **and I'm not an attorney, as you know. I mean,**  
24 **liquidated damages, to me, would be more of a -- more**  
25 **of something to say, Here is like the direct harm that**

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1 I, you know, I incurred as a result of these, you  
2 know, as a result of bad performance. And here,  
3 here's kind of the amount of that.

4 And the PAP doesn't try to get at direct harm  
5 to a CLEC. I mean, I think the PAP -- both the QPAP  
6 and the APAP I suspect would be greatly under -- you  
7 know, underestimate the direct harm that comes from  
8 poor wholesale service quality.

9 Q. And based on how you prepared this  
10 testimony -- this plan, why don't you read the first  
11 sentence of 13.5?

12 A. "By incorporating these liquidated  
13 damage terms into the APAP, Qwest and  
14 CLEC, by accepting this APAP, agree that  
15 proof of damages from any nonconforming  
16 performance measurement would be  
17 difficult to ascertain and, therefore,  
18 liquidated damages are a reasonable  
19 approximation of any contractual damages  
20 that may result from nonconforming  
21 performance measurement."

22 Q. And sir, according to Section 13.9 of the  
23 APAP proposal, only when the payments exceed  
24 \$3 million in one month to one CLEC can Qwest come to  
25 this Commission to ask that its liability that month

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1 the opportunity to come to the Commission to get  
2 relief; is that correct?

3 A. Well, I agree that you're not gonna get to  
4 3 million for a single CLEC.

5 Q. Okay.

6 A. I mean, that's not gonna happen. And that  
7 was kind of the debate -- that's why I thought about  
8 taking it out of there, you know, in the beginning.  
9 But then I was afraid you would complain that there  
10 was no cap in there and that I remove, somehow, the  
11 cap from the CPAP. And we'd be having a different --  
12 from the QPAP and we'd be having a different  
13 discussion today.

14 Q. And if this paragraph was ever invoked you  
15 would agree with me that the obligation to pay the  
16 amount in excess of \$3 million in one month to one  
17 CLEC is not suspended while Qwest is making that  
18 request to the Commission, correct?

19 A. That's correct.

20 Q. And now, I think we agreed that there were --  
21 or at least you didn't dispute that there were 46  
22 CLECs in Utah that have the QPAP in their  
23 interconnection agreement?

24 A. I agree that I -- that was in Mr. Williams'  
25 testimony.

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1 be kept to \$3 million; is that correct?

2 A. Well, I mean, I don't agree with that,  
3 because there are provisions in the PAP that allow  
4 Qwest to come, to come to the Commission well before  
5 you got to that. Because they're the provision -- the  
6 *force majeure* positi -- provisions that we've talked  
7 about previously, which are in -- let's see what  
8 section those were in.

9 That's in Section 13.3. And then the  
10 provision about the root cause, which is in  
11 Section 16.1.1, a request for root cause analysis.  
12 You -- there's nothing that says you have to wait till  
13 it gets to \$3 million to do those, to do those  
14 sections.

15 And if that's the concern with the plan we  
16 can write that in specifically that you don't need to  
17 wait till it gets to the, to the 3 million to do that.

18 Q. So we can do that now, then, you're saying?

19 A. Right.

20 Q. We can change it? Okay. And earlier you  
21 said that you couldn't see how that could ever happen,  
22 \$3 million to one CLEC. So really this provision is  
23 meaningless, because you're saying it'll never get to  
24 that point where one CLEC has the -- where one CLEC is  
25 owed \$3 million for one month, and therefore Qwest has

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1 Q. And you would expect that a similar number of  
2 CLECs would opt into the APAP in their interconnection  
3 agreements if this Commission were to impose this,  
4 correct?

5 A. Yes.

6 Q. And any APAP penalties would be in addition  
7 to the penalties of the QPAP; is that correct?

8 A. That is correct.

9 Q. So a CLEC would recover twice?

10 A. No, that's incorrect. It's -- the plans are,  
11 the plans are completely different. They're measuring  
12 different, different things.

13 Q. But a CLEC would recover both the -- any  
14 payment under the APAP and would also recover under  
15 the QPAP, correct?

16 A. Right. The QPAP and APAP are different, are  
17 different plans, applying different standards and  
18 different tests.

19 Q. I understand.

20 A. They both, they both are intended to exist.

21 Q. Right. So if a CLEC -- if I'm a CLEC and I  
22 decide to adopt both the QPAP and the APAP, I get the  
23 penalties that I would be entitled to under the  
24 statistical analysis under both plans, correct?

25 A. Right. You have your 271 protection against

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1 **nondiscrimination in the QPAP. You have your kind of**  
2 **additional PAP protection for the merger of not**  
3 **decreasing wholesale performance, you know,**  
4 **post-merger. They're two different --**

5 **Q.** So ultimately when Qwest sends me a check  
6 they're gonna send me a check for both the APAP and  
7 the QPAP is what I'm trying to get at.

8 **A.** Yeah, but I'm -- the reason I disagree with  
9 that is because it -- you could -- you may be -- if  
10 your retail and wholesale service quality both decline  
11 you may never make a -- you may not make a payment  
12 under the QPAP but you still could make a payment  
13 under the APAP.

14 **So I don't agree you're getting a check for**  
15 **both, both things. You don't always even make**  
16 **payments under the, you know, under the QPAP. So you**  
17 **don't -- that's not necessarily the case. The plans**  
18 **are, the plans are separate. And they measure two**  
19 **different things. And they both would exist. I agree**  
20 **with that.**

21 **Q.** Okay. And so it's very possible, in fact  
22 likely, that for the same month a CLEC would get  
23 different payments under both plans, correct?

24 **A.** Well, I hope it's not that likely, because  
25 the Company's been talking about how wholesale service

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1 to April 2010?

2 **A.** I mean -- and this is what I talked about in  
3 my opening statement, is that I didn't do that  
4 analysis. It should be a non-issue. And I think  
5 we've offered up language to try to make that a  
6 non-issue to say, Here's what we would do, here's what  
7 we would do to try to remedy that concern.

8 **Because I don't think that's a legitimate**  
9 **concern to get out of having to provide quality**  
10 **wholesale performance post-merger.**

11 **Q.** But sir, you would agree with me that if  
12 Qwest's performance -- or I should say the merged  
13 company, CenturyLink's performance in the 12 months  
14 after the merger closes is exactly the same as Qwest's  
15 performance from May 2009 to April 2010, there has  
16 been no service -- or I'm sorry, performance  
17 degradation or performance deterioration, correct?

18 **A.** If performance is the same post-merger,  
19 right?

20 **Q.** Yes, sir.

21 **A.** Yes, I agree, that's not a deterioration in  
22 performance.

23 **Q.** Okay. And you would agree with me that under  
24 your APAP proposal, and in any state, even if the  
25 Company's service performance indeed stayed exactly

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1 **quality isn't going to deteriorate post-merger.**

2 **Q.** If it's invoked, Mr. Denney. If it's  
3 invoked, Mr. Denney, you agree with me that the CLEC  
4 would recover penalties under both the APAP and the  
5 QPAP?

6 **A.** Right. And I agree, I agree that they're two  
7 separate plans that measure two different things. And  
8 they could both result in, in a payment based on a  
9 different methodology. A different measurement.

10 **Q.** Mr. Denney, you didn't do any statistical  
11 analysis of what the Company would pay in penalties  
12 under your APAP proposal if, in the 12 months after  
13 the merger closed, Qwest's performance was exactly the  
14 same as it was from May 2009 to April 2010, did you?

15 **A.** I did not.

16 **Q.** You didn't do that for Utah and you didn't do  
17 it for Minnesota, correct?

18 **A.** That's correct.

19 **Q.** And you didn't do it for any state?

20 **A.** That's correct.

21 **Q.** So you prepared this APAP with significant  
22 potential penalties, but without trying to even  
23 determine what the impact would be if the merged  
24 Company's performance in the 12 months post-merger was  
25 exactly the same as Qwest's performance from May 2009

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1 the same in the first 12 months of the plan as it was  
2 from May 2009 to April 2010, the combined company  
3 could still have to pay penalties, correct?

4 **A.** I mean, that, that's the claim you've made.  
5 And I, I haven't seen, I haven't seen the details of  
6 that, so I don't, I don't agree with that at this  
7 time.

8 **And, because we don't think that's a concern,**  
9 **we put language to -- we've offered up language to go**  
10 **around that and say, Let's not, let's not even argue**  
11 **about that point because that's silly.**

12 **We're trying to get at a way to measure**  
13 **pre-merger and post-merger performance that will**  
14 **incent the Company to perform. And so we've**  
15 **written -- tried to offer up some language to get**  
16 **around that concern that you've raised.**

17 **Q.** Mr. Denney, you can't show the Commissioners  
18 here that if service performance stays exactly the  
19 same 12 months after the merger as Qwest's performance  
20 in April 2009 -- I'm sorry, May 2009 to April 2010,  
21 that there will not be penalties. You can't show --  
22 you can't prove that to the Commissioners, can you?

23 **A.** Right. I think you asked me if I did that  
24 analysis already, and I said I had not done that  
25 analysis.

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- 1 Q. And you have access to all the data to do  
2 that analysis, don't you?  
3 A. **No, I don't. I only have access to my own**  
4 **Company's data. I can't run individual CLECs' --**  
5 Q. Okay.  
6 A. **-- information.**  
7 Q. But you can be able to do that for your  
8 company. You didn't do that analysis?  
9 A. **I did not, no.**  
10 Q. Now Mr. Denney, you were here yesterday  
11 afternoon when Mr. Williams was on the witness stand,  
12 weren't you?  
13 A. **Yes.**  
14 Q. And you heard him testify in his oral  
15 surrebuttal testimony that he did a statistical  
16 analysis of precisely that. A comparison that assumed  
17 the exact same performance levels for the first 12  
18 months after the merger closed with the period from  
19 May 2009 to April 2010. Do you recall that?  
20 A. **You mean the analysis that got stricken by**  
21 **the -- from the Commission?**  
22 Q. Well, the document got stricken but you heard  
23 his oral testimony, did you not?  
24 A. **I heard his claims, yes.**  
25 Q. Okay. And you heard him say that assuming

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- 1 the exact same performance, Qwest would have to pay  
2 almost \$390,000, or more than 7 times what it paid in  
3 QPAP penalties during that same time period; is that  
4 correct?  
5 A. **I heard that's what he said.**  
6 Q. Okay. And if that's true, you would agree  
7 that that would be in addition to the approximately  
8 \$50,000 that Qwest did pay under the Utah QPAP last  
9 year?  
10 A. **I don't know what you mean by "addition."**  
11 **They're two separate, two separate plans.**  
12 Q. Right.  
13 A. **So it's not one -- they're two separate**  
14 **payments.**  
15 Q. Well, sure.  
16 A. **Two separate plans.**  
17 Q. Sure. If the performance -- last year Qwest  
18 paid about \$50,000, based on the analysis from the  
19 12 months that we're talking about. If the exact same  
20 performance happened next year, wouldn't, under the  
21 QPAP, the amounts be the same?  
22 A. **What -- you lost me on that question.**  
23 Q. Okay. You know, that was a bad question.  
24 And I'm almost done here, so.  
25 If it is true -- what Mr. Williams said --

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- 1 that for the 12-month period that we're talking about  
2 Qwest paid approximately \$50,000 in QPAP penalties,  
3 and if you assume that Qwest has exactly the same  
4 performance in the first 12 months after the merger  
5 closes, you would expect that the QPAP penalties would  
6 be the same approximately \$50,000, correct?  
7 A. **That's correct. The --**  
8 Q. So --  
9 A. **-- the parity measure -- the plan that**  
10 **measures parity, you know, would produce about the**  
11 **same -- would produce the same. If the performance**  
12 **was the same, CLECs were the same.**  
13 Q. We're assuming exactly the same, month by  
14 month --  
15 A. **Right.**  
16 Q. **-- CLEC by CLEC, exactly.**  
17 A. **You know it doesn't happen that way, right?**  
18 Q. Okay. I think I can agree with you on that  
19 one.  
20 So, so if there was both payments under the  
21 Q -- the APAP and the QPAP, those would both be paid  
22 by Qwest, right? The 50,000 plus the 390 that he  
23 testified about?  
24 A. **Right. They're two completely separate**  
25 **plans. One -- they measure two different things. The**

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- 1 **standards are two different, two different things.**  
2 MR. DUARTE: Your Honors, I have no further  
3 questions.  
4 CHAIRMAN BOYER: Thank you, Mr. Duarte.  
5 Mr. Peña, are you gonna have cross  
6 examination of this witness?  
7 MR. PEÑA: No questions.  
8 CHAIRMAN BOYER: Commissioner Allen?  
9 COMMISSIONER ALLEN: Quick question. Thank  
10 you, Mr. Chairman.  
11 Mr. Denney, I'm just kind of curious. In  
12 your experience have you dealt with other mergers in  
13 your career? Have you had to deal with post-merger  
14 quality degradation in the companies that you've  
15 actually worked with?  
16 THE WITNESS: I -- the most that I've done  
17 that with is just the most recent Verizon-Frontier  
18 merger. And that has been, has been kind of a  
19 concern. And we've -- we tried to address that  
20 concern, though, prior to the merger, but we didn't  
21 have all these performance measures in place.  
22 And then post-merger we have had, you know,  
23 some issues that we've tried to work with, you know,  
24 work out with the Company. I think we may have had to  
25 go to the FCC a couple times for that. And so kind of

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1 what we were looking for here is trying to have a more  
2 proactive mechanism in place that would resolve these  
3 issues.

4 COMMISSIONER ALLEN: So there were  
5 performance assurance plans in place, and they failed  
6 to --

7 THE WITNESS: Right. Well, the -- and that  
8 was the problem kind of in the Verizon-Frontier, there  
9 weren't really those plans and measurements like fully  
10 in, fully in place. So we didn't have the same types  
11 of plans that exist for Qwest.

12 Those companies didn't -- they're not, you  
13 know, RBOCs, so they didn't, you know -- regional  
14 telephone companies, so they didn't fall under that  
15 section of the Act that would require them going  
16 through that 271 approval process.

17 So they didn't get all the detailed plans  
18 that got put into place for Qwest, so you didn't have  
19 the data kind of to start with when you were going  
20 through those. So it made some of these -- it adds  
21 another element to the debate, because now you're not  
22 even agreeing on the set of data that you're kind of  
23 looking at when you're trying to resolve some of these  
24 issues.

25 COMMISSIONER ALLEN: So in your experience is

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1 So resolution on matters -- I'm thinking of a  
2 docket that we opened maybe three years ago in Arizona  
3 regarding an ICA -- a complaint of an ICA provision.  
4 That it's still not really resolved because of the --  
5 because kind of the process that it takes to go  
6 through there.

7 And that was kind of, that was the idea I  
8 think initially behind the QPAP. And that was, you  
9 know, kind of having these automatic enforcement  
10 mechanisms in place so that you wouldn't have to drag  
11 the Commission in for these -- for every little thing.

12 But it has provisions in there that say --  
13 for any -- either party to come in and say,  
14 Commission, this isn't working as we intended. Look,  
15 we're making these payments where we clearly shouldn't  
16 be making them. Commission, put a stop to those  
17 payments.

18 Those provisions are written into both the  
19 QPAP, you know, and the APAP. But the difference kind  
20 of is who has the burden to do that.

21 COMMISSIONER ALLEN: Okay, thank you.

22 CHAIRMAN BOYER: Mr. Denney, you heard  
23 described yesterday some of the challenges of  
24 integrating merged companies: Operating systems that  
25 might be different, personnel reassignments, trying to

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1 it -- well, I realize that these performance assurance  
2 plans have certain provisions of when commissions can  
3 be contacted, those types of things.

4 But in your experience would it be  
5 overly-challenging or a burden to approach a  
6 Commission and say that the existing QPAP, for  
7 instance, is not working well, or that -- do you feel  
8 that there would be restrictions on access to perhaps  
9 a new docket if you felt that there were severe  
10 experiences after a merger -- post-merger degradation?

11 THE WITNESS: Right. I mean, I think that  
12 is, I mean, that is something that the CLECs could,  
13 you know, could do. But those types of endeavors tend  
14 to be, you know, tend to be incred -- big -- tend to  
15 grow into incredible expense.

16 And they tend to shift the burden on  
17 behalf -- on the CLEC to, as a result of the merger,  
18 kind of to show performance degradation, you know.  
19 Rather than kind of putting the burden on the merged  
20 company, which has made kind of this commitment to,  
21 you know, to their value of wholesale service quality.

22 And I know cases that we've gotten into over,  
23 you know, over ICA provisions or other things that  
24 cost us tens of thousands of dollars. And then they  
25 get appealed, they go on and kind of on.

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1 capitalize or monetize synergies, and all sorts of  
2 things.

3 Wouldn't it be normal in a merger situation  
4 to expect some sort of confusion, or slippage, or  
5 disruption during that period of time?

6 THE WITNESS: Right. And, I mean, I guess  
7 it's, it's normal to expect that. I mean, I think  
8 that that's the CLECs' -- that's what they're -- we're  
9 kind of worried about is how can we minimize that  
10 impact on our, on our business.

11 Because what you hear, I mean, what you hear  
12 from the Joint Applicants is kind of, Nothing's going  
13 to change. Nothing's going to change. And then they  
14 testify of all those things you just mentioned about  
15 everything is gonna change, and all the kind of  
16 benefits.

17 And the Joint CLECs I think and Integra just  
18 want to say, Let's try to set up some, you know, a  
19 series of conditions that kind of protect that  
20 wholesale business, which is dependent on, you know,  
21 directly on your network, to the extent, you know, to  
22 the extent that we can.

23 CHAIRMAN BOYER: Well, I understand your  
24 desire -- the Joint CLECs' desire to have some form of  
25 metrics to measure the, you know, post-and-pre-

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1 performance level and that sort of thing.

2 I'm just asking, wouldn't it be typical in a  
3 merger situation to experience these sorts of things  
4 in the shorter term? Wouldn't it be more appropriate  
5 to measure performance on a longer term?

6 THE WITNESS: And, well, you know, I'm not  
7 sure that I agree that those things have to happen in  
8 the short term. I think you can, you know, if you do  
9 kind of manage your integration plans appropriate and  
10 you take, you take kind of the steps necessary, you  
11 can eliminate some of those problems.

12 Like OSS, you know, that's why I think we  
13 proposed kind of third-party testing on the OSS  
14 systems. Let's get all those kinks worked out before  
15 it actually gets put into production.

16 And so, you know, I think adequate training  
17 of employees. Making sure that you're, you know, when  
18 you do integrate workforce that are maybe serving out  
19 in the, you know, call centers, or provisioning loops,  
20 or other types of services, that they're adequately  
21 trained before they go in there. That they understand  
22 the new systems that they're using when they do these  
23 beforehand.

24 I think you can get rid of a lot of those  
25 problems. And that's what I -- a lot of the

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1 conditions are to try to incent that -- kind of incent  
2 that behavior to not to have those problems show up,  
3 you know, and impact CLECs, which impacts their  
4 customers in Utah. And all customers in Utah, really.

5 CHAIRMAN BOYER: So in your view is any  
6 change a significant change? Based on your  
7 statistical analysis and the way you've designed the  
8 APAP?

9 THE WITNESS: Not any, no.

10 CHAIRMAN BOYER: What are the -- what kind of  
11 bands do you have around the performance levels?

12 THE WITNESS: It's really -- the statistical  
13 test we use is the same one kind of in the QPAP. And  
14 so it measures -- it's intended to try to get at kind  
15 of a 95 percent confidence around that the change was  
16 a significant difference.

17 And now we try to add in, you know, try to  
18 add in kind of some new protections in -- on top of  
19 that to say you won't even make, you know, payments  
20 until you hit this certain, this certain level. Kind  
21 of to raise -- to the concern that, you know, that the  
22 Company had raised.

23 Because we're not -- the CLECs don't want any  
24 money from this. We just want, we want wholesale  
25 service quality to maintain post-merger. And we want

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1 the incentives in place not to, not to kind of obtain  
2 your synergy at the expense of wholesale service  
3 quality.

4 And that's what I hear the Joint Applicants  
5 saying is their intent. And so we're trying to find  
6 some mechanism in place that we can achieve that end.

7 CHAIRMAN BOYER: Okay, thank you.

8 Any redirect, Mr. Merz?

9 MR. MERZ: Just very briefly.

10 REDIRECT EXAMINATION

11 BY MR. MERZ:

12 Q. Mr. Duarte asked you some questions about  
13 forcing the APAP on the Joint Applicants. Is it the  
14 Joint CLECs' position that the Commission should force  
15 the APAP on the Joint Applicants?

16 A. No. I think that our position is that this  
17 ought to be a condition to the merger.

18 Q. You also had some discussion about this cap  
19 that is at Section 3.9. And you said that you can't  
20 figure out how you can get to that \$3 million. Would  
21 you just explain a little bit more about why you  
22 believe that?

23 A. Well, you can look at the -- I mean, one of  
24 the things you can look at is the volumes that a  
25 carrier has. And kind of what the payments would be

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1 for, kind of for a miss in those volumes.

2 And the -- when these caps and things were  
3 put into place it was when they were expecting -- and  
4 UDP kind of still existed. So they were expecting,  
5 you know, the CLEC competition to take place over kind  
6 of the whole market. Including retail and -- I mean  
7 residential and business market.

8 And really what's happened, in part as a  
9 result of the FCC's orders on the availability of the  
10 Unbundled Network Element-Platform product, I mean,  
11 the -- you can't really -- most CLECs don't serve the  
12 residential market. They can't do that under the  
13 current -- new current pricing, so they're focused in  
14 the business market.

15 That's a lot smaller -- those are a lot  
16 smaller line counts. It's a much smaller segment of  
17 the whole market in Utah than what existed when they  
18 put these caps in place, which was looking at a large  
19 carrier serving across a large market.

20 Also like, I mean, I think Integra may be the  
21 largest, the largest CLEC in, you know, in Utah. I  
22 mean -- and we don't have the volumes that would  
23 gener -- could generate that type of a monthly  
24 payment.

25 And you can look over the whole history of

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1 the, history of the QPAP as well and look at it's  
2 never -- that's never been -- we've never hit up  
3 against those volumes -- those numbers.

4 Q. Have the Joint Applicants ever proposed a  
5 different cap that should be included in the APAP?

6 A. No, they haven't.

7 Q. Have they proposed any language to address  
8 any of the concerns that they've expressed?

9 A. No. They've just proposed to delete the  
10 provisions regarding wholesale service quality  
11 assurance.

12 Q. At the beginning of your testimony today in  
13 your summary you discussed some additional language  
14 that was being proposed. Can you just explain the,  
15 again, the reason why you were proposing that  
16 additional language?

17 A. Well, I, I mean, I -- the reason is in --  
18 from the concerns that were raised by, you know, by  
19 Mr. Williams yesterday. You know, and that I think I,  
20 you know, I heard Mr. Williams raise it in one other  
21 point as well.

22 And it was really just to try to eliminate  
23 that concern. Because there's another part of  
24 Mr. Williams' testimony where he kind of implied that  
25 the CLECs are just trying now to get more money from

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1 the incumbents, and that's not the case at all.

2 The CLECs -- so we're trying to create a  
3 plan. We're trying to get the Company to reply to a  
4 plan that will assure wholesale service quality pre-  
5 and post, post-merger. And so it was kind of in a --  
6 to try to move the ball forward in that manner and  
7 address a -- what they raised as a big -- what I heard  
8 was a big concern of theirs.

9 Q. And maybe if you can just explain very  
10 briefly how you believe that language does respond to  
11 that concern.

12 A. Well, it, I mean, what the language does is  
13 if you -- if there was the case where you go back and  
14 look in the past and -- you heard the discussion about  
15 using the -- applying the past data to the APAP there  
16 would be, there would payments. I think is what  
17 Mr. Williams was arguing. So just the normal random  
18 fluctuations would result in payments.

19 What this language does is it's, Let's  
20 calculate exactly what those are. And if  
21 Mr. Williams' number is accurate you would use, you  
22 know, you would use those numbers. Let's calculate  
23 what those numbers are and let's set up -- we'll call  
24 that a credit now.

25 So basically if -- when we measure

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1 performance going forward, if you make a payment for,  
2 for a specific PID you're not gonna, you're not gonna  
3 actually make that payment until it exceeds that  
4 credit.

5 So you've kind of got -- we've built in the  
6 payments that may result as a -- from these random  
7 fluctuations as a credit to future payments. So that  
8 you wouldn't enter into that situation that they were  
9 raising that past performance could be identical and  
10 still result in payments.

11 It basically eliminates that from, you know,  
12 from a -- as a concern in my mind.

13 Q. And again, the Joint Applicants never  
14 proposed any language themselves to address that  
15 issue?

16 A. Right, that's correct.

17 MR. MERZ: I don't have anything further,  
18 thank you.

19 CHAIRMAN BOYER: Okay. Thank you,  
20 Mr. Denney, you are excused.

21 We'll take --

22 MR. DUARTE: Your Honor, I do have one  
23 redirect question.

24 CHAIRMAN BOYER: Oh, you do?

25 MR. DUARTE: I do.

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1 MR. MERZ: Well --

2 MR. DUARTE: I mean recross, right.

3 CHAIRMAN BOYER: Recross?

4 MR. MERZ: Your Honor, I move --

5 CHAIRMAN BOYER: I think we're done with this  
6 witness.

7 MR. DUARTE: Okay, that's fine.

8 CHAIRMAN BOYER: You're excused, Mr. Denney.

9 We'll take a 10-or-15-minute recess, and then

10 we'll hear from Level 3's witness. If that will be  
11 fine, Mr. Peña? Okay, thank you.

12 (A recess was taken from 10:42 to 10:56 a.m.)

13 CHAIRMAN BOYER: Back on the record.

14 Mr. Peña?

15 MR. PEÑA: Yes, your Honor. I'd like to  
16 call -- oh, Level 3 would like to call Richard Thayer.

17 CHAIRMAN BOYER: Mr. Thayer, and I'm sure  
18 we'll have him spell his name for the record.

19 (Mr. Thayer was sworn.)

20 CHAIRMAN BOYER: Thank you, please be seated.

21 \*\*\*

22 \*\*\*

23 RICHARD THAYER,

24 called as a witness, having been duly sworn,  
25 was examined and testified as follows:

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. For Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corporation.	}	Docket No.: 10-049-16
	}	VOLUME III OF III

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission  
160 East 300 South  
Salt Lake City, Utah

DATE: November 4, 2010

TIME: 9:02 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)

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APPEARANCES

Commissioners:

**Ted Boyer** (Chairman)  
**Ric Campbell**  
**Ron Allen**

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EXHIBITS

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3	DPU-CJC-1.0 Casey Coleman Direct and 1.2 Testimony and attached exhibit	499
4	DPU-CJC-1.0R Casey Coleman Rebuttal and 1.1R Testimony and attached exhibit	499
6	DPU-CJC-2.0SR Casey Coleman Supplemental Rebuttal Testimony	499
7	DPU-CO-2.0 Clair Oman Direct Testimony and 2.1 and attached exhibit	496
9	DPU-PP-3.0 Phillip Powlick Supplemental Rebuttal Testimony	559
10	JA-HC-Sup-R1 Jerry Fenn Highly Confidential Supplemental and R1.1 to R1.8 Response Testimony and attached exhibits	566
13	JA-HC-Sup-R2 Michael Hunsucker Highly Confidential Supplemental and R2.1 to R2.3 Response Testimony and attached exhibits	587
15	JA-HC-Sup-R3 Michael Williams Supplemental and R3.1 to R3.2 Response Testimony and attached exhibits	581
18	Joint CLECs Timothy Gates Supplemental 2SP and 2SP.1 Testimony and attached exhibit	597

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(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed at the Commission.)

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1 A. Right.

2 Q. He's a Qwest employee?

3 A. Right.

4 MR. MERZ: Nothing further, thank you.

5 THE WITNESS: That's it?

6 MR. MERZ: That's it.

7 CHAIRMAN BOYER: Commissioner Allen?

8 COMMISSIONER ALLEN: Real quickly, Mr. Fenn.

9 Since you manage a multi-state area, multi-state  
10 company, I'm just curious, is it this Commission's  
11 charge, or has it been over the years, to try to  
12 coordinate our orders or our concerns with other state  
13 activities or other stipulations in other states?

14 Is it our charge or is it our practice, that  
15 you can speak to?

16 THE WITNESS: Well, I suspect that the  
17 Commission communicates regularly with other  
18 commissions and staffs in the country. I know  
19 particularly, being part of the -- of different  
20 organizations, that you would, I suspect, in  
21 performing your duties and doing your own due  
22 diligence would have those communications.

23 I assume it's a practice, but I can't speak  
24 to having personal knowledge of that fact.

25 COMMISSIONER ALLEN: If there were

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1 the combined entity might, after the time frames in  
2 the various stipulations and so on expire, that the  
3 joint operators of the combined entity might fix  
4 things that aren't broke?

5 Replace effective systems with less-effective  
6 systems? Should we be concerned about that as  
7 Commissioners?

8 THE WITNESS: Mr. Chairman, I respectfully  
9 don't think you should be concerned about that.  
10 Because I think one of the things we should not lose  
11 sight of here is that it is in the interest of the  
12 Joint Applicants to have their wholesale business  
13 prosper and grow.

14 And we have relationships at Qwest with  
15 CLECs. CenturyLink has relationships with CLECs. And  
16 I think as part of this merger and integration,  
17 this -- we have very capable men and women involved in  
18 this combined company who will be carefully making  
19 decisions going forward. Keeping in mind that one of  
20 the objectives we have is to be profitable.

21 And one of the objectives we have is to serve  
22 our customers. And it just so happens that CLECs,  
23 while they are our competitors, they are also our  
24 customers. And so I think that there isn't a reason  
25 to be concerned that somehow that process will be

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1 differences in the different states' handling of this  
2 existing request for a merger, is there a great  
3 opportunity for harm or unintended consequences? Or  
4 do you think that the Joint Applicants could manage  
5 differences in stipulations and settlements between  
6 states, from your view as where things are at this  
7 point in time?

8 THE WITNESS: Well, we have to remember,  
9 Commissioner Allen, that we still have an FCC process.  
10 And the FCC order may have some applicability across  
11 states, which may mitigate some of your concerns that  
12 you've just identified.

13 But I think that the process can be managed.  
14 There are complexities in any process like this. But  
15 I think they can be managed, and managed quite well.

16 COMMISSIONER ALLEN: Thank you.

17 CHAIRMAN BOYER: Mr. Fenn, the Joint CLECs  
18 have expressed some concern in their testimony that  
19 some of the Qwest processes, the OSS and other  
20 processes might be actually more efficient and more  
21 effective than those currently used by CenturyLink.  
22 And also expressed concerns about the prior Embarq  
23 merger, and so on, and so forth.

24 If we were to approve this transaction should  
25 we be concerned that the Joint Applicants, after --

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1 flawed.

2 CHAIRMAN BOYER: So you think that  
3 self-interest will be sufficient to see that that  
4 happens?

5 THE WITNESS: Well, self-interest as you  
6 define it by seeking a return on your investment and  
7 growing your business, I think that that's correct.

8 CHAIRMAN BOYER: Okay, thank you.

9 Mr. Duarte, any redirect?

10 MR. DUARTE: No, your Honor.

11 CHAIRMAN BOYER: Okay. Thank you, Mr. Fenn,  
12 you are excused.

13 Mr. Williams?

14 We're gonna -- I mean, we're running over a  
15 little bit, but we're gonna get these two witnesses on  
16 before we break. Is that okay with you, Kelly? Okay.  
17 Our reporter is ready, willing, and able to go.

18 Mr. Williams, you're already sworn in this  
19 proceeding?

20 MR. WILLIAMS: Yes.

21 \*\*\*

22 MICHAEL G. WILLIAMS,  
23 called as a witness,

24 having previously been duly sworn,  
25 was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. DUARTE:

Q. Good morning, Mr. Williams.

A. Good morning.

Q. Please state your full name and business address for the record?

A. My name is Michael Williams. And my business address is 1801 California Street, Denver, Colorado.

Q. Mr. Williams, who do you work for and what is your position?

A. I work for Qwest, and I'm a senior director in public policy.

Q. Mr. Williams, did you previously file rebuttal testimony, and later testify before this commission on October 26, 2010?

A. Yes.

Q. And Mr. Williams, did you recently -- more recently prepare supplemental response testimony that was filed on Tuesday, November 2, 2010?

A. Yes, I did.

Q. Does your supplemental response testimony have any exhibits?

A. Yes, two exhibits. They're labelled MGW-S1 and MGW-S2.

Q. Are any of these two exhibits confidential or

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highly confidential?

A. No.

Q. Do you have any confidential or highly-confidential testimony in your supplemental response testimony?

A. No, I do not.

Q. Mr. Williams, do you have any corrections to make to any of your supplemental response testimony?

A. To one of the exhibits. Late last night we discovered that the exhibit that contains the transcript pages, we'd gotten the correct pages but we took them from the wrong date. We took them from the 26th of October, and it should have been from the 27th because we were referring to Mr. Denney's testimony.

And so we replaced those pages with the correct pages from October 27th.

MR. DUARTE: Your Honors, for the record, and I do have and I will pass out those replacement pages. And if you want, we can certainly file an errata with the Commission later this afternoon. But I thought it would be helpful just to pass out those pages.

And for the record, they are from the rough draft transcript. And as we've mentioned in Mr. Williams' testimony, the court reporter was gracious enough to let us use a rough draft, even

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though obviously it was a quick turned around, and allowed us to use it for very limited purposes.

And the pages that we have, for the record, are pages 17 and 18, 40 and 41, 57 and 58, and 60 and 61. And it's all regarding either the oral summary of Mr. Denney or the cross examination of Mr. Denney. I'll just pass that out now. I'll have Mr. -- my co-counsel do that for me. Thank you.

CHAIRMAN BOYER: I was going volunteer him for you.

MR. DUARTE: Since we are on a tight time frame.

Q. (By Mr. Duarte) Mr. Williams, with that correction about the -- your second exhibit, are all of the answers in your supplemental response testimony and in your exhibits true and correct, to the best of your knowledge?

A. Yes, they are.

Q. And finally Mr. Williams, with the correction you've just discussed, if I were to ask you the same questions here as those in your supplemental response testimony would your answers be substantially the same?

A. Yes.

MR. DUARTE: Your Honor, we have marked

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Mr. Williams' supplemental response testimony as Qwest Exhibit J -- I'm sorry, not Qwest. It would be JA Exhibit Sup R3. And it's two exhibits would now be marked as Exhibits Sup R3.1 and Sup R3.2. And we move for admission into the evidence in the record those -- that testimony and those two exhibits.

CHAIRMAN BOYER: Any objection to the admission of Mr. Williams' testimony and the exhibits, including this rough draft of certain pages?

MR. MERZ: Yes. The Joint CLECs object to Mr. Williams' testimony beginning at page 6, line 13, through the end, and the exhibits cited therein.

The basis for our objection is it's beyond the scope of what was intended to be provided in this round of testimony. It's not responsive to Mr. Gates, it's responsive to oral testimony the Commission heard last week. And so we object on that basis.

MR. DUARTE: Your Honor --

CHAIRMAN BOYER: Have you anything to say about that, Mr. Duarte?

MR. DUARTE: Yes, I do, your Honor. We need to be fair here, your Honor. And what's good for the goose is good for the gander. This simply is not fair for Mr. Gates and the Joint CLECs to continually make their arguments, and object when the Joint Applicants

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<p>(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)</p> <p>1 call them on it with competent evidence.</p> <p>2 Now your Honors, Mr. Gates in his</p> <p>3 supplemental testimony devotes 10 full pages -- from</p> <p>4 pages 71 through 81 -- in which he goes on and on</p> <p>5 about that the UPAP is not sufficient to maintain</p> <p>6 wholesale service quality post-merger. And why he</p> <p>7 believes the DPU settlement is insufficient and</p> <p>8 inadequate because it does not contain an APAP</p> <p>9 condition. And thus why this Commission should not</p> <p>10 adopt -- or should adopt the Joint CLECs' APAP concept</p> <p>11 and reject the settlement.</p> <p>12 Mr. Williams' testimony responds directly to</p> <p>13 Mr. Gates' claims starting at the bottom of page 71 of</p> <p>14 his supplemental testimony that the APAP, which is</p> <p>15 notably absent in the DPU settlement, would help</p> <p>16 assure that the merged company maintains full</p> <p>17 wholesale service quality at current levels and</p> <p>18 creates disincentives for the merged company to</p> <p>19 achieve synergies at the expense of competitors.</p> <p>20 It is Mr. Williams' testimony and contention</p> <p>21 that the APAP does not accomplish these goals, and in</p> <p>22 fact that the APAP goes far beyond those goals.</p> <p>23 Mr. Williams' response is directly to Mr. Gates'</p> <p>24 testimony to prove these points, and he provides a</p> <p>25 specific calculation that backs this up.</p> <p style="text-align: right;">578</p> <p style="text-align: center;">Kelly L. Wilburn, CSR, RPR DepomaxMerit</p>	<p>(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)</p> <p>1 So your Honor, I think that in all fairness</p> <p>2 for a complete record this exhibit should be allowed.</p> <p>3 MR. MERZ: Your Honor, can I be heard?</p> <p>4 CHAIRMAN BOYER: Please.</p> <p>5 MR. MERZ: The portion of Mr. Williams'</p> <p>6 testimony that I am talking about now has nothing to</p> <p>7 do with his spreadsheet, has nothing to do with the</p> <p>8 testimony that was offered in Minnesota. It begins on</p> <p>9 line 6 -- I'm sorry, page 6, line 13, where he talks</p> <p>10 about what Mr. Denney testified to at the hearing.</p> <p>11 Now, Qwest didn't object to Mr. Denney's</p> <p>12 testimony at that time. They could have, and we would</p> <p>13 have hashed it out at that time. But I don't think</p> <p>14 it's appropriate to be providing responsive testimony</p> <p>15 here, because I think it's beyond the scope of what we</p> <p>16 intended this round would be about.</p> <p>17 MR. DUARTE: Mr. -- excuse me, your Honor.</p> <p>18 Mr. Gates here is sitting in place of Mr. Denney. He</p> <p>19 devotes 10 of his 98 pages of his supplemental</p> <p>20 testimony to the APAP concept. Even to the point</p> <p>21 where he gets into the HSR documents to make his</p> <p>22 points.</p> <p>23 Again, we feel that those are unfair attacks</p> <p>24 about the, you know, the UPAP, and try to bolster the</p> <p>25 APAP. And they've opened the door, your Honor. And</p> <p style="text-align: right;">580</p> <p style="text-align: center;">Kelly L. Wilburn, CSR, RPR DepomaxMerit</p>
<p>(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)</p> <p>1 I also find it highly ironic, your Honor,</p> <p>2 that on the witness stand here last Monday Mr. Denney</p> <p>3 apparently felt it was okay to change his APAP, and to</p> <p>4 try to come up with what the CLECs now call a</p> <p>5 "solution" by recalibrating the APAP on the fly.</p> <p>6 Somehow the CLECs believe that this new evidence is</p> <p>7 okay.</p> <p>8 But when Qwest tried to defend itself with</p> <p>9 real-world calculations to debunk the APAP and the</p> <p>10 unfairness of the attempts to essentially what we</p> <p>11 think is slip a fast one by this Commission, somehow</p> <p>12 we can't do that.</p> <p>13 Your Honor, they had a copy of that exhibit</p> <p>14 that was stricken from the record last Wednesday.</p> <p>15 They've had it now for a week. They've been able to</p> <p>16 see it, analyze it, and they can certainly cross</p> <p>17 examine Mr. Williams today on that exhibit. And</p> <p>18 Mr. Williams is obviously prepared to answer those</p> <p>19 questions.</p> <p>20 Finally, your Honor, the Joint CLECs are</p> <p>21 always fond of citing the Minnesota transcript and</p> <p>22 that proceeding. I should also note that Mr. Merz</p> <p>23 made the same objection just last Monday in Minnesota,</p> <p>24 in St. Paul, and the Administrative Law Judge</p> <p>25 overruled Mr. Merz's objection.</p> <p style="text-align: right;">579</p> <p style="text-align: center;">Kelly L. Wilburn, CSR, RPR DepomaxMerit</p>	<p>(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)</p> <p>1 so it's very fair for Mr. Williams to be able to rebut</p> <p>2 those with real-world calculations based on the</p> <p>3 numbers that they provided.</p> <p>4 CHAIRMAN BOYER: Have Counsel had an</p> <p>5 opportunity to review these rough draft transcript</p> <p>6 pages?</p> <p>7 MR. MERZ: The ones that were just handed</p> <p>8 out?</p> <p>9 CHAIRMAN BOYER: Just handed out, yeah.</p> <p>10 MR. MERZ: No.</p> <p>11 CHAIRMAN BOYER: All right. I'm frankly more</p> <p>12 concerned about that than the other.</p> <p>13 Okay, this is what we're gonna do. We're</p> <p>14 going to admit the testimony into evidence, but we're</p> <p>15 going to deliberate over how much weight we give them.</p> <p>16 MR. DUARTE: Sure.</p> <p>17 CHAIRMAN BOYER: In the interest of fairness.</p> <p>18 But we don't have time to sort through page by page,</p> <p>19 line by line, at this point in time.</p> <p>20 (Michael G. Williams Supplemental Response</p> <p>21 Testimony and attached exhibits were</p> <p>22 admitted.)</p> <p>23 MR. DUARTE: Thank you, your Honor.</p> <p>24 Q. (By Mr. Duarte) With that we would ask,</p> <p>25 Mr. Williams, do you have a brief summary of your</p> <p style="text-align: right;">581</p> <p style="text-align: center;">Kelly L. Wilburn, CSR, RPR DepomaxMerit</p>

(November 4, 2010 - Qwest/CenturyTel - 10-049-16, Vol. III of III)  
1 testimony?

2 A. Yes, I do. My supplemental response  
3 testimony addresses Mr. Gates' supplemental testimony  
4 in which he finds fault with the DPU's settlement  
5 because it does not contain the APAP. He argues that  
6 CLECs' Condition 4, which contains the APAP, is  
7 "notably absent."

8 In response I've offered Exhibit MGW-S1,  
9 which is based on real-world data that demonstrates  
10 why the APAP has no place in any settlement discussion  
11 or in any condition associated with the merger because  
12 it would significantly penalize the Company, even when  
13 post-merger performance levels were exactly the same  
14 as pre-merger.

15 As that exhibit shows, based on 2009 data the  
16 APAP would have penalized the Company almost \$390,000,  
17 over seven times what the QPAP was -- charged Qwest  
18 for 2009.

19 And then Mr. Denney's on-stand modification,  
20 just to make it clear that that doesn't solve this  
21 problem and somehow make it appropriate for a  
22 settlement or for a condition. I used the same  
23 analysis and looked at that modification and it would  
24 still have charged a penalty of \$300,000. Even  
25 though, again, there was no difference in post-merger

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1 performance and pre-merger performance in that  
2 analysis.

3 So the fundamental problem beyond -- the APAP  
4 goes beyond what the law requires, which is more of a  
5 nondiscrimination requirement, is that it's fatally  
6 flawed in the way it attempts to automatically  
7 penalize merger-related performance degradation,  
8 without any provisions that define, specifically,  
9 performance degradation or even define a merger  
10 connection. Other than the coincidence of time. And  
11 without providing any opportunity to look behind the  
12 data to understand the true causes.

13 So in short, the APAP is a bad plan that is  
14 beyond repair and has no place in any settlement or as  
15 a condition in a merger.

16 MR. DUARTE: Your Honors, I have no further  
17 questions of Mr. Williams and we would tender  
18 Mr. Williams for any cross examination or questions of  
19 the Commissioners.

20 CHAIRMAN BOYER: Mr. Merz, you said you  
21 weren't going to ask questions of this witness?

22 MR. MERZ: I see that I'm out of time so I  
23 will waive my cross examination of Mr. Williams.

24 CHAIRMAN BOYER: Commissioner Allen?  
25 Commissioner Campbell? Okay, I have none either.

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1 Thank you, Mr. Williams, you are excused.  
2 Mr. Hunsucker?

3 MR. ZARLING: Joint Applicants call Mr. Mike  
4 Hunsucker.

5 CHAIRMAN BOYER: Mr. Merz, we will give you a  
6 couple of minutes to cross examine Mr. Hunsucker.

7 MR. MERZ: Thank you.

8 CHAIRMAN BOYER: -- as you originally  
9 indicated.

10 Mr. Hunsucker, you're still under oath from  
11 the prior hearing.

12 MR. HUNSUCKER: Okay.

13 MICHAEL R. HUNSUCKER,

14 called as a witness,

15 having previously been duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ZARLING:

19 Q. Morning Mr. Hunsucker. Would you state your  
20 full name and business address for the record, please?

21 A. It's Michael Hunsucker, 5454 West  
22 110th Street, Overland Park, Kansas 66211.

23 Q. And how are you employed and what is your  
24 position?

25 A. Director of CLEC management. I'm employed by

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1 CenturyLink.

2 Q. Okay. Did you cause to be filed in this  
3 proceeding on November 2nd supplemental response  
4 testimony?

5 A. Yes, I did.

6 Q. Okay. And does that supplemental response  
7 testimony have any exhibits to it?

8 A. No, I believe it does not.

9 Q. Actually, I think if you check you'll find  
10 that you do have.

11 A. I do? Okay. Well, I don't have the exhibits  
12 in front of me, but okay, it does.

13 Q. Okay. And do you recall HSR documents  
14 perhaps being attached?

15 A. Yes, that's correct.

16 Q. Okay. Now, are those exhibits confidential  
17 or highly confidential?

18 A. Yes.

19 Q. Okay. Do you happen to recall how many  
20 exhibits you had?

21 A. No.

22 Q. Okay. I'll provide the court reporter with  
23 the information. There were three exhibits to your  
24 testimony. And let me ask, as to your supplemental  
25 response testimony do you -- are there any highly-

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