



CenturyLink™

805 Broadway, 8th Floor
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September 21, 2010

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Ste 215
Salem, Oregon 97301-2551

RE: UM-1484 – Application for Approval of Merger between CenturyTel,
Inc. and Qwest Communications International, Inc.

Dear Commission:

Enclosed for filing is the original and five copies of CenturyLink's Rebuttal Testimony of John F. Jones, G. Clay Bailey, Todd Schafer and Michael R. Hunsucker.

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

Sincerely,

Rhonda Kent
Legal Secretary

Encl.

cc: Certificate of Service

CERTIFICATE OF SERVICE
UM-1484

I certify that on September 21st, 2010, a true and correct copy of CenturyLink's Rebuttal Testimony of John F. Jones, G. Clay Bailey, Todd Schafer and Michael R. Hunsucker, in Docket UM-1484, was served on the following parties via electronic mail and where paper service is not waived, by U.S. mail:

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W – Waived paper service
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1484

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the Indirect
Transfer of Control of QWEST
CORPORATION

REBUTTAL TESTIMONY OF

JOHN F. JONES

VICE PRESIDENT STATE GOVERNMENT AFFAIRS

ON BEHALF OF

CENTURYLINK, INC.

SEPTEMBER 21, 2010

1 **Q. Please state your name and business address.**

2 A. My name is John Jones and my business address is 100 CenturyLink Drive, Monroe,
3 Louisiana.

4

5 **Q. Who is your employer and what is your position?**

6 A. I am employed by CenturyLink, Inc. (“CenturyLink”) as Vice President, State
7 Government Affairs.

8

9 **Q. Are you the same John Jones that filed direct testimony in this proceeding?**

10 A. Yes, I am.

11

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. I am providing rebuttal testimony concerning certain policy and integration issues and
14 proposed conditions raised in reply testimonies in the proceeding before the Public Utility
15 Commission of Oregon (“Commission”) related to the proposed merger of Qwest
16 Communications International, Inc. (“Qwest”) and CenturyLink (the “Transaction”).
17 Specifically, I will address the testimonies of Mr. Michael Dougherty¹ who provides
18 reply testimony on behalf of the Staff of the Commission (collectively “Staff”); Mr.
19 Timothy Gates, who provided direct testimony on behalf of tw telecom of Oregon, LLC,
20 Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC,
21 Eschelon Telecom of Oregon, Inc., and United Telecommunications Inc, d/b/a Unicom,

¹ Michael Dougherty, Public Utility Commission of Oregon, Staff Exhibit 100, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter “Staff/100, Dougherty”].

1 Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink
2 OR-CCVII (collectively, these competitive local exchange carriers are the “Joint
3 CLECs”)²; Dr. August H. Ankum, who also provided direct testimony on behalf of the
4 Joint CLECs³; Mr. Richard E. Thayer, who provided direct testimony on behalf of Level
5 3 Communications, LLC⁴, and Mr. Chris Frentrup, who provided direct testimony on
6 behalf of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel West
7 Corp., and NPCR, Inc. (collectively “Sprint Nextel”)⁵.

8
9 **Q. Are there other CenturyLink and Qwest personnel providing rebuttal testimony?**

10 A. Yes. CenturyLink witness Clay Bailey provides rebuttal testimony concerning financial
11 and related issues raised in the testimonies of the Commission Staff and intervenor
12 witnesses. CenturyLink witness Todd Schafer provides rebuttal testimony on operational
13 issues and proposed conditions raised in the testimonies of Commission Staff.
14 CenturyLink witness Michael Hunsucker and Qwest witnesses Chris Viveros and
15 Michael Williams provide rebuttal testimony concerning wholesale issues and conditions

² Direct Testimony of Timothy J. Gates on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/8, Gates”].

³ Direct Testimony of August H. Ankum, Ph.D., on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/1, Ankum”].

⁴ Direct Testimony of Richard E. Thayer on Behalf of Level 3 Communications, LLC, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Level 3 Communications/100, Thayer”].

⁵ Sprint Direct Testimony of Chris Frentrup, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Sprint/1, Frentrup”].

1 raised in the testimonies of the Commission Staff and intervenor witnesses. Qwest
2 witness Robert Brigham provides rebuttal testimony concerning issues related to
3 competition raised in the testimonies of the Commission Staff and intervenor witnesses.
4

5 **I. STATUS OF APPROVALS AND INTEGRATION PLANNING.**
6

7 **Q. Please update the Commission on the activity in the other state proceedings or other**
8 **approval processes regarding the proposed Transaction.**

9 A. Certainly. The Transaction requires state commission approvals in 21 states and the
10 District of Columbia. While CenturyLink and Qwest are early in the transaction review
11 process for many of these jurisdictions, the approval process is now (as of September 20,
12 2010) favorably concluded in nine of the states requiring state commission approval—
13 California, Hawaii, Maryland, Georgia, West Virginia, New York, Ohio, Mississippi and
14 Louisiana – and the District of Columbia.
15

16 Moreover, on July 15, 2010, CenturyLink and Qwest were notified by the Department of
17 Justice (“DOJ”) and the Federal Trade Commission (“FTC”) that the proposed
18 Transaction review was completed early (“Early Termination”) under the Hart Scott
19 Rodino Act, and, as such, has clearance from a federal antitrust perspective. On July 16,
20 2010, CenturyLink filed with the Securities and Exchange Commission (“SEC”) a final
21 joint proxy statement-prospectus, which describes the Transaction with Qwest. This
22 final joint proxy statement-prospectus was mailed to shareholders of both CenturyLink
23 and Qwest. Based on the information provided in the joint proxy statement-prospectus,

1 each company held a special meeting on August 24, 2010 at which their respective
2 shareholders voted overwhelmingly to approve the Transaction.

3
4 **Q. Some of the intervenor parties filing testimony in this proceeding express concern**
5 **over CenturyLink's ability to accomplish an integration of this magnitude. Are**
6 **these integration concerns valid?**

7 A. No, they are not, and I would say their concerns are based more on speculation than fact.
8 CenturyLink has a proven track record of successfully integrating the operations of the
9 companies it acquires not once or twice, but multiple times over a 20-year period. As I
10 stated in my direct testimony, the senior officers who will lead the combined company
11 are proven leaders in the telecommunications industry with multiple decades of both
12 individual and combined experience. The majority of the CenturyLink leadership team
13 has been together since the 1980s, a fact that highlights the stability and experience of the
14 Company's management. This level of management continuity and the track record over
15 that time is important as it demonstrates convincingly that the CenturyLink leadership
16 team consistently has worked to provide exceptional customer service over an extended
17 period while successfully managing multiple acquisitions and integrations. With respect
18 to the management team's transactional experience, CenturyLink has increased its scope
19 and scale over the years through a number of sizeable acquisitions, starting in 1997 with
20 the acquisition of Pacific Telecom, Inc. and most recently with the 2009 acquisition of
21 Embarq. An important by-product of the multiple acquisitions by CenturyLink is the
22 accumulation of experienced employees and critical skill sets needed for successful
23 integration outcomes. At times these acquisitions have more than doubled or tripled the

1 size of the Company within a fairly short span of years. In each instance the integration
2 has been successful in terms of customer service improvements and operating
3 performance. This proven and uncontested history demonstrates that CenturyLink is
4 accustomed to managing and executing on mergers and acquisitions of varying types,
5 sizes and complexity while continuing to operate as a successful service provider in a
6 challenging industry environment. To my knowledge, the intervenors have no significant
7 or meaningful basis in fact to suggest otherwise.

8
9 More specifically, the preparation for the Qwest integration process is underway, and
10 joint CenturyLink/Qwest integration teams are hard at work reviewing all functional
11 areas to determine the best organizational structure for the company post-merger. In
12 addition, there is an early and important focus on integrating various company systems
13 and practices. CenturyLink approaches the systems integration process with an open
14 mind as the Company evaluates and prepares to adopt the best systems of merged
15 companies. This approach to systems integration ensures critical functionality, efficiency
16 and an overall positive customer experience. It is important to note that a key factor in
17 the CenturyTel/Embarq transaction and this transaction, which sets them apart from other
18 mergers in a very positive way, is that CenturyLink is integrating not partial companies
19 but entire companies. Acquiring total companies such as Embarq and Qwest—personnel,
20 systems, network assets, etc.— provides CenturyLink the ability to operate using dual
21 systems for as long as management believes is prudent. Preparation is further focused as
22 the employees of both companies are committed to coordinating and transitioning the
23 companies' operations. Accordingly, there are common integration goals rather than the

1 conflicts of interest that may arise when a company sells only parts of its operations.
2 Additionally, while final staffing decisions have not yet been made, the majority of both
3 companies' employees are expected to be retained to help the merged company achieve
4 its local operational objectives. Through the extensive experience CenturyLink has with
5 merger integrations, we are also mindful of employees and their families nationwide that
6 must deal with various levels of uncertainty until all approvals are granted and the
7 companies are formally allowed to close the transaction. That is why CenturyLink and
8 Qwest have begun post-merger integration planning and are seeking prompt approvals.
9

10 **Q. Several parties express frustration with the lack of details that CenturyLink has**
11 **provided with regard to its integration plans with Qwest. How do you respond?**

12 A. CenturyLink is experienced in large integrations, which require processes that are
13 thorough, well thought-out and customer focused. We understand there may be some
14 frustration with a lack of certain details at this stage, but these processes require
15 deliberate and disciplined efforts to complete. While much integration planning can
16 begin pre-merger, as is the case with the proposed Transaction, most of the final
17 decisions regarding integration cannot be made, and do not need to be made, until after
18 the merger is closed. Additionally, from a sequencing standpoint, we are just now
19 naming Tier 2 leadership with Tier 3 leaders following later this year. These individuals
20 will be responsible for structuring their respective areas, building teams and actually
21 operating many of the systems in question. From our perspective, it makes little sense to
22 select systems without the input of critical, hands-on employee leaders.
23

1 This kind of parent-level transaction does not force the Company into short timelines.
2 Rushing the selection and integration of critical systems designed to seamlessly serve
3 millions of retail and wholesale customers is not an option, nor, as I have said, does this
4 type of transaction force CenturyLink to do so. By the same token, mandating arbitrary
5 dates before which implementation of systems integration cannot occur would be just as
6 ill-advised. CenturyLink is committed to follow proven processes that involve careful
7 review of all aspects of the integration to ensure that the merger goes as smoothly as
8 possible for customers, employees and other key stakeholders. Based on its past
9 experience and track record, CenturyLink is confident that it understands the processes
10 that lead to efficient and smooth integrations. If decisions are hurried to benefit one
11 subset of customers, or constrained or limited to the supposed benefit of another subset,
12 such as proposed by the Joint CLECs and other intervenors, it only increases the
13 likelihood that problems will develop to the detriment of a much larger base of residential
14 and business customers and employees.

15
16 **Q. You mentioned the companies were moving forward with integration plans and that**
17 **the Tier 2 leaders were in the process of being named. Has there been a recent**
18 **announcement regarding the Tier 2 leaders?**

19 A. Yes, on Monday, September 20, 2010, Tier 2 leadership appointments were announced in
20 the Operations, Business Markets, Wholesale, Finance, Network Services, Corporate
21 Strategy & Development, Public Policy and Government Relations, Legal, Human
22 Resources and IT organizations. This announcement also included the alignment of the
23 combined company's Oregon Operations into one of six Regions. Oregon will be part of

1 the newly formed Northwest Region which also includes operations in the states of
2 California, Idaho, and Washington. Brian Stading, currently Vice President-Network
3 Operations and Engineering for Qwest will become the Northwest Region President upon
4 the close of the Transaction. We believe the creation of a Northwest Region
5 demonstrates CenturyLink's commitment to an increased presence in Oregon and a clear
6 focus on meeting the needs of Oregon consumers. I have included as an exhibit
7 (CTL/501) to my testimony a detailed list of the Tier 2 appointments just announced.

8
9 **Q. Can you generally describe Centurylink's approach to the integration process?**

10 **A.** Yes, I can. CenturyLink and Qwest are applying a disciplined method to on-going
11 integration planning. Specifically, in the first phase of integration planning, management
12 will: (i) establish guiding principles and strategies for companywide integration planning;
13 (ii) identify and commit resources to integration planning efforts; (iii) resolve and
14 escalate any critical issues as needed; and (iv) track and communicate progress to
15 business leadership. Each functional group then has a leader who heads a functional
16 integration team focused on the organization for which he or she has responsibility. The
17 functional integration teams then, over time, will create objectives and also detailed work
18 plans that assign task owners, deliverables and due dates for integration work. The work
19 plans also will help identify resource constraints, dependencies and other issues. Finally,
20 functional sub-teams will be employed to manage integration planning for specific
21 functions within each leader's area of responsibility. This highly-structured and detail-
22 oriented integration methodology and process not only demonstrates that the CLECs'

1 concerns are speculative and not likely to materialize, but also demonstrates the caliber of
2 management planning that will ensure successful integration of the merging companies.
3

4 **II. COMMISSION STAFF AND OTHER INTERVENORS ATTEMPT TO**
5 **INCORRECTLY EXPAND THE COMMISSION'S "NO-HARM"**
6 **STANDARD OF REVIEW TO JUSTIFY CONDITIONS THAT PROVIDE**
7 **AFFIRMATIVE BENEFITS.**
8

9 **Q. What is the standard of review to be applied in this transfer of control proceeding?**

10 A. I am not an attorney and I rely upon the Commission to determine the specific standard of
11 review that is appropriate for this type of proceeding in Oregon. Mr. Dougherty in his
12 testimony cites to advice from the Oregon Department of Justice ("ODOJ") that the
13 standard of review is "in the public interest, no harm."⁶ He explains that this is a "lesser
14 standard" than a review requiring a showing of "net benefits," which is the standard
15 applied in energy utility transactions in Oregon.⁷ CenturyLink's attorneys have advised
16 me that the correct standard of review for the proposed Transaction is consistent with my
17 understanding of Mr. Dougherty's testimony. I have read the applicable Oregon statute
18 which requires that CenturyLink and Qwest provide specific factual information in
19 support of the Transaction application, and that CenturyLink and Qwest provide their
20 view of issues related to why the Transaction is in the public interest. The statute calls
21 for CenturyLink and Qwest to supply, among other things:

22 (l) The facts relied upon by applicants to show that the proposed sale, lease,
23 assignment, or consolidation of facilities, mortgage or encumbrance of property,
24 or acquisition of stock, bonds, or property of another utility *will be consistent with*
25 *the public interest*;

26 (m) The reasons, in detail, relied upon by each applicant, or party to the
27 application, for entering into the proposed sale, lease, assignment, merger, or

⁶ Staff/100, Dougherty/4, lines 13-15.

⁷ Staff/100, Dougherty/5, lines 1-2.

1 consolidation of facilities, mortgage or encumbrance of property, acquisition of
2 stock, bonds, or property of another utility, *and the benefits, if any, to be derived*
3 *by the customers of the applicants and the public.*⁸ [Emphasis added.]
4

5 **Q. Do the intervenor witnesses and Commission Staff attempt to expand the standard**
6 **of review in this proceeding?**

7 A. It appears that certain intervenor witnesses seek to expand the Oregon transactional
8 standard of review in two ways: (i) by requiring that CenturyLink prove affirmative
9 benefits flowing from the Transaction, and (ii) by requiring that a specific
10 telecommunications customer segment—wholesale customers—realize direct financial
11 benefits from the merger. Effectively, witnesses Gates, Ankum, Denney, Johnson, and
12 Frentrup seek to set a higher threshold for approval of the Transaction so that the
13 intervening parties they represent may achieve self-interested benefits as part of the
14 review process. Similarly, the Commission Staff in the testimony of Mr. Dougherty
15 appears to base his recommendation for a long list of conditions on the premise that there
16 should be offsetting benefits to address a litany of alleged risks associated with the
17 proposed Transaction. Mr. Bailey addresses this issue in greater detail in his rebuttal
18 testimony.
19

20 **Q. Where in their testimonies do the intervenor witnesses argue that the Oregon**
21 **standard of review should be able to prove affirmative benefits?**

22 A. Dr. Ankum devotes the entire sixth section of his testimony to the “*Failure to Prove*
23 *Benefits Resulting from the Merger.*”⁹ (Emphasis added). Dr. Ankum argues that the

⁸ ORS 860-027-0025, paragraphs l and m.

⁹ Joint CLECs/8, Ankum/ 56-62.

1 Commission cannot substantiate the “alleged benefits” and he provides Joint CLECs/5
2 (Ankum) on the same point.¹⁰ Mr. Gates speculates that “material changes are coming
3 post-transaction” and CenturyLink’s commitments regarding service quality and
4 wholesale operations, among other things, are not “verifiable benefits on which the
5 Commission should rely.”¹¹ Mr. Gates contends that the absence of detail about its plans
6 and the “sparse information” provided by CenturyLink and Qwest creates such harm that
7 the Transaction should be rejected.¹² Mr. Gates reiterates the theme of “uncertainty”
8 regarding the benefits of the proposed Transaction throughout his testimony, and equates
9 the perceived uncertainty around benefits with actual “harm.”¹³

10
11 **Q. Can you comment on the intervenor witnesses’ arguments that the Joint Petitioners**
12 **fail to demonstrate or prove affirmative benefits?**

13 A. Yes. In no transaction with which I am familiar did management of the merging
14 companies provide detailed plans regarding post-merger business operations or benefits.
15 In fact, the pre-close period is a time of ongoing evaluations and provisional steps that
16 eventually lead to post-close decisions and plans. It is not possible or appropriate to
17 subject a pending transaction to a level of scrutiny that requires detailed final plans prior
18 to closing. As I testified earlier, CenturyLink and Qwest are making significant progress
19 regarding integration plans, but cannot provide, and should not have developed, detailed
20 final plans prior to closing. No merger involving CenturyLink or any other acquirer, as

¹⁰ Joint CLECs/8, Ankum/ 56-62; Ankum/19, lines 9-15; Ankum/25, lines 11-14; Joint CLECs/5 (Ankum).

¹¹ Joint CLECs/8, Gates/5, lines 3-8; Gates/5, lines 14-17.

¹² Joint CLECs/8, Gates/4, lines 9-16.

¹³ Joint CLECs/8, Gates/4, line 12 to Gates/5, line 2; Gates/5, lines 8-14; Gates/110, lines 9-15.

1 far as I know, has been held to a standard that required detailed proof of plans at this
2 stage.

3
4 **Q. You stated that intervenor witnesses argue that the Commission should require**
5 **sharing of the financial benefits of the merger. Can you comment?**

6 A. Yes. Mr. Bailey will address this question more fully, but CenturyLink takes issue with
7 the testimonies of Dr. Ankum, Mr. Gates, and Dr. Frentrup who assert that wholesale
8 customers should “share” in the benefits that flow from the merger.¹⁴ CenturyLink and
9 Qwest are combining so that they may create efficiencies and financial resources to meet
10 customer needs over the long term. The proposal that those financial benefits should be
11 earmarked for wholesale customers would frustrate a fundamental business purpose of
12 this combination. Additionally, such a redirection of cash flows, as Mr. Bailey points
13 out, would also limit the merged company’s ability to invest in plant and services, as well
14 as improve its balance sheet. CenturyLink rejects the recommendation that the
15 Transaction approval should be conditioned upon any such sharing of synergies.

16

¹⁴ Sprint/1, Frentrup/15, line 14 through Frentrup/16, line 2; Frentrup/13, line 21 through Frentrup/14, line 5; Joint CLECs/1, Ankum/ 62, lines 1-6; Joint CLECs/8, Gates/ 113, lines 13-16; Mr. Gates footnotes the concept, citing to the FCC’s *Local Competition Order* (“Order”) from 1996, ¶11, and his footnote selectively states “...the local competition provisions of the Act require that these economies be shared with entrants.” In reality, the Order’s paragraph concerns setting initial rules based on “economies of density, connectivity, and scale [that have] traditionally . . . been viewed as creating a natural monopoly.” Nowhere does the FCC’s Order suggest that there should be a sharing of economic benefits resulting from a merger.

1 **III. THE TRANSACTION IS NOT SIMILAR TO CERTAIN PREVIOUS**
2 **PROBLEMATIC INCUMBENT LOCAL EXCHANGE CARRIER**
3 **(“ILEC”) MERGERS, INCLUDING THOSE IN WHICH THERE WERE**
4 **FUNDAMENTAL FLAWS THAT LED TO BANKRUPTCIES.**

5
6 **Q. Please respond to the concerns raised by several interveners that the proposed**
7 **Transaction might be similar to the Hawaiian Telcom, Inc. (“Hawaiian Telcom”)**
8 **and FairPoint Communications, Inc. (“FairPoint”) mergers, which eventually**
9 **resulted in bankruptcies.**

10 A. Several intervenors, including Mr. Gates, Dr. Ankum, and Mr. Thayer—describe the
11 failure of The Carlyle Group’s (“Carlyle’s”) purchase of Hawaiian Telcom and the
12 similar problems in the FairPoint acquisition of Verizon Communications Inc.’s
13 (“Verizon’s”) wireline operations in Maine, New Hampshire, and Vermont, but they fail
14 to analyze with appropriate diligence or present facts regarding whether similar problems
15 are likely in the instant Transaction.¹⁵ Dr. Ankum and Mr. Gates summarily conclude
16 that “ILEC local telephone operations carry a high degree of risk of failure” and the
17 “integration of two companies’ disparate operations and OSS [operating support systems]
18 can pose a tremendous challenge.”¹⁶ Dr. Ankum adds two additional unsupported
19 conclusions, which are that, “company management tends to overstate the anticipated
20 benefits and understate the risks and uncertainties,” and that “integration of a Bell
21 Operating Company’s ILEC operation can prove to be extremely expensive and difficult,
22 and integration failures can be so costly as to not only eliminate the forecasted transaction
23 cost savings and other synergies, but to place the post-transaction company under severe

¹⁵ Joint CLECs/8, Gates/88-112; Joint CLECs/1, Ankum/25-28; Level 3 Communications/100, Thayer/2, lines 16-18.

¹⁶ Joint CLECs/8, Gates/89, line 21 to Gates/90, line 10; Joint CLECs/8, Ankum/35, lines 11-22.

1 financial pressure.”¹⁷ All these testimonies focus on speculation about what the
2 witnesses think “can” happen, but provide no substantive evidence relevant to the current
3 Transaction to indicate that the problems related to the Hawaiian Telcom and FairPoint
4 combinations will or are likely to happen in this Transaction.

5
6 **Q. Please elaborate on your comment that the intervenor witnesses failed to analyze**
7 **diligently the problems in the Hawaiian Telcom and FairPoint mergers and**
8 **compare those transactions with the facts in the proposed Transaction.**

9 A. First, Dr. Ankum, Mr. Gates and Mr. Thayer focus on only two transactions, in spite of
10 the fact that there have been a large number of successful transactions combining ILEC-
11 to-ILEC operations—involving independent operations, properties sold by Regional Bell
12 Operating Companies (“RBOCs”), and combinations of RBOCs—over the last decade
13 and indeed well before that time.¹⁸ In addition to several smaller transactions,
14 CenturyLink has successfully acquired and integrated Verizon-owned properties that
15 totaled nearly 2 million access lines in Wisconsin, Missouri, Arkansas, and Alabama
16 since the year 2000 – a more difficult transaction from a systems perspective because
17 CenturyLink was not acquiring an entire company, as is the case in this Transaction. In
18 addition, CenturyLink has been integrating Embarq over the last year. Windstream

¹⁷ Joint CLECs/1, Ankum/35, lines 15-22.

¹⁸ Dr. Ankum states, without providing any evidence, that “most mergers are not successful.” See Joint CLECs/1, Ankum/10, line 14. It might be assumed that he is referring to mergers outside the ILEC industry, but his testimony provides no data or references to verify the statement about “most mergers.” Dr. Ankum does cite in general terms several other mergers but they did not involve two ILECs combining their businesses; i.e., the combination of MCI and WorldCom (Joint CLECs/1, Ankum/10, lines 21 ff.), and Qwest and US West (Joint CLECs/1, Ankum/24, lines 15 ff.); and he makes passing reference without specifics to the combinations of SBC and BellSouth, as well as SBC and Ameritech. Dr. Ankum also alleges that Frontier is having “cut-over problems with backoffice and OSS systems reminiscent of the prior two transactions [Hawaiian Telcom and FairPoint]” but the source cited in his footnote is only a Fact Sheet from Frontier, announcing the transaction.

1 Corporation (“Windstream”) successfully acquired Verizon properties (about 600,000
2 lines) in Kentucky in 2002. I know of no “failed” ILEC-to-ILEC mergers except the two
3 cited by the intervenor witnesses. Second, CenturyLink believes that the Hawaiian
4 Telcom and FairPoint transactions are distinguishable from virtually every other ILEC-
5 to-ILEC transaction in terms of the specific problem that precipitated those companies’
6 financial failure. That is, in both of those transactions, the acquiring companies were
7 required to create entirely new OSS and then to cut over (“flash cut”) the acquired
8 carrier’s services to those newly-created OSS. Dr. Ankum and Mr. Gates both
9 acknowledge that every one of the state commissions that reviewed those two
10 transactions—in Hawaii, Vermont, Maine, and New Hampshire—trace the financial and
11 service problems to those specific OSS challenges, which then led to financial distress.¹⁹
12 I reiterate that I know of no other “failed” ILEC combinations besides Hawaiian Telcom
13 and FairPoint, and, in those two cases, the root problem, according to Mr. Gates and Dr.
14 Ankum themselves and according to the respective commissions, was the inability to
15 develop and implement entirely new OSS to replace the legacy Verizon OSS. In contrast,
16 the current Transaction does not force the Company to change or replace OSS.

17
18 **Q. Can you be more specific about the distinguishing characteristics between the**
19 **proposed Transaction on the one hand and the FairPoint-Verizon and the Hawaiian**
20 **Telcom acquisitions on the other?**

21 **A.** Yes. The proposed Transaction does not at all resemble the FairPoint-Verizon
22 transaction or the Hawaii divestiture. The proposed Transaction is a stock-for-stock

¹⁹ See, for example, Joint CLECs/1, Ankum/32, line 3 through Ankum/33, line 9; Joint CLECs/8, Gates/91, line 1 through Gates/102, line 23.

1 merger with no incremental debt. All Qwest systems, including the back-office systems
2 (OSS), and all personnel will convey to CenturyLink as part of the merger. These factors
3 eliminate important risks that apparently proved highly detrimental in the cases of the
4 two cited bankruptcies.

5
6 Turning to the specific problems that precipitated the bankruptcies cited by the
7 intervenors, both Carlyle, which acquired Hawaiian Telcom, and FairPoint were required
8 to build “de novo” the back-office software (i.e., OSS) that manages key operational
9 functions. Those systems support order-taking, provisioning those orders through the
10 company’s systems, billing, maintenance and repair. However, as has been well-
11 reported, the newly-developed Hawaiian Telcom and FairPoint systems performed poorly
12 due to design and integration flaws, which resulted in a loss of customers and related
13 financial problems. I emphasize that those significant financial commitments made by
14 Carlyle and FairPoint are not required in the proposed Transaction because CenturyLink
15 and Qwest have well-established, fully operational and tested systems. The financial
16 reports issued by Hawaiian Telcom and FairPoint further point to the *substantial* costs
17 required in developing (and then fixing) newly-developed, but ineffective, systems. In its
18 2007 Form 10-K filing with the Securities and Exchange Commission (“SEC”), Hawaiian
19 Telcom reported that it initially had engaged BearingPoint, Inc. (“BearingPoint”) to build
20 the back-office and information technology (“IT”) infrastructure. According to the SEC
21 filing, the back-office and IT systems then required “substantial investments” when

1 BearingPoint failed to perform.²⁰ And, in its 2008 Form 10-K filing, Hawaiian Telcom
2 explained that the failure of the back-office systems “led to deficiencies in billings and
3 collections, revenue assurance, and order entry flow-through,” which adversely affected
4 its business.²¹ FairPoint’s investment in systems development was originally estimated to
5 be \$200 million.²² FairPoint also reported the high costs to remediate its failed systems:
6 “In addition to the significant incremental expenses we incurred as a result of these
7 cutover issues, we have been unable to fully implement our operating plan for 2009 and
8 effectively compete in the marketplace”²³ Although, to my knowledge, neither
9 FairPoint nor Hawaiian Telcom reported the full extent of the costs associated with lost
10 customers, they have made clear that the losses were significant.²⁴

²⁰ 2007 10-K for the fiscal year ended December 31, 2007, Hawaiian Telcom Communications, Inc, available at http://www.sec.gov/Archives/edgar/data/1349120/000110465908020904/a08-2974_110k.htm, p. 7. Hawaiian Telcom described in the 10-K at p. 12 the eventual settlement that provides a sense of the magnitude of back-office systems cost: “Effective as of February 6, 2007, we reached a mutual agreement with BearingPoint that was memorialized in a Settlement Agreement and Transition Agreement. Under the Settlement Agreement, BearingPoint paid to us the aggregate amount of \$52.0 million (the “Settlement Payment”) on March 27, 2007 and agreed to discharge previously-submitted invoices in an aggregate amount of approximately \$29.6 million as well as other amounts otherwise payable to BearingPoint. The total benefit to us under the settlement includes the cash Settlement Payment and a reduction in accounts payable (\$38.6 million at February 6, 2007, including certain accrued costs) associated with reversing amounts accrued under our agreement with BearingPoint. For the year ended December 31, 2006, we recorded a recovery contractually due under our agreement with BearingPoint amounting to \$24.1 million. The remaining settlement consideration was recognized in the first quarter of 2007.”

²¹ Hawaiian Telcom 2008 10-K, p. 12; “This [failure of the back-office systems] led to deficiencies in billings and collections, revenue assurance, and order entry flow-through. Despite BearingPoint’s efforts to improve the functionality of the related systems, we continued to experience many of these same issues, requiring us to incur significant incremental expenses in 2006 to retain third-party service providers to provide call center and manual processing services in order to operate our business. To help remediate deficiencies, we also engaged the services of Accenture, which has expertise in telecommunications back-office software systems and processes. In addition to the third-party costs, we incurred additional internal labor costs in the form of overtime pay. As a result, we engaged in discussions with BearingPoint seeking reimbursement of the aforementioned costs and compensation for damages arising from failures to deliver promised services in a timely manner.”

²² “FairPoint Communications, January 16, 2008,” p. 8; transcript of investor call available at http://www.sec.gov/Archives/edgar/data/1062613/000110465907003517/a07-1924_2ex99d1.htm; see, especially, p. 5.

²³ *Id.*

²⁴ FairPoint Second Quarter 10-Q 2009, available at <http://www.sec.gov/Archives/edgar/data/1062613/000104746909007239/a2193968z10-q.htm>, p. 40: “Following the cutover [from Verizon’s systems to FairPoint’s in 2009], many of these [back-office] systems functioned without significant problems, but a number of the key back-office systems, such as order entry, order

1
2 I note that, to my knowledge, in all other ILEC transactions where there has not been the
3 need to create new OSS—and there is no need in the proposed Transaction—there is a
4 long track record of successful integrations resulting in improved combined operations,
5 including numerous transactions involving CenturyLink. Had Dr. Ankum, Mr. Gates and
6 other the intervenors citing the bankruptcies looked beyond the two “failed” transactions
7 upon which they selectively focus their testimonies, they would have had to acknowledge
8 that the ILEC industry in general, and CenturyLink in particular, have a long history of
9 successful transactional activity and that ongoing industry consolidation is appropriate
10 and positive as telecommunications becomes a more intensely competitive industry.
11

management and billing, experienced certain functionality issues. As a result of these systems functionality issues, as well as work force inexperience on the new systems, we experienced increased handle time by customer service representatives for new orders, reduced levels of order flow-through across the systems, which caused delays in provisioning and installation, and delays in the processing of bill cycles and collection treatment efforts. These issues impacted customer satisfaction and resulted in large increases in customer call volumes into our customer service centers. While many of these issues were anticipated, the magnitude of difficulties experienced was beyond our expectations. . . . Because of these cutover issues, during the three months and six months ended June 30, 2009 we incurred \$8.6 million and \$28.0 million, respectively, of incremental expenses in order to operate our business, including third-party contractor costs and internal labor costs in the form of overtime pay. The cutover issues also required significant staff and senior management attention, diverting their focus from other efforts. We expect to continue to incur a modest amount of incremental costs during the third quarter of 2009 as we fully complete our cutover restoration efforts. In addition to the significant incremental expenses we incurred as a result of these cutover issues, we have been unable to fully implement our operating plan for 2009 and effectively compete in the marketplace, which we believe is having an adverse effect on our business, financial condition, results of operations and liquidity, as well as our ability to continue to comply with the financial covenants in our credit agreement.”

See, also, Hawaiian Telcom 2008 10-K, p. 15: “In addition to the significant expenses we have incurred, because we do not have fully functional back-office and IT systems, we have been unable to fully implement our business strategy and effectively compete in the marketplace, which has had an adverse effect on our business and results of operations. While we are continuing to work to improve the functionality of our systems and we have seen improvement, there is no certainty that these activities will be successful or when we will achieve the desired level of functionality. Until we are able to achieve this level of functionality, our lack of critical back-office and IT infrastructure will negatively impact our ability to operate as a stand-alone provider of telecommunication services, and will have an adverse effect on our business and operations.” See also, p. 18.

1 **Q. Is there any risk in the proposed Transaction similar to the risks that caused the**
2 **financial distress for Hawaiian Telcom and for FairPoint?**

3 A. No. The proposed Transaction does not include the risk associated with creating new
4 OSS or a “flash cut” to a different OSS on the day the merger is completed. I note that
5 CenturyLink has extensive experience in successfully “flash cutting” acquired operations
6 to its own OSS, as was the case in the acquisitions of the Verizon properties in
7 Wisconsin, Missouri, Arkansas, and Alabama over the last ten years. However, in the
8 proposed Transaction, there is no immediate cutover of systems required nor are there
9 new and unproven systems that must be relied upon in the combination between
10 CenturyLink and Qwest. The proposed transaction is completely and fundamentally
11 distinguishable from the two merger-related ILEC failures. Immediately after the close
12 of the proposed Transaction, Qwest will operate using the same systems it currently has
13 in place, and CenturyLink will operate using its systems, with both OSS fully functioning
14 and staffed by operating personnel who have been managing those systems. If the
15 affected state commissions were correct in identifying the foundational problem in the
16 two ILEC “failures” (i.e., the need to develop and implement entirely new OSS “from
17 scratch” to replace the legacy Verizon systems), there clearly and definitively is no
18 similar risk in the current Transaction. The similarities between FairPoint and Hawaiian
19 Telcom are very clear, and the precipitating problem in those transactions is not a factor
20 in executing the proposed Transaction.

1 **Q. Please comment on the risks related to mergers that Mr. Gates and Dr. Ankum**
2 **outline as a result of their assessment of the two ILEC bankruptcies.**

3 A. Mr. Gates and Dr. Ankum conclude from the problems of Hawaiian Telcom and
4 FairPoint that ILEC mergers in general bear a “high degree of risk of failure.”²⁵ This
5 claim is not accurate or balanced, as, to my knowledge, there have been two and only two
6 notable ILEC transactional failures in recent years. Mr. Gates cites that “the integration
7 of two companies’ disparate operations and OSS pose a tremendous challenge” which
8 can lead to elimination of synergies and “severe financial pressures.”²⁶ CenturyLink will
9 not be challenged to migrate or “integrate disparate systems” at the time the merger is
10 completed. CenturyLink reserves the right to improve its systems and integrate
11 operations (similar to the operating rights at any other carrier including Verizon or
12 AT&T), but there are no plans to effect a flash cut or transition at the consummation of
13 the merger or in the months that immediately follow. Dr. Ankum also generalizes that
14 “company management tends to overstate the anticipated benefits and understate the
15 risks.”²⁷ On the contrary, in CenturyLink’s past transactions, the Company has made
16 accurate assumptions, integrated operations successfully, generated new services for
17 customers, and achieved synergies at levels consistent with or in excess of expectations
18 going into the transactions. In addition, other proven ILEC acquirers, such as Frontier
19 Communications Corporation (“Frontier”) and Windstream, frequently have engaged in
20 successful combinations that have achieved financial results that have exceeded
21 expectations. I know of no other ILEC-to-ILEC transaction over the last ten years that

²⁵ Joint CLECs/8, Gates/102, lines 28-31; Joint CLECs/1, Ankum/35, lines 11-14.

²⁶ Joint CLECs/8, Gates/102, line 33 to Gates/103, line 2; see also Joint CLECs/1, Ankum/35, lines 11-22.

²⁷ Joint CLECs/1, Ankum/35, lines 15-17.

1 can be characterized as overstating benefits and understating risks except in the Hawaiian
2 Telcom and FairPoint transactions. Mr. Gates and Dr. Ankum are speculating about
3 potential problems unique to two companies, but CenturyLink has provided convincing
4 evidence related to a proven and long history of its capabilities with respect to
5 acquisitions, high-quality services, and responsible management of local exchange
6 operations—none of which have resulted in failure. We believe the CenturyLink
7 management team has much more experience in actually integrating companies than the
8 witnesses who offer only theoretical and speculative assertions.

9
10 **IV. RESPONSE TO ISSUES AND CONDITIONS AS PROPOSED BY STAFF.**

11 **Q. Based on the testimony filed by the Commission Staff, what is their position on this**
12 **transaction?**

13 A. As summarized in the testimony of witness Mr. Dougherty, the Commission Staff
14 recommends the Commission deny CenturyLink's request to approve the Transaction due
15 to purported risks included in his testimony and in the testimonies of other Staff
16 witnesses. Commission Staff goes on to offer fifty-seven (57) separate conditions, which
17 if adopted by the Commission or voluntarily agreed to by the CenturyLink, would allow
18 Staff to recommend that the Commission approve the transaction.

19
20 **Q. Does CenturyLink believe the Staff's purported risks are a valid basis for**
21 **recommending that the proposed Transaction not be approved?**

22 A. No. CenturyLink witness Clay Bailey addresses each of the risks identified in Mr.
23 Dougherty's testimony and explains why those concerns are not valid or identifies

1 mitigating factors which limit the identified risks. In any event, identification of risks
2 does not equate to a showing of likely harm resulting from the Transaction, particularly
3 given the benefits that will accrue to Qwest's Oregon customers—by far the largest group
4 of Oregon customers involved in the Transaction—as a result of the merger.

5
6 **Q. Commission Staff recommends that the Applicants should agree to fifty-seven (57)**
7 **separate conditions before the Commission could approve the Transaction²⁸. Can**
8 **you comment on CenturyLink's perspective on these conditions?**

9 A. Yes. As a foundational matter, CenturyLink may be able to implement a number of
10 Staff's proposed conditions as part of a comprehensive settlement agreement
11 recommending an approval of the proposed Transaction. However, each of the conditions
12 will increase, at some level, the post-merger company's costs to ensure compliance, or
13 will otherwise delay or minimize the public interest benefits of the Transaction. The
14 sheer magnitude of Staff's conditions (57 conditions), along with the multiple new
15 tracking and reporting requirements to ensure compliance, impose costs that CenturyLink
16 believes in many cases, are unnecessary.

17
18 CenturyLink will address each of the Staff's proposed conditions in my testimony and the
19 testimonies of Clay Bailey, Mike Hunsucker and Todd Schafer. Where appropriate, the
20 testimonies address the risks identified by the Commission Staff and CenturyLink's
21 position on the proposed Staff condition.

22

²⁸ These conditions are summarized in the testimony of Staff Witness Dougherty and listed fully at Staff/100, Dougherty/45-58.

1 **Q. Please comment on Staff Recommended Condition 4 regarding the corporate**
2 **structure of the three existing CenturyLink Oregon ILECs and the Qwest Oregon**
3 **ILEC.**

4 A. This proposed condition would require CenturyLink to maintain a corporate
5 organizational structure that includes the four separate ILECs in Oregon (CenturyTel of
6 Oregon Inc., CenturyTel of Eastern Oregon, Inc., United Telephone Company of the
7 Northwest and Qwest Corporation) and to file an application with the Commission should
8 CenturyLink propose to merge or consolidate the operations of the entities, to the extent
9 required by Oregon law. Future decisions to merge or consolidate any of the Oregon
10 entities would be completed in accordance with Oregon law. Therefore, as part of a
11 comprehensive settlement agreement recommending an approval of the proposed
12 Transaction, CenturyLink could agree to accept this condition.

13
14 **Q. Please comment on Staff Recommended Condition 5 regarding customer**
15 **notification of the merger.**

16 A. This proposed Staff condition would require CenturyLink to notify all of its Oregon
17 customers of the merger and the change of the parent company in accordance with any
18 Oregon and Federal Communications Commission ("FCC") rules and regulations. The
19 proposed condition also would require specific notification to OTAP/Lifeline customers.
20 As part of a comprehensive settlement agreement recommending an approval of the
21 proposed Transaction, CenturyLink could agree to comply with all Oregon and FCC
22 customer notice requirements relating to the merger, including the specific recommended
23 notice to OTAP/Lifeline customers.

1
2 **Q. Please comment on Staff Recommended Condition 6 regarding continuance of**
3 **current Qwest tariffs.**

4 A. This proposed Staff condition would preclude discontinuation of any Commission-
5 regulated intrastate service currently offered by Qwest in its Exchange and Network
6 Services Tariff No. 33 and Private Line Transport Services Tariff for at least three years
7 unless otherwise approved by the Commission. As part of a comprehensive settlement
8 agreement recommending an approval of the proposed Transaction, CenturyLink could
9 agree to accept this condition.
10

11 **Q. Please comment on Staff Recommended Condition 7 regarding continued**
12 **compliance with Qwest's Price Plan.**

13 A. This proposed Staff condition would require continued compliance post-merger with the
14 terms and conditions of Qwest's UM 1354 price plan. In addition, any branding or
15 administrative changes to Qwest's Oregon rates, rules and regulations would require
16 updates be completed within 60 days. As indicated in the direct testimony of Qwest
17 witness Judy Pepler, nothing in the merger transaction will change any of the terms of
18 the Qwest Oregon Price Plan. Qwest will continue to operate under its Oregon Price
19 Plan, approved in 2008 and subject to a five-year term, including the price caps for first-
20 line residential and business lines. Any changes to services subject to Qwest's Oregon
21 Price Plan will require the same regulatory approval that applies to those services pre-
22 merger. For these reasons, as part of a comprehensive settlement agreement

1 recommending an approval of the proposed Transaction, CenturyLink could agree to
2 accept this condition.

3
4 **Q. Please comment on Staff Recommended Condition 12 regarding merger integration**
5 **reporting.**

6 A. This proposed Staff condition requires CenturyLink to file with the Commission an
7 annual report for three (3) years that provides information regarding integration activities,
8 synergies, organization and staff force changes and the impact of these items on Oregon
9 operations and customers related to the Qwest transaction. As part of a comprehensive
10 settlement agreement recommending an approval of the proposed Transaction,
11 CenturyLink could agree to accept this condition.

12
13 **Q. Please comment on Staff Recommended Condition 13 regarding broadband**
14 **investment.**

15 A. CenturyLink objects to this proposed Staff condition for a number of reasons. First,
16 Staff's foundation for proposing a broadband investment condition is to address alleged
17 risks related to the Commission's inability to "ring fence"²⁹ the Oregon operating entities
18 from the parent company. Mr. Bailey's testimony addresses the "ring fencing" issue and
19 explains that Staff's justification for a broadband condition on the basis of an inability to

²⁹ Ring fencing is a practice employed in regulating a public utility business. The regulator seeks to financially and legally separate the assets of an entire operating entity, such as a state's utility business, from other operations, which may involve a parent company based in another state. Alternatively, the financial separation involves a regulated business that is required to be legally distinct from a non-regulated business. The goal is to create legal protections for consumers of utility services such as power or water from potential financial instability in other operating entities.

1 implement "ring fencing" is not appropriate, particularly in an industry such as
2 telecommunications.

3
4 Second, Commission Staff offers scant support for the proposed \$60 million level of
5 required Oregon capital expenditures reflected in this proposed condition. Staff witness
6 Mr. Reynolds explains that the Commission approved in the Frontier-Verizon transaction
7 a broadband condition requiring Oregon investment of \$25 million. Mr. Reynolds
8 compares that Frontier commitment on a per access line basis with the proposed \$60
9 million amount for this Transaction. Mr. Reynolds concludes that the proposed
10 investment amount is less for this Transaction on a per access line basis than the amount
11 agreed upon in the Frontier-Verizon transaction³⁰. However, since this analysis was
12 based on total access lines involved in the two transactions, and does not take into
13 consideration the level of broadband deployment already achieved (which I believe is
14 greater in the to-be-acquired Qwest operations than was the case with the Verizon
15 properties acquired by Frontier). CenturyLink believes that the per-line calculation does
16 not provide a reliable measure to justify the proposed \$60 million Oregon investment
17 amount, if such a condition were even appropriate.

18
19 Third, CenturyLink and Qwest already have demonstrated a commitment to expansion of
20 broadband availability and capability in their networks, and market forces incent the
21 companies to continue that expansion. As such, any Commission imposed broadband
22 investment condition is unnecessary. Staff explains that the proposed condition is

³⁰ Staff/300, Reynolds/5.

1 necessary to ensure that CenturyLink commits to continuing to invest in broadband in
2 Oregon.³¹ But as explained in the rebuttal testimony of Todd Schafer, CenturyLink and
3 Qwest have been investing in a broadband-capable infrastructure in Oregon with the
4 overall goal of increasing the availability of broadband service while also increasing
5 broadband speeds in areas where broadband service already exists. Staff also appears to
6 ignore the fact that other providers are and will be making broadband investment in
7 Oregon markets and that CenturyLink and Qwest are not necessarily the only broadband
8 providers in any given market. There is no reason provided by Staff witnesses to
9 conclude that this broadband investment effort in Oregon will cease after the merger.
10 Both CenturyLink and Qwest have achieved nearly 89% broadband availability in
11 Oregon. Broadband is a critical component of CenturyLink's business strategy, and
12 continuing to increase availability and speeds to meet customer needs in our markets is
13 required for CenturyLink to remain competitive. CenturyLink will continue to deploy
14 broadband in response to customer demand, which is an approach that avoids the risk of
15 wasted or stranded investment and better dedicates capital in a rapidly-changing
16 competitive market. Therefore, there is no need for the Commission to impose
17 broadband commitments since CenturyLink and Qwest already are incented to continue
18 their broadband investments, which are in the best interests of customers, the Company's
19 business and the welfare of other key stakeholders.

³¹ Staff/100, Dougherty/38; Staff/300, Reynolds/3.

1 Finally, Staff's reliance on the standards proposed in the FCC's National Broadband Plan
2 ("NBP") in developing their proposed broadband speed and coverage goals³² is
3 premature as the NBP is merely a proposal at this stage and its recommendations have
4 not been adopted, in full or in part, by the FCC. Also, the Staff ignores the fact that the
5 NBP contains provisions for incremental funding to achieve the plan's proposed speed
6 and availability metrics. As such, the NBP should not be relied upon by the Staff to
7 justify or quantify the parameters of prudent broadband investment.

8
9 **Q. Please comment on Staff Recommended Condition 14 regarding broadband**
10 **reporting requirements.**

11 A. This proposed Staff condition requires detailed annual reporting for four (4) years
12 regarding: a) DSL trouble report complaint data; and b) DSL subscriptions. As
13 described above, CenturyLink objects to the Commission Staff's proposed broadband
14 commitment which limits the Company's ability to respond to market conditions and
15 risks the stranding of investment if there is insufficient demand. Similarly, CenturyLink
16 objects to this proposed broadband reporting condition. First, the Commission does not
17 regulate broadband, and therefore, lacks jurisdiction to require detailed reporting of
18 trouble report data associated with broadband, or data on the combined company's
19 subscription information. Competition for broadband customers in Oregon is intense,
20 and CenturyLink has every incentive to deploy high-quality broadband service at
21 competitive rates in order to effectively compete in the market. The imposition on
22 CenturyLink of costly and burdensome reporting requirements that are not otherwise also

³² Staff/300, Reynolds/2 and Reynolds/4-5

1 imposed upon CenturyLink's competitors places CenturyLink at a competitive
2 disadvantage and creates unnecessary reporting costs that detract from investments.
3 CenturyLink also notes that certain broadband subscribership and availability information
4 will be available to the Commission via the FCC Form-477 reports that CenturyLink is
5 willing to provide as outlined in Staff's proposed condition 25 discussed below.
6 Therefore, the Commission should not impose the Staff's proposed broadband reporting
7 condition.

8
9 **Q. Please comment on Staff Recommended Condition 19 regarding sale, transfer, or**
10 **merger involving Qwest properties.**

11 A. CenturyLink and Qwest object to this proposed condition as written because it would
12 result in Qwest relinquishing a benefit negotiated as part of Qwest's Oregon Price Plan.
13 Neither ORS 759.395 nor ORS 759.380 applies to Qwest due to the Commission's
14 August 8, 2008 approval of Qwest Oregon Price Plan which included a waiver of those
15 statutes as to Qwest Corporation. CenturyLink and Qwest believe the Commission
16 should not attempt to establish jurisdiction over a future transaction involving the Qwest
17 properties as part of this Transaction. For these reasons, CenturyLink and Qwest cannot
18 accept this condition.

19
20 **Q. Please comment on Staff Recommended Condition 22 regarding retail service**
21 **quality reporting.**

22 A. Staff's proposed Condition 22 would require the reinstatement of service quality
23 reporting for a period of two (2) years for the legacy CenturyTel ILECs. As described in

1 the testimony of Staff witness Emmons³³ the legacy CenturyTel ILECs in Oregon
2 (CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc.) were granted a
3 waiver from service quality reporting in March 2008 after meeting all of the
4 Commission's service quality objective service levels for a twelve (12) month period. As
5 explained by Mr. Emmons, Staff's proposed condition is not based on any concerns with
6 CenturyLink's current service quality performance, but rather is focused on Staff's desire
7 to have a post-merger view of service quality performance for all of the merged
8 company's operating entities in Oregon in order to monitor if “. . .service starts to
9 degrade.”³⁴

10
11 CenturyLink is committed to continuing to provide high quality service post-merger to all
12 of its Oregon customers, irrespective of whether service quality reporting is required or
13 not. As is apparent from its history in the State and in other states, CenturyLink would
14 not purposefully allow service to degrade for one or more of its operating companies in
15 Oregon simply because it is not required to report service quality performance to the
16 Commission. For these reasons, CenturyLink does not believe it is necessary for the
17 Commission to reinstate service quality reporting for the legacy CenturyTel operating
18 entities. In any event, the Commission will continue to receive service quality reports for
19 CenturyLink's United Telephone Company of the Northwest operating entity and for
20 Qwest's Oregon operations. The provision of service quality reports for these entities
21 will provide the Commission adequate assurances that CenturyLink post-merger is

³³ Staff/400, Emmons 2-3.

³⁴ Staff/400, Emmons/3, line 10.

1 continuing its long-standing commitment to the provision of high-quality service to all of
2 its Oregon customers.

3
4 **Q. Please comment on Staff Recommended Condition 23 regarding retail service**
5 **quality penalties.**

6 A. Staff's proposed condition 23 states that CenturyLink will be subject to potential
7 penalties set forth in ORS 759.450 if it fails to maintain the current service quality levels
8 for the Qwest operating company in Oregon. This proposed condition merely reiterates
9 CenturyLink's obligation post-merger under the existing Commission rules and statutes.
10 For this reason, CenturyLink is uncertain why a restatement of existing obligations needs
11 to be included as a transaction-related condition, but nonetheless, as part of a
12 comprehensive settlement agreement recommending an approval of the proposed
13 Transaction, CenturyLink could agree to accept this condition.

14
15 **Q. Please comment on Staff Recommended Condition 25 regarding the provision of**
16 **FCC-477 data to the Oregon Commission Staff**

17 A. This proposed Staff condition would require CenturyLink to provide the Commission
18 Staff, in electronic form and subject to confidentiality, the company's Form-477 report as
19 filed with the FCC. As part of a comprehensive settlement agreement recommending an
20 approval of the proposed Transaction, CenturyLink could agree to accept this condition.

1 **Q. Please comment on Staff Recommended Condition 29 regarding OSS.**

2 A. This proposed Staff condition would require CenturyLink to keep Qwest's legacy OSS
3 intact for a minimum of three (3) years and to seek approval from the Commission before
4 modifying or integrating existing Qwest and CenturyLink OSS. Commission Staff
5 witness Reynolds explains that a similar condition was imposed in Oregon in the
6 Frontier-Verizon transaction and a condition is also needed for the proposed Transaction
7 in order to allow Staff ". . . to maintain a level of oversight by the Commission in this
8 critical area."³⁵

9
10 As explained earlier in my testimony, CenturyLink has a demonstrated competency in
11 successfully completing transaction-related integrations, including the evaluation,
12 selection and conversion of OSS. CenturyLink's approach to systems integration ensures
13 critical functionality, efficiency and an overall positive customer experience. Further, as
14 opposed to the Frontier-Verizon transaction, in the CenturyTel/Embarq transaction and
15 the proposed Transaction, CenturyLink is integrating not partial companies but entire
16 companies. The acquisition of total companies, such as Embarq and Qwest, provides
17 CenturyLink the ability to operate using dual systems, providing more time for rigorous
18 evaluation, selection and gradual conversion of OSS. For these reasons, this Staff
19 proposed condition is unnecessary and CenturyLink urges the Commission not to adopt
20 it. CenturyLink is willing to agree, as part of a comprehensive settlement agreement, to
21 keep the Commission informed of progress on its integration activities, including OSS
22 integrations, as contemplated in Staff condition 12. However, CenturyLink strongly

³⁵ Staff/300, Reynolds/9.

believes that proposed condition 29 unnecessarily limits the combined company's flexibility to efficiently manage the systems integration process.

Q. Please comment on Staff Recommended Conditions 44 and 45 regarding long distance services.

A. CenturyLink does not agree with the proposed Staff conditions related to long distance service.

Staff proposed condition 44 would require CenturyLink to maintain the long distance offerings and rates of Qwest for 180 days. As outlined in the testimony of Qwest witness Mr. Brigham, the long distance market is highly competitive. As such, any limitation on post-merger CenturyLink's ability to make changes to long distance offers and rates could impact negatively the combined company's ability to compete. The competitive nature of the long-distance market should provide sufficient protections that will discipline any changes CenturyLink decides to pursue with respect to post-merger long distance offerings for Qwest's Oregon customers.

Staff proposed condition 45 would require CenturyLink to notify Qwest customers in advance of any carrier change and to waive PIC change charges for any customer choosing to change carriers. CenturyLink objects to the open-ended nature of this condition and reiterates its position articulated above that the highly competitive nature of the long-distance market will ensure that long-distance customers are treated appropriately.

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Q. Please comment on Staff Recommended Conditions 46-53 regarding OTAP/Lifeline.

A. These proposed Staff conditions would require specific actions related to post-merger processes and reports and continuing participation by the merged company related to OTAP/Lifeline requirements. CenturyLink does not have substantial concerns with the recommended OTAP/Lifeline conditions that Staff has proposed and as part of a comprehensive settlement agreement recommending an approval of the proposed Transaction, CenturyLink could agree to accept these conditions. CenturyLink and Qwest understand the importance of ensuring that OTAP/Lifeline customer needs are met. Both CenturyLink and Qwest have worked cooperatively with the OTAP Manager and his staff to ensure that processes and procedures are in place to effectively serve this customer base. CenturyLink expects this stable relationship to continue after the Transaction is approved and CenturyLink has committed to continued representation on the Commission's Oregon Telecommunications Relay Services Industry Advisory Committee.

Q. Please comment on Staff Recommended Condition 56 regarding certifications of the CenturyLink and Qwest entities certified as Competitive Providers.

A. This proposed condition would require that the CenturyLink and Qwest entities currently certified as Competitive Providers in Oregon remain in effect and unchanged at merger close and that future changes to those certifications be completed in compliance with applicable Commission statutes and regulations. As part of a comprehensive settlement

1 agreement recommending an approval of the proposed Transaction, CenturyLink could
2 agree to accept this condition.
3

4 **Q. Please comment on Staff Recommended Condition 57 regarding a Most Favored**
5 **State Commitment.**

6 A. This proposed Staff condition would allow the Commission to expand or modify any
7 conditions imposed in Oregon as a result of regulatory decisions in other states and at the
8 FCC. CenturyLink strongly urges the Commission not to adopt this condition. Mr. Gates
9 also recommends a similar provision in his recommended Condition 29.³⁶
10

11 CenturyLink strongly objects to this proposed Staff condition. CenturyLink believes that any
12 individual state conditions that may be imposed on the proposed Transaction should be
13 based on state-specific facts, circumstances and regulations. Due to the differences in
14 each state, a condition or commitment in one state may not be a necessary or even
15 appropriate condition for another state. As a result, there will almost always be
16 uncertainty as to whether and how a condition of approval in one state will be applicable
17 to another state. Trade-offs made by the Commission and CenturyLink that result in
18 satisfying the public interest should not be subsequently unraveled by importing a
19 condition from a different state. A state's order of approval is to be premised upon the
20 public interest issues of that state, not upon the issues or provisions from another state.
21 Once a state has issued an order approving the application, the public interest for that
22 state has been satisfied, and thus a provision that subsequently may be carried over from

³⁶ Joint CLECs/16 (Gates p. 11).

1 another state is by definition immaterial to satisfying the public interest. The
2 Commission Staff offers little rationale or explanation for this proposed condition other
3 than identifying past transactions where such a condition was ordered or agreed to in
4 stipulations³⁷.

5
6 **V. RESPONSE TO THE IDENTIFICATION OF CERTAIN NEW RISKS**
7 **WHICH WILL RESULT FROM THE PROPOSED TRANSACTION AND**
8 **CONDITIONS RECOMMENDED BY MR. GATES AND DR. FRENTRUP.**
9

10 **Q. Please comment on the concerns of Mr. Dougherty and Mr. Gates that CenturyLink**
11 **is not a Bell Operating Company (“BOC”) and could have problems fulfilling the**
12 **responsibilities of a BOC.³⁸**

13 A. CenturyLink and Qwest are merging their entire companies. This is different from a
14 scenario in which CenturyLink might have acquired some of Qwest’s assets or
15 operations. Qwest’s assets, personnel and systems are being absorbed in full, which
16 means that on the day after the consummation of the proposed merger, the Qwest systems
17 and personnel that today manage BOC operations will continue to meet any and all
18 obligations to customers and regulators. Mr. Dougherty states that “because CenturyLink
19 does not have experience as a BOC, [the transfer of ownership] *may* have an adverse
20 effect on competition.”³⁹ He provides no analysis or other detail about the alleged risk.⁴⁰

³⁷ Staff/100, Dougherty/44.

³⁸ Staff/100, Dougherty/3, lines 3-4; Dougherty/14, lines 15-16; Dougherty/39, lines 9-13; Joint CLECs/8, Gates/25, line 9 through Gates/28, line 14.

³⁹ Staff/100, Dougherty/3, lines 3-4; Dougherty/14, lines 15-16.

⁴⁰ Mr. Dougherty cites to Staff witness Kay Marinos whose testimony is that the CLECs have raised concerns in various states and that CenturyLink has not provided sufficient detail about its plans; see Staff/100, Dougherty/39, lines 7-15; Kay Marinos, Public Utility Commission of Oregon, Staff Exhibit 500, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter “Staff/500, Marinos”], Marinos/10, lines 11-20; Marinos/15, lines 5-17; Marinos/18, 4-18.

1 Mr. Dougherty relies on the testimony of Staff witness Marinos who essentially reiterates
2 the issues presented in the interventions of the CLECs, which again provide unfounded
3 concerns that arise because CenturyLink is not a BOC.⁴¹ The response is that Qwest has
4 operated as a BOC and will continue to operate as a BOC. While management at Qwest
5 has transitioned over time, the systems and core personnel remain unchanged and retain
6 the ability to meet BOC obligations. CenturyLink has no intention of eliminating
7 personnel or systems that are important in maintaining the responsibilities of the BOC.
8 Further, CenturyLink does not want the cost and disruption that would ensue if the
9 Company failed to meet those important obligations. CenturyLink responds that Qwest
10 has proven that it can operate as a BOC, and those Qwest personnel and systems essential
11 to continuing to operate the BOC portion of the combined company will continue to be
12 charged with that task. Thus, no new risk or harm regarding BOC operations in Oregon
13 is created as a result of the proposed transaction.

14
15 **Q. Can you comment on Dr. Ankum's speculation regarding the risk in purchasing a**
16 **BOC's operations?**

17 Yes. Dr. Ankum points to a BOC's distinct culture and engineering. While there are
18 differences in the telecommunications operations of a carrier in each state and in each
19 competitive situation, CenturyLink believes it has extensive experience managing
20 telecommunications services under a wide range of operating conditions, meeting the
21 needs of retail and wholesale customers in rural and urban areas, engineering robust and
22 reliable networks, and managing the capital and human resources necessary to compete

⁴¹ Staff/500, Marinos/11, line 1 through Marinos/12, line 23; Marinos/14, line 18 through Marinos/15, line 4.

effectively in the telecommunications industry. Additionally, in the past, CenturyLink successfully has integrated, operated, and improved the service in exchanges it has acquired from two BOCs—Verizon and Ameritech Corporation (“Ameritech”).⁴² These acquisitions demonstrate that CenturyLink has in fact integrated operations and personnel in exchanges previously managed by BOCs. It also is important to recognize that the combined company resulting from this Transaction will benefit from the assets and personnel of both CenturyLink and Qwest, which will work together to respond to customer demands and opportunities. Thus, the proposed Transaction will utilize, capitalize upon, and enhance the corporate culture and engineering practices “inherited from Ma Bell” based in part on CenturyLink’s experience, which is exceptionally strong in terms of its culture and technical resources. The cultural issues and engineering challenges are not foreign to CenturyLink, and again the record is clear that CenturyLink is a proven acquirer of telecommunications companies and assets. While Dr. Ankum speculates about a potential problem, CenturyLink provides the Commission with a long and consistent history to support its testimony that this acquisition will result in benefits for Oregon and customers throughout the state.

Q. Please respond to Mr. Gates’ recommendation in Condition 13 that, “In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company (‘BOC’), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the ‘competitive checklist’ set forth in Section 271(c)(2)(B) and the obligation to

⁴² CenturyLink acquired 89,000 lines from Ameritech in 1998; 1.2 million lines in Arkansas, Missouri and Wisconsin from Verizon in 2000, and another 654,000 lines in Missouri and Alabama in 2002.

1 **ensure there is no backsliding, and the nondiscrimination requirements of Section**
2 **272(e) of the Communications Act.”⁴³**

3 A. CenturyLink believes that the type of condition proposed by Mr. Gates regarding the
4 federal definition of, and requirements imposed on, a BOC is an FCC matter, and thus is
5 not appropriate in a state transactional review process. The definition of a BOC is
6 established under federal law. As such, Mr. Gates’ proposed condition is unnecessary
7 and not appropriate for this proceeding. In any event, the pre-merger CenturyLink
8 Oregon operations are not BOC properties. Further, CenturyLink believes that no non-
9 BOC property has been converted into a BOC up to this time, and none will be converted
10 in the future.

11
12 **Q. Can you address Mr. Gates’ Condition 30 which states: “In the event a dispute**
13 **arises between the parties with respect to any of the pre-closing and post-closing**
14 **conditions herein, either party may seek resolution of the dispute by filing a petition**
15 **with the state commission at any time. Alternative dispute resolution provisions in**
16 **an interconnection agreement shall not prevent any party from filing a petition with**
17 **the state commission at any time”?⁴⁴**

18 A. CenturyLink will abide by appropriate dispute resolution procedures contained in
19 negotiated commercial and interconnection agreements. However, CenturyLink does not
20 believe that it is in the best interest of the Commission or any of the parties to encourage
21 frivolous or duplicative dispute resolution processes that potentially waste the resources
22 of the companies or the Commission. There appears to be no specific harm to Oregon or

⁴³Joint CLECs/8, Gates/ 152, lines 8-12; Joint CLECs/16, pp. 6-7.

⁴⁴ Joint CLECs/16, p. 11.

1 to Oregon customers that will be avoided as a result of establishing overlapping
2 mechanisms for dispute resolution. Further, to the extent parties to an interconnection
3 agreement have the ability to file a petition with the state commission under the terms of
4 the agreement, the merger does not change a parties' ability to do so. As such, the
5 condition proposed by Mr. Gates is unnecessary and could confer additional rights
6 beyond the commercially negotiated contract terms. Such an outcome is inappropriate.

7
8 **Q. Does the proposed Transaction raise the level of risk for competitive carriers**
9 **because Qwest is able to avoid paying access charges to the Qwest ILECs or**
10 **CenturyLink ILECs, as alleged by Dr. Frentrup?**⁴⁵

11 A. No. As an initial matter, this line of testimony fails to grasp the nature of the
12 Transaction. As CenturyLink and Qwest have made clear, the CenturyLink operating
13 entities and the Qwest operating entities will remain separate. Also, existing tariffs and
14 agreements for such rates will remain in effect post-merger, and the companies will
15 continue to charge and pay access rates as required. Moreover, as the Commission
16 understands, access charges are intercarrier rates that are set by federal and state
17 regulatory authorities to recover operating expenses and investment-related costs. The
18 costs to invest, manage, and operate ILEC networks do not disappear in an acquisition.
19 In fact, if the economics as suggested by Dr. Frentrup were correct, Verizon would not be
20 selling ILEC properties to other carriers or investors (such as Carlyle), thereby losing
21 special access and switched access rates, and Sprint would not have made the decision to
22 divest its local telephone properties in the spin-off entity that became Embarq. The

⁴⁵ Sprint/1, Frentrup/5, line 9 through Frentrup/11, line 4.

1 investment and operating costs, recovered in part through special access and switched
2 access rates, for ILEC networks have been and continue to be high, particularly as the
3 telecommunications network evolves to accommodate higher speed data services.

4
5 **Q. Dr. Frentrup urges the Commission to condition the approval of the merger on a**
6 **reduction of intrastate access rates.⁴⁶ What is your response?**

7 A. Dr. Frentrup asserts that the merged company will have a competitive advantage for long
8 distance services as it will not have to pay the same “inflated” switched access rates as
9 other long distance providers.⁴⁷ Dr. Frentrup also claims that the companies have
10 essentially “signed an agreement to get access services [at] cost-based rates instead of the
11 bloated rates in the Merged Firms’ tariffs.”⁴⁸ To fix this perceived competitive
12 advantage, Dr. Frentrup recommends that the Commission require the merged company
13 to reduce intrastate access rates to mirror Qwest’s interstate rates. Dr. Frentrup is
14 incorrect. After the completion of the merger, the combined company will continue to
15 charge the tariffed access rates to *all* long distance providers, just as the companies do
16 currently. The CenturyLink affiliated long distance companies do not currently pay a rate
17 for access service that is different from that of any other long distance company and,
18 post-merger, the affiliated long distance companies will continue to pay for access
19 services at rates that are the same as those paid by all other long distance carriers. The
20 perceived competitive advantage to which Dr. Frentrup refers simply does not exist.

21

⁴⁶ Sprint/1, Frentrup/18, lines 18-20; Frentrup/21, lines 5-12.

⁴⁷ Sprint/1, Frentrup/18, lines 14-17.

⁴⁸ Sprint/1, Frentrup/20, lines 25-27.

1 In fact, Commission Staff witness Reynolds reaches the conclusion that the access issues
2 raised by Dr. Frentrup “. . . are too broad and too complex to be addressed simply as a
3 condition for approval of this transaction.”⁴⁹ In addition, the Administrative Law Judge
4 (“ALJ”) presiding over the review of the proposed Transaction in Oregon recently
5 affirmed that affiliate long distance operations do not receive the sort of economic benefit
6 that Dr. Frentrup alleges. The ALJ stated, "Historically the issue (affiliate access
7 charges) has been addressed and was resolved many years ago by the requirement that
8 ILECs place their competitive operations in fully separated subsidiaries with separate
9 management, technical and financial staffs and operations, so that the access charges
10 which they pay to their ILEC affiliate will have the same economic impact upon their
11 operations as they would to an unaffiliated CLEC competitor.”⁵⁰

12
13 **Q. Please summarize your rebuttal testimony?**

14 A. CenturyLink and Qwest are confident that the proposed Transaction will result in the
15 creation of a superior, financially sound, and stable service provider. The proposed
16 Transaction addresses market conditions and challenges as it combines assets and skills
17 responsive to a rapidly changing, data-centric world. The potential for enhanced scope
18 and scale better assures employees and customers of a stable and capable
19 telecommunications provider. CenturyLink recommends that the Commission
20 expeditiously approve the proposed Transaction for the good of the public and the
21 ratepayers of the State, as the evidence from CenturyLink and Qwest is compelling in
22 establishing that benefits to Oregon and Oregon customers will result from the merger,

⁴⁹ Staff/300, Reynolds/13.

⁵⁰ *ALJ Ruling on Sprint Motion to Compel*, p. 4.

1 while no reasonable substantive evidence of likely harms has been provided. As such,
2 the “no harm” standard has been met and in reality Oregon and Oregon customers will
3 receive a net benefit (which goes beyond the appropriate requirement for approval).
4 Clearly, CenturyLink’s long-standing and proven track record of integration and
5 operational execution over-shadows and negates the unsubstantiated speculative concerns
6 of some interveners. Moreover, Oregon consumers will benefit from the assurance of
7 having a financially stable, long-term service provider with a history of good customer
8 service, significant investment in advanced services and network reliability.

9
10 **Q. Does this conclude your rebuttal testimony?**

11 **A. Yes.**

CenturyLink/Qwest TIER 2 Announcements**Tier Two leaders reporting to Karen Puckett, Executive Vice President and Chief Operating Officer**

Terry Beeler, Southwest Region President, will have responsibility for the states of Arizona, Nevada and New Mexico. The headquarters location will be determined at a later date. Terry is President of CenturyLink's Western Region.

Dana Chase, Southern Region President, will have responsibility for the states of Alabama, Arkansas, Florida, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Texas. Southern Region will be headquartered in Orlando, Florida. Dana is President of CenturyLink's Southern Region.

Duane Ring, Midwest Region President, will have responsibility for the states of Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin. The headquarters location will be determined at a later date. Duane is President of CenturyLink's North-East Region.

Todd Schafer, Eastern Region President, will have responsibility for the states of Georgia, Indiana, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee and Virginia. Eastern Region will be headquartered in Wake Forest, North Carolina. Todd is President of CenturyLink's Mid-Atlantic Region.

Brian Stading, Northwest Region President, will have responsibility for the states of California, Idaho, Oregon and Washington. The headquarters location will be determined at a later date. Brian is Vice President-Network Operations and Engineering for Qwest.

Kenny Wyatt, Mountain Region President, will have responsibility for the states of Colorado, Montana, Utah and Wyoming. Mountain Region will be headquartered in Denver, Colorado. Kenny is President of CenturyLink's South-Central Region.

Shirish Lal, Senior Vice President-Marketing. Shirish is Senior Vice President-Marketing for CenturyLink.

Amador Lucero, Vice President-Network Operations Centers (NOC). Amador is Vice President-Network Operations and Engineering for Qwest.

Andy Mika, Vice President-Customer Implementation Assurance. Andy is Vice President-Network Operations and Engineering for Qwest.

Jeff Painting, Vice President-Business Sales and Care. Jeff is President-Business Sales for CenturyLink.

CenturyLink/Qwest TIER 2 Announcements

Al Roberts, Senior Vice President-Operational Readiness. Al is Senior Vice President and General Manager-Mass Markets for Qwest.

Kathy Victory, Senior Vice President-Customer Care. Kathy is Senior Vice President-Customer Care for CenturyLink.

Tier Two leaders reporting to Chris Ancell, President-Business Markets Group

Suzanne Dove, Vice President-Sales Operations. Suzanne is Vice President-Sales Effectiveness for Qwest.

Diana Gowen, Senior Vice President-Sales (Federal). Diana is Senior Vice President and General Manager-Government Services for Qwest.

Cynthia Humphrey, Vice President-Product and Marketing. Cynthia is Vice President-Business Marketing for Qwest.

Gary Phillips, Vice President-Sales (Central). The Central sales area consists of the following states: Arkansas, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Texas. Gary is Vice President-Sales for Qwest.

Debra Quinby, Vice President-Customer Care. Debra is Vice President-Sales Support Operations for Qwest.

Kenneth Smith, Vice President-Sales (West). The West sales area consists of the following states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. Kenneth is Vice President-Sales for Qwest.

Richard Twilley, Vice President-Sales (East). The East sales area consists of the following states: Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and West Virginia. Richard is Area Vice President-Business Sales for CenturyLink's Western Region.

Jeffrey Waters, Vice President-Sales (Government and Education Services-GES). Jeffrey is Vice President-Sales for Qwest.

CenturyLink/Qwest TIER 2 Announcements

Blake Wetzel, Vice President-Sales (Business Partners Program). Blake is Vice President-Sales for Qwest.

Chris plans to fill the Vice President-Pricing and Offer Management position at a later date.

Tier Two leaders reporting to Bill Cheek, President-Wholesale Operations

Eric Bozich, Vice President-Product and Marketing. Eric is Vice President-Product Management for Qwest.

Paul Cooper, Director-National Public Access. Paul is Director-Public Access for CenturyLink.

Craig Davis, Vice President-Sales and Account Management. Craig is Vice President-Wholesale Sales and Account Management for CenturyLink.

Mike Hunsucker, Vice President-Wholesale Services and Support. Mike is Director-CLEC Management and Service for CenturyLink.

Warren Mickens, Vice President-Wholesale Operations. Warren is Vice President-Customer Service Operations for Qwest.

Tier Two leaders reporting to Stewart Ewing, Executive Vice President, Chief Financial Officer and Assistant Secretary

Clay Bailey, Senior Vice President/Treasurer. Clay is Senior Vice President and Treasurer for CenturyLink.

David Cole, Senior Vice President-Operations Support. David is Senior Vice President- Operations Support for CenturyLink.

David Hilton, Vice President-Internal Audit. David is Vice President-Internal Audit for CenturyLink.

Stewart is continuing to evaluate the various functions within Finance and will make additional Tier Two announcements at a later date.

CenturyLink/Qwest TIER 2 Announcements**Tier Two leaders reporting to Dennis Huber, Executive Vice President-Network Services**

Matt Beal, Senior Vice President & Chief Technology Officer-Product Development and Network Strategy. Matt is Chief Technology Officer for CenturyLink.

Pieter Poll, Senior Vice President-National Network Planning, Engineering and Construction. Pieter is Vice President and Chief Technology Officer for Qwest.

Matt Rotter, Vice President-Local Network Planning, Engineering and Construction (West). Matt will have responsibility for the states in the Mountain, Northwest and Southwest Regions. Matt is Vice President-Network Operations and Engineering for Qwest.

Carla Stewart, Vice President-National Service Delivery. Carla is Vice President-Network Operations and Engineering for Qwest.

Tim Walden, Vice President-Local Network Planning, Engineering and Construction (East). Tim will have responsibility for the states in the Eastern, Midwest and Southern Regions. Tim is Vice President-Engineering, Core and Fiber, for CenturyLink.

Tier Two leaders reporting to Stephanie Comfort, Executive Vice President-Corporate Strategy & Development

Dan Ashley, Vice President-Strategy Integration. Dan is Director-Corporate Strategy for Qwest.

Renee Karson, Vice President-Customer Insights. Renee is Vice President-Customer Insights for Qwest.

Chris Mangum, Vice President-Strategy and Business Development. Chris is Vice President-Strategic Planning for CenturyLink.

Bryan Taylor, Vice President-Corporate Development. Bryan is Vice President-Corporate Development for CenturyLink.

Tier Two leaders reporting to Steve Davis, Senior Vice President-Public Policy & Government Relations

Jim Campbell, Vice President-Mountain Region Regulatory and Legislative Affairs. Jim is a State President for Qwest in Arizona.

CenturyLink/Qwest TIER 2 Announcements

Jeff Glover, Vice President-Regulatory Operations. Jeff is Vice President-Regulatory Operations and Policy for CenturyLink.

Bill Hanchey, Vice President-Eastern Region Regulatory and Legislative Affairs. Bill is Director-State Government Affairs for CenturyLink's Mid-Atlantic Region.

John Jones, Vice President-Public Policy and Federal Legislative Affairs. John is Vice President-State Government Affairs for CenturyLink.

Dean Kurtz, Vice President-Southern Region Regulatory and Legislative Affairs. Dean is Director-State Government Affairs for CenturyLink's Southern Region.

Melissa Newman, Vice President-Federal Regulatory Affairs. Melissa is Vice President-Federal Relations for Qwest.

Additional announcements regarding the Vice Presidents of Midwest, Northwest and Southwest Region Regulatory and Legislative Affairs are expected to be made at a later date.

Tier Two leaders reporting to Stacey Goff, Executive Vice President-General Counsel & Secretary

James Butler, Vice President-Assistant General Counsel, Corporate. James is Vice President- Assistant General Counsel for CenturyLink.

Dan Davis, Vice President-Assistant General Counsel, Wholesale. Dan is Senior Assistant General Counsel for CenturyLink.

Tony Davis, Vice President- Investor Relations, Communications and Brand. Tony is Vice President-Brand Management, Corporate Communications and Investor Relations for CenturyLink.

Paul Eason, President-Century Marketing Solutions (CMS). Paul is President-CMS for CenturyLink.

Evelyn Fox, Vice President-Assistant General Counsel, Business Markets Group. Evelyn is Associate General Counsel for Qwest.

Laurie Korneffel, Vice President-Assistant General Counsel, Litigation. Laurie is Vice President-Legal for Qwest.

Chris Schneider, Vice President-Assistant General Counsel, Commercial. Chris is Senior Assistant General Counsel for CenturyLink.

CenturyLink/Qwest TIER 2 Announcements

Nancy Shelledy, Vice President-Assistant General Counsel, Regulatory and Policy.

Nancy is Senior Assistant General Counsel for CenturyLink.

Mark Stites, Vice President-Assistant General Counsel, Human Resources. Mark is

Senior Counsel for CenturyLink.

Tier Two leaders reporting to Don McCunniff, Senior Vice President-Human Resources

Christy Gray, Vice President-Human Resources. Christy is Manager-Human Resources Business Partner for CenturyLink's Western Region.

Joyce Joransen, Vice President-Human Resources. Joyce is Director-Human Resources for Qwest.

Joe Osa, Vice President-Labor. Joe is Vice President-Labor Relations for CenturyLink.

Marina Pearson, Vice President-Compensation, Benefits and Human Resources Information Systems (HRIS). Marina is Vice President-Compensation and Benefits for CenturyLink.

Odell Riley, Vice President-Staffing and Diversity. Odell is Vice President-Corporate Information Systems for CenturyLink.

Vickie Smith, Manager-Employee Relations and Policies. Vickie is Manager-Policy for CenturyLink.

Michelle Vinson, Director-Talent Management. Michelle is Director-Human Resources for Qwest.

Tier Two leaders reporting to Girish Varma, Senior Vice President-Information Technology Services

Harsch Bhatnagar, Senior Vice President-IT Architecture and Overseas Development Center. Harsch is Vice President-Information Technology for Qwest.

Bill Bradley, Senior Vice President and Chief Information Officer. Bill is Senior Vice President and Chief Information Officer for CenturyLink.

CenturyLink/Qwest TIER 2 Announcements

Jacob Perlman, Vice President-IT Portfolio Management & Governance. Jacob is Director-Information Technology for Qwest.

Sami Syed, Vice President-IT Enterprise/Business Market Systems. Sami is Vice President-Information Technology for Qwest.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1484

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the Indirect
Transfer of Control of QWEST
CORPORATION

REBUTTAL TESTIMONY OF

G. CLAY BAILEY

SENIOR VICE PRESIDENT AND TREASURER

ON BEHALF OF

CENTURYLINK, INC.

SEPTEMBER 21, 2010

1 **Q. Please state your name and business address.**

2 A. My name is G. Clay Bailey and my business address is 100 CenturyLink Drive, Monroe,
3 Louisiana 71203.

4
5 **Q. Who is your employer and what is your position?**

6 A. I am employed as Senior Vice President and Treasurer for CenturyLink, Inc.
7 ("CenturyLink," the "Company," or the "Applicant.")

8
9 **Q. Are you the same G. Clay Bailey who supplied direct testimony in this proceeding**
10 **on May 21, 2010?**¹

11 A. Yes. I am.

12
13 **Q. What is the purpose of your Rebuttal Testimony?**

14 A. I am providing rebuttal testimony concerning financial and related issues raised in direct
15 testimonies in the proceeding before the Public Utility Commission of Oregon
16 ("Commission") related to the proposed merger of Qwest Communications International,
17 Inc. ("Qwest") and CenturyLink (the "Transaction"). Specifically, I will address the
18 testimonies of Mr. Michael Dougherty² and Mr. Jorge Ordonez,³ who provide reply
19 testimony on behalf of the Staff of the Commission (collectively "Staff"); Mr. Timothy

¹ Direct Testimony of G. Clay Bailey, on behalf of CenturyLink, Inc., In the Matter of CenturyLink, Inc. Application for an Order to Approve the Indirect Transfer of Control of Qwest Corporation, UM1484, May 21, 2010 [hereafter "CTL/300, Bailey"].

² Michael Dougherty, Public Utility Commission of Oregon, Staff Exhibit 100, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter "Staff/100, Dougherty"].

³ Jorge Ordonez, Public Utility Commission of Oregon, Staff Exhibit 200, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter "Staff/200, Ordonez"].

1 Gates, who provided direct testimony on behalf of tw telecom of Oregon, LLC, Integra
2 Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon
3 Telecom of Oregon, Inc., and United Telecommunications Inc, d/b/a Unicom, Covad
4 Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-
5 CCVII (collectively, these competitive local exchange carriers are the “Joint CLECs”)⁴;
6 Dr. August H. Ankum, who also provided direct testimony on behalf of the Joint
7 CLECs⁵; and Dr. Chris Frentrup, who provided direct testimony on behalf of Sprint
8 Communications Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR,
9 Inc. (collectively “Sprint Nextel”)⁶. My rebuttal testimony regarding financial and
10 related issues is to be read in conjunction with the rebuttal testimonies provided by other
11 witnesses representing CenturyLink and Qwest. I have reviewed and agree with the
12 rebuttal testimonies presented by those other CenturyLink and Qwest witnesses.

13
14 **Q. Please summarize your rebuttal testimony.**

15 A. I will respond to the Staff and intervenor testimonies noted above regarding concerns
16 raised in the testimonies, principally based on the structure provided by Mr. Dougherty. I
17 will address the following general matters:

⁴ Direct Testimony of Timothy J. Gates on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/8, Gates”].

⁵ Direct Testimony of August H. Ankum, Ph.D., on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/1, Ankum”].

⁶ Sprint Direct Testimony of Chris Frentrup, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Sprint/1, Frentrup”].

1. The standard of review applied and the approach to evaluating the proposed Transaction taken by Mr. Dougherty in balancing potential risks and benefits;
2. Qwest's current financial position is expected to improve as a result of the Transaction, providing Oregon and Oregon customers a net benefit;
3. The merged company's profitability and access line loss metrics will be better than Qwest's current results, providing Oregon and Oregon customers a net benefit;
4. The importance of synergies in a highly-competitive industry;
5. The alleged conflict between shareholder and customer interests is contrary to the evidence;
6. The insignificance of goodwill in a cash-flow driven industry;
7. The risk in "ring fencing" a telecommunications company as opposed to the alleged risk from the inability to "ring fence";
8. Perspectives on use of the Risk Factors section of the Securities and Exchange ("SEC") Form S-4 ("S-4") in this proceeding;⁷
9. Additional Staff proposed financial conditions; and
10. The CLECs' recommendation that CenturyLink and Qwest should be required to prove affirmative benefits and share synergy savings with wholesale or other customers in Oregon.

⁷ CenturyLink SEC Form S-4, filed July 16, 2010, available at <http://www.sec.gov/Archives/edgar/data/18926/000095012310066042/y84818a1sv4za.htm#113>.

**I. THE STANDARD OF REVIEW APPLIED AND THE APPROACH TO
EVALUATING THE TRANSACTION TAKEN BY MR. DOUGHERTY IN
BALANCING POTENTIAL RISKS AND BENEFITS.**

Q. What is the standard of review to be applied in this transfer of control proceeding?

A. I am not an attorney and I understand that CenturyLink witness, Mr. John Jones, addresses this matter. I have reviewed Mr. Dougherty's testimony in which he cites to advice from the Oregon Department of Justice ("ODOJ") that the standard of review is "in the public interest, no harm."⁸ As Mr. Jones also notes, Mr. Dougherty explains that this is a "lesser standard" than a review requiring a showing of "net benefits," which is the standard applied in energy utility transactions in Oregon.⁹ I also understand that the Commission, based on its interpretation of its merger approval authority, applied the "no harm" standard in the recent proceedings regarding the CenturyTel, Inc. ("CenturyTel") combination with Embarq Corporation ("Embarq") (Docket UM 1416) and the Frontier Communications Corporation ("Frontier") purchase of operations from Verizon Communications Inc. ("Verizon") (Docket UM 1431). I have also reviewed the applicable Oregon administrative rule which states, among other requirements:

(l) The facts relied upon by applicants to show that the proposed sale, lease, assignment, or consolidation of facilities, mortgage or encumbrance of property, or acquisition of stock, bonds, or property of another utility *will be consistent with the public interest*;

(m) The reasons, in detail, relied upon by each applicant, or party to the application, for entering into the proposed sale, lease, assignment, merger, or consolidation of facilities, mortgage or encumbrance of property, acquisition of stock, bonds, or property of another utility, *and the benefits, if any, to be derived by the customers of the applicants and the public.*¹⁰ [Emphasis added.]

⁸ Staff/100, Dougherty/4, lines 13-15.

⁹ Staff/100, Dougherty/5, lines 1-2.

¹⁰ ORS 860-027-0025, paragraphs l and m.

1 **Q. Do you agree with Mr. Dougherty’s and Staff’s application of the Oregon standard**
2 **of review in his testimony?**

3 A. No, I do not. In my opinion, Mr. Dougherty’s testimony, specifically, and Staff’s
4 testimony, in general, overstates and expands the alleged risks associated with the
5 proposed Transaction. Then, based on unsupported and speculative risks, the Staff’s lead
6 witness contends that there should, therefore, be offsetting benefits associated with the
7 merger approval, and those benefits are presented in the form of proposed conditions.
8 CenturyLink assumes that the “benefits” that Mr. Dougherty is suggesting are required
9 for approval must be offsetting and not a “net benefit,” as Mr. Dougherty has stated that a
10 “net benefit” showing is not required, the Commission consistently has applied a “no
11 harm” standard of review, and the applicable Oregon administrative rule reads only that
12 the Applicant must offer its view of “benefits, *if any*.” [Emphasis added.]

13
14 CenturyLink believes that the alleged risks from the proposed Transaction cited by Staff
15 are overstated, and certain of the proposed conditions to generate benefits are both
16 unnecessary according to the standard of review and do not address any specific or
17 verifiable harm. All businesses face risks, in the ordinary course of business or in
18 conjunction with strategic initiatives such as mergers, acquisitions, growth projects, etc.
19 While it is possible that these risks actually could occur (while many risks also never
20 materialize), it is management’s job to recognize and mitigate the risks facing their
21 company. CenturyLink believes that its long track record of strong operating results
22 provides the Commission with a tangible and real indication that the Company is capable
23 of avoiding or mitigating any risks that may confront the Company’s operations. Post-

1 merger CenturyLink believes the Transaction will create value for its Oregon customers,
2 but the objection here is that unfounded or speculative risks should not be used to limit
3 the Company's operating flexibility through the imposition of unnecessary conditions in
4 a highly competitive industry. I believe that it is possible that unnecessary conditions can
5 increase costs, divert management attention, and alter the competitive balance in a way
6 that may harm, not benefit, Oregon customers.

7
8 **Q. Which alleged risks are overstated in the Staff testimony?**

9 A. Mr. Dougherty lists ten risks which he suggests flow from the proposed Transaction
10 related to: (i) maintaining the merged company's dividend; (ii) assumption of increased
11 debt; (iii) *CenturyLink's* increased debt leverage; (iv) the potential for *CenturyLink's*
12 credit rating to fall below investment grade; (v) *CenturyLink* bearing Qwest's relatively
13 higher losses of access lines; (vi) *CenturyLink* coping with Qwest's relatively lower level
14 of profitability; (vii) the inability to "ring fence" the merged operating company in
15 Oregon; (viii) CenturyLink's ongoing integration of Embarq; (ix) CenturyLink's
16 inexperience as a Bell Operating Company ("BOC"); and (x) the list of risk factors
17 presented by CenturyLink in its SEC Form S-4 filing.

18
19 **Q. On what basis do you believe that certain of the alleged risks suggested by Staff are**
20 **overstated?**

21 A. Staff explains that Qwest is larger than CenturyLink by 46% in terms of nationwide
22 access lines, and that, in Oregon, Qwest serves approximately 802,000 lines while

1 CenturyLink serves approximately 109,000 lines.¹¹ Thus, in Oregon, the current Qwest
2 customers represent approximately 88.0% of those that will be served by the pro forma
3 merged company, while the current CenturyLink customers represent approximately
4 12.0%. I believe that Mr. Dougherty's cited risks, therefore, for items (iii) through (vi)
5 are misstated as approximately 88% of the combined company's Oregon customers (the
6 current Qwest customers) will *benefit* as a result of the Transaction from lower debt
7 leverage than Qwest's current leverage, the potential for an improved credit rating versus
8 Qwest's current rating, relatively lower access line losses than Qwest currently
9 experiences, and relatively improved profitability compared to Qwest today. By the
10 Staff's own logic as can be inferred from Staff's testimony, the overwhelming majority of
11 the merged company's customers in Oregon will *benefit* from the improved financial
12 position and operating performance relative to that of Qwest. If the required analysis
13 under the Oregon standard of review is to balance risks and benefits flowing from the
14 proposed to Transaction to ensure no "net harm" to the public interest, the combination of
15 CenturyLink and Qwest creates an affirmative and sizable *net benefit* for Oregon
16 customers, rather than any net harm, in terms of those four alleged "risks."
17

18 **Q. What about the other six alleged risks cited by Mr. Dougherty?**

19 A. Identification of potential risks is an exercise that every acquirer in any industry must
20 undertake. However, identifying financial or operating or competitive risks to a potential
21 transaction is only the first step, as CenturyLink or any acquirer must assess the degree of
22 the potential risks and the probability they will occur. Staff has performed its assessment

¹¹ Staff/200, Ordonez/3, lines 3-10; Ordonez/4, lines 13-14; Staff/100, Dougherty/6, lines 16-22.

1 of the initial step (identifying potential risks that might come to pass), but no second step
2 (assessing the degree and probability of various possible risks) is presented in the
3 testimony of the Staff, which points consistently to risks that “could” develop. In fact,
4 Staff provides no data, evidence, or probability about any of the risks, including those
5 other six concerns. Accordingly, it is difficult to respond to testimony that remains vague
6 and without quantification. For example, Staff cites access line losses that might
7 accelerate (or on the other hand line losses might decelerate as has been the case in
8 CenturyLink’s acquisition of Embarq), or synergies that might not be realized (or the
9 expected synergies might be surpassed as has been the case in CenturyLink’s acquisition
10 of Embarq), or the ongoing integration of Embarq (which Mr. Dougherty notes is
11 progressing well), or the risks cited in the Company’s SEC Form S-4 filing.¹²
12 CenturyLink takes issue with the proposition that identifying *possible* risks from a
13 transaction is sufficient, absent any evidence, to lead to conclusions that those risks are
14 real or likely to lead to harms to Oregon customers.

15
16 I will provide more specific responses below, but I reiterate that certain of the conditions
17 proposed by Staff to generate benefits are not based on substantive assessments of risks
18 that are shown to be real or likely to result in overall harm to Oregon customers. In fact,
19 CenturyLink’s history of sound financial management and solid operating performance,
20 particularly with respect to executing large transactions successfully, should be the basis
21 for confidence that the Company can identify, assess and manage risks, with a view to

¹² Staff/100, Dougherty/12, lines 3-16: “these shareholder positives could come as a detriment for customers CenturyLink could potentially place a higher priority on paying dividends . . . one-time costs could potentially consume funds. . . .”; Dougherty/13, lines 11-14: “. . . could result in CenturyLink’s management being more focused on shareholders than Oregon customers”; Dougherty/19, lines 17-20: “increased debt service could potentially result in hindering CenturyLink . . .”

1 achieving positive outcomes for customers. A clear and constructive focus on customers
2 is the consistent and proven pattern over CenturyLink's lengthy corporate history.

3
4 **II. QWEST'S CURRENT FINANCIAL POSITION IS EXPECTED TO**
5 **IMPROVE AS A RESULT OF THE TRANSACTION, PROVIDING**
6 **OREGON AND OREGON CUSTOMERS A NET BENEFIT.**

7 **Q. Please comment on the concerns raised by Mr. Dougherty and other intervenor**
8 **witnesses regarding the risks related to the increased levels of debt on the merged**
9 **company's balance sheet.**

10 A. Mr. Dougherty and Mr. Ordonez point to the absolute increase in debt from
11 CenturyLink's current level to the pro forma company's level. The Staff witnesses also
12 highlight that the net leverage ratio for CenturyLink (currently 2.0 times) is expected to
13 increase to a higher level for the pro forma combined company (pro forma 2.4 times
14 based on 2009 figures and excluding all expected synergies, or 2.2 times including
15 synergies).¹³ Representing the CLECs, Mr. Gates also highlights that CenturyLink "will
16 have *more than quadrupled* its debt load in approximately three years."¹⁴ [Emphasis in
17 the original.] What the Staff witnesses and Mr. Gates fail to highlight is that the merged
18 company will be far larger, and, as important, will generate significantly larger levels of
19 cash flows to service its debt. Illustrating the proportionate growth in operating cash
20 flow to support investment and debt, CenturyLink's earnings before interest, taxes,
21 depreciation and amortization ("EBITDA") at the end of 2006 was \$1.2 billion and, at the
22 end of 2007, EBITDA was \$1.3 billion, while the pro forma EBITDA for the combined

¹³ Staff/100, Dougherty/2, line 10;

¹⁴ Joint CLECs/8, Gates/80, lines 5-6.

1 company at the end of 2009 was approximately \$8.2 billion.¹⁵ Accordingly, the pro
2 forma 2009 EBITDA is higher by 6.9 times from 2006 and 6.2 times from 2007. Further,
3 the Company expects within three to five years to generate synergies that will result in
4 annual operating cash flows that improve by \$575 million and an annual capital
5 expenditure benefit that is estimated at \$50 million. Thus, the Company expects to
6 produce operating cash flows that permit incremental reductions of debt and incremental
7 investments in plant and services. This increased capacity to strengthen the merged
8 company's balance sheet is a financial benefit for customers, employees and all the other
9 stakeholders.

10
11 **Q. Can you comment on Staff's concern regarding the debt leverage of the pro forma**
12 **company?**

13 A. Yes. As I explained above, while CenturyLink's pro forma net leverage (Net Debt-to-
14 EBITDA) will rise modestly in the near term from the current level of 2.0 times, the Net
15 Debt-to-EBITDA for Qwest should be reduced through the combination. Qwest's net
16 leverage is expected to improve from 2.7 times at the end of 2009 to the pro forma 2009
17 net leverage for the merged company, which is estimated to be 2.4 times before including
18 the positive impact of expected synergies and 2.2 times after including the full run-rate
19 synergies.¹⁶ The combined company's leverage level is more favorable, even before

¹⁵ The EBITDA in 2006 (in thousands) was \$1,189,044 and in 2007 was \$1,329,333; see 2007 CenturyTel SEC Form 10-K, available at <http://www.sec.gov/Archives/edgar/data/18926/000001892608000004/form10k2007.htm>; 2006 D&A was \$523,506 and operating income was \$665,538, while 2007 D&A was \$536,255 and operating income was \$793,078.

¹⁶ See CenturyLink and Qwest Merger Conference Call, April 22, 2010, [hereafter "Merger Conference Call"]; available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzA0MDUyNnxDaGlsZEIEPTM3ODA0M3xUeXBIPtI=&t=1>, slides 7 and 12.

1 synergies, than the 2009 net leverage of the two most comparable companies in the
2 incumbent local exchange carrier industry—Windstream Corporation (“Windstream”)
3 and Frontier—and, again, is better than that of Qwest.¹⁷ If the Commission considers that
4 approximately 88% of the pro forma company’s Oregon customers will be served by a
5 merged company with a net leverage ratio *below* that of Qwest, the conclusion should be
6 that this leverage ratio is not a net risk for Oregon customers, as suggested by Staff, but a
7 net benefit for the vast majority of the relevant customer base. Two additional important
8 insights are that the combined company is not acquiring any new debt as the Transaction
9 is a stock-for-stock merger, and the combined company is positioning itself to generate
10 incremental cash flows through synergies and new revenues based on the combination of
11 CenturyLink and Qwest assets. The result is expected to be higher cash flows that can be
12 used to invest in new service capabilities and reduce debt from current levels, which are
13 affirmative benefits of the merger. CenturyLink also believes that the merged company’s
14 market capitalization will provide a larger and more liquid equity base (more shares
15 outstanding and a higher market capitalization). All else being equal, the increase in
16 market capitalization generally improves access to capital markets, which is an important
17 consideration for the Commission in this review process.

18
19 **Q. Is Mr. Dougherty correct that the merged company’s debt *may not* be rated**
20 **investment grade after the close of the Transaction?**¹⁸

21 **A.** Yes, it is possible that one or more of the credit rating agencies could rate the merged
22 company’s debt below investment grade. It also is possible that some of the merged

¹⁷ Merger Conference Call, slide 12.

¹⁸ Staff/100, Dougherty/2, line 13.

1 company's debt could be rated investment grade and that other debt could be rated non-
2 investment grade (as is the case with Qwest today). With regard to credit ratings, Mr.
3 Dougherty appears to assess the public interest impact in a way that is narrow and judges
4 the merged company based on the credit ratings of CenturyLink, which, as explained
5 above, will provide 12% of the pro forma company's Oregon lines. However, Qwest,
6 which will contribute approximately 88% of the pro forma company's lines, is expected
7 to have a stable or higher credit rating, *which presumably will not slip*, since it is
8 combining with a company that has a higher credit rating. In fact, all three of the major
9 credit rating agencies have noted that Qwest's debt possibly could be upgraded in the
10 future as a result of the proposed Transaction. Moody's, at the time of its recent upgrade
11 of Qwest's debt to one step below investment grade, stated that Qwest's ratings *remain*
12 on review for upgrade, as the planned acquisition "could lead to a further improvement in
13 Qwest's credit profile."¹⁹ In addition, Standard & Poor's ("S&P") revised its outlook on
14 Qwest's debt to "CreditWatch Positive" on April 22, 2010, when the Qwest-CenturyLink
15 merger was announced, because of S&P's assessment that the combination might result
16 in improved financial characteristics for Qwest.²⁰ Finally, Fitch Ratings improved its
17 outlook on Qwest's ratings to "Watch Positive" that same day, again as a result of the
18 announced combination.²¹ Therefore, the Staff witness ignores the fact that Qwest,
19 which serves the vast majority of the pro forma company's customers (as reflected by
20 access lines) in Oregon, is on watch *for an upgrade* of its credit rating. As a result,

¹⁹ "Moody's upgrades Qwest rating," Bloomberg BusinessWeek, August 13, 2010, available at <http://www.businessweek.com/ap/financialnews/D9HINI3G0.htm>.

²⁰ Standard & Poor's Global Credit Portal, Ratings Direct, "Qwest 'BB' Rating On Watch Positive," April 22, 2010, p. 2.

²¹ Fitch Ratings, *Fitch Places CenturyTel's Ratings on Watch Negative; Qwest's Ratings on Watch Positive*, April 22, 2010.

1 CenturyLink believes that Mr. Dougherty's public interest assessment is framed too
2 narrowly as it fails to include the positive impact that will accrue to the largest portion of
3 the combined company's Oregon customers. The possible improved credit rating for the
4 state's largest telecommunications carrier immediately after the close of the proposed
5 Transaction is clearly a significant net benefit to Oregon, not a net risk.

6
7 **Q. How will the cash flows generated by the forecasted synergies be used?**

8 A. CenturyLink has not yet defined how it will allocate the improved cash flows it expects
9 to generate from the synergies. However, as I explained in my direct testimony, the
10 Company intends to use the cash flows that remain after meeting all of its cash operating
11 expenses, network investment and financial obligations to repay debt and commit to
12 additional investments, among other things.²² I noted in that testimony that the combined
13 company's pro forma 2009 free cash flow after meeting all obligations—before projected
14 synergies—would have been approximately \$1.7 billion—money that could have been
15 used to strengthen the underlying business.²³

16
17 **Q. Please comment on Mr. Dougherty's concern that the increased debt service could**
18 **result in "hindering CenturyLink from upgrading its current network**
19 **infrastructure and may delay or cease broadband expansion in CenturyLink's**
20 **legacy service areas as overall demand for landlines fall."**²⁴

21 A. Mr. Dougherty's alleged risk is both speculative and contrary to the evidence. The pro
22 forma combined company is not adding incremental debt as a result of the merger and, as

²² CTL/300, Bailey/13, lines 14-17.

²³ CTL/300, Bailey/13, line 15.

²⁴ Staff/100, Dougherty/19, lines 17-20.

1 noted above, would have had \$1.7 billion in free cash flow (excluding expected
2 synergies) using 2009 full-year figures, after meeting all of its cash operating expenses,
3 network investment and financial obligations, including \$2.4 billion in capital
4 investment.²⁵ If we were to assume the realization of the full run-rate capital and
5 operating synergies, the free cash flow after meeting all obligations would have been \$2.1
6 billion. In addition, since there is no new debt incurred as part of the Transaction
7 financing, there will be no greater debt service for the combined company than there
8 would have been for CenturyLink and Qwest as standalone entities. So, debt service will
9 not be increased due to the Transaction, but there is the potential for improved cash flows
10 if the Qwest credit rating is upgraded, as potential debt refinancing could be
11 accomplished at lower interest rates, and through Transaction-related cost savings. Thus,
12 the purpose for the Transaction is to *reduce* rather than increase risk, including financial
13 risks, and the focus on improved efficiencies is a clear indication of that intent. Again,
14 Mr. Dougherty provides no justification for his concern that investment might be harmed
15 by the merger, other than to propose the possibility. CenturyLink and Qwest believe that
16 their capital resources are likely to improve due to enhanced free cash flows from
17 synergies, improved product portfolios (e.g., combining Qwest's transport capacity with
18 CenturyLink's rural broadband customer offerings), and strong credit ratings. Finally,
19 CenturyLink believes that its corporate history is the most convincing proof that the
20 Company is devoted to prudent balance sheet management coupled with superior service,

²⁵ Based on 2009 pro forma financial results, before any expected synergies, the combined company generated approximately \$5.8 billion in free cash flow before capital expenditures and dividends. After approximately \$2.4 billion in capital expenditures and \$1.7 billion in pro forma dividend payments, the combined company in 2009 generated \$1.7 billion in "discretionary" free cash flow after all operating and capital obligations.

1 even in areas when the network costs are high. Mr. Dougherty's concern is speculative,
2 without foundation, and contrary to the evidence.

3
4 **III. THE MERGED COMPANY'S PROFITABILITY AND ACCESS LINE**
5 **LOSS METRICS WILL BE BETTER THAN QWEST'S CURRENT,**
6 **PROVIDING OREGON AND OREGON CUSTOMERS A NET BENEFIT.**

7 **Q. Is there a greater public interest risk because the merged company will have lower**
8 **profitability margins and higher access line loss rates than CenturyLink's current**
9 **metrics?**

10 A. No. As explained earlier, Qwest, which serves 88% of the pro forma company's lines in
11 Oregon, will *benefit* from the combination in terms of the eventual profitability margins
12 and access line loss rate, using the perspective that Mr. Dougherty has proposed.
13 Qwest's overall access line losses (which are greater) and margins (which are lower) will
14 blend with those of CenturyLink (lower access line loss rate and higher margins) to
15 improve even if no operational benefits are realized.

16
17 It is more balanced to say that there is no reason to believe that Qwest post-Transaction
18 will lose more lines than would otherwise occur or that CenturyLink will lose more lines
19 than would otherwise be the case. This slightly different perspective suggests that there
20 would be no harm to customers or to the merged company. At the same time, Qwest and
21 CenturyLink believe that they will combine best practices and more effectively use their
22 complementary assets to slow the line loss rate for the combined company versus
23 Qwest's line loss rate today, and the combined margins will improve versus Qwest's

1 current margins because of CenturyLink's higher margins and additional efficiencies and
2 economies of scale. Whatever the perspective the Commission chooses, it appears clear
3 that there is no harm in Oregon and there is a realistic expectation that the merged
4 company will provide net benefits to Oregon customers through improving the
5 profitability and line loss characteristics of the state's largest telecommunications
6 provider. As such, the Staff's contention that changes in line loss rates and profitability
7 margins represent risks that are occasioned by the Transaction is without foundation and
8 focuses solely on the current CenturyLink customer base.

9
10 **IV. THE IMPORTANCE OF SYNERGIES IN A HIGHLY-COMPETITIVE**
11 **INDUSTRY.**

12 **Q. Can you comment on Mr. Dougherty's testimony that the synergies will create a risk**
13 **for the merged company and therefore for Oregon customers?**

14 A. Yes. Mr. Dougherty is speculating about risks related to the generation of synergies, but
15 no such risks have materialized or been alleged, to the best of my knowledge, in any of
16 CenturyLink's previous transactions, including the Embarq transaction, and the Company
17 does not believe any such risks are likely in the proposed Transaction. Synergies have
18 been realized and new products introduced in the combinations in which CenturyLink has
19 been involved (e.g., new bundles of services and broadband products)—all for the good
20 of customers, the public interest and other stakeholders. No one in this or any other
21 proceeding has suggested otherwise regarding CenturyLink's record, to the best of my
22 knowledge. In fact, Mr. Dougherty noted the "significant" progress that CenturyLink and

1 Embarq have achieved in their merger from just a year ago.²⁶ In summary, the
2 opportunity to achieve transaction synergies is by definition a benefit, as the synergies
3 reflect improvements that would not have occurred for either company on a standalone
4 basis and the combined operation has the potential to do better than the two separate
5 entities.

6
7 In a peculiar paragraph in his testimony, Mr. Dougherty writes in response to the question
8 about the risks associated with synergies that the merged company will have financial
9 obligations—dividends, debt, coping with increasing landline losses, and investments
10 required by state and federal regulators.²⁷ Mr. Dougherty contends that, because of these
11 factors, the merged company may not have the capital to make “investments needed to
12 improve or maintain the current level of service.”²⁸ The peculiar issue is, of course, that
13 synergies should create *more* cash flow and most of the expenditures in the list of
14 obligations are industry-based or company-based obligations that would be incurred with
15 or without the Transaction. The only items that are slightly different are a modestly
16 higher dividend obligation to Qwest shareholders and the incremental regulatory
17 investments, offset by lower interest costs if the credit of the combined company is on
18 balance better than Qwest’s current credit rating, as well as the benefit from potential
19 accelerated debt repayments. The other factors—landline losses and most of the dividend
20 obligations—are not new “risks” arising from the Transaction. Still, the potential or
21 likelihood for synergies should improve the risk profile of the largest carrier in the

²⁶ Staff/100, Dougherty/24, lines 16-18: “In a highly confidential response to a Staff Data Request, CenturyLink demonstrated significant strides in achieving the synergy savings stated in UM 1416.”

²⁷ Staff/100, Dougherty/25, lines 16-24; it is somewhat surprising that Mr. Dougherty lists as a risk the investment requirements imposed by state and federal regulators.

²⁸ *Id.*

Oregon rather than harm it, as the synergies provide the post-merger Company with incremental cash to meet its obligations. The peculiar paragraph cites financial pressures in the industry and effectively argues that the potential for synergies creates a risk in addressing these industry-wide factors when in reality, the expected synergies help to address these risks as the combined company will have more cash flows on a combined basis than either company would generate on a standalone basis.

Q. Are the published synergy targets extraordinarily large or aggressive in the proposed Transaction?

A. No, they are not. Mr. Dougherty is correct in his assessment that the synergies are realistic in light of his experience in the CenturyTel merger with Embarq and the highly confidential documents he has reviewed concerning the progress of that merger.²⁹ Dr. Frentrup, however, contends that the expected synergies will result in large financial benefits like the “massive” synergies realized in the Embarq transaction.³⁰ The reality is that the estimate of \$575 million in operating expense savings is approximately 7% of Qwest’s 2009 cash operating costs, while the \$625 million of total estimated synergies (including capital expenditure synergies) is less than 8% of Qwest’s cash operating costs. Further, the synergy targets are modest compared with other publicly-available ILEC merger synergy expectations. Illustrating the reasonableness of the expected synergies for the proposed Transaction, the estimates (operating costs and capital expenditure savings) as a percentage of cash operating costs are below the 11% expected cost savings announced when CenturyTel merged with Embarq, and are well below other merger-

²⁹ Staff/100, Dougherty/24, lines 9-18.

³⁰ Sprint/1, Frentrup/17, line 9-15.

1 related synergies from ILEC transactions that generally have been 20%+ of the target
2 company's cash operating costs in recent years, as verified by independent financial
3 analysts.³¹

4
5 **Q. Does the synergy target create an incremental risk for CLECs, based on investor**
6 **expectations, as suggested by both Dr. Frentrup and Mr. Gates?**

7 A. No. Dr. Frentrup testifies that the merger may go badly and that the combined company
8 will be pressured by investors to achieve large synergy savings by raising rates or
9 sacrificing service to CLECs.³² Mr. Gates offers a similar view, stating that the merged
10 company will be seeking "to find synergies [and] it will be under pressure to produce
11 meaningful dividends, pay down debt and invest in advanced services" which might
12 result in making wholesale service a "low . . . priority."³³ CenturyLink's management
13 believes the estimated synergies can be achieved while continuing to provide high-quality
14 service to customers and invest in the network. Specifically regarding the cash flow
15 characteristics and priorities arising from the proposed Transaction, using pro forma 2009
16 financials, *before any expected synergies*, the merged CenturyLink and Qwest would
17 have generated around \$3.4 billion in free cash flow³⁴ after all cash operating expenses
18 and an estimated \$2.4 billion in capital investment. Based on this level of free cash flow,
19 after meeting all operating, capital and financial costs as noted earlier, the combined
20 company expects to have about \$1.7 billion in remaining cash flow—without assuming
21 any synergies—that could be used for additional investment (beyond the \$2.4 billion in

³¹ Simon Flannery, *CenturyTel: 1Q10 Preview: Awaiting Embarq Synergy/Integration Update and Additional Color on Qwest Deal*, Morgan Stanley Research, North America, April 29, 2010.

³² Sprint/1, Frentrup/15, lines 4-17.

³³ Joint CLECs/8, Gates/30, lines 16-18.

³⁴ See Merger Conference Call, slide 8.

1 capital investment noted above), debt repayment, and other appropriate uses. As such,
2 CenturyLink expects to be financially sound even if no synergies are achieved and,
3 therefore, will not be unduly pressured by investors or other stakeholders. Still, the direct
4 response to the Staff and the intervenor witnesses is that CenturyLink is committed to
5 providing high-quality service to all of its customers and will not jeopardize its business
6 to manage short-term investor expectations. CenturyLink understands that the failure to
7 meet customer expectations is the prelude to disappointing investors, employees, and
8 other stakeholders. As is clear from the Company's history, including previous
9 acquisitions, CenturyLink understands its business and its priorities are aligned with
10 successfully operating the business in a manner that benefits its customers and other key
11 stakeholders.

12
13 **V. THE ALLEGED CONFLICT BETWEEN SHAREHOLDER AND**
14 **CUSTOMER INTERESTS IS CONTRARY TO THE EVIDENCE.**

15 **Q. Is there a fundamental conflict between the interests of shareholders and those of**
16 **customers?**

17 **A.** Absolutely not. In fact, the opposite is true. A good management team understands that
18 enhancing long-term customer welfare through providing high quality services at
19 reasonable rates creates long-term shareholder value. And, appropriate attention to long-
20 term debt and equity investors ensures access to capital at competitive rates so that
21 investment can occur for the long-term benefit of customers. The two stakeholder
22 groups—capital providers and customers—are complementary and necessary to any
23 business, and certainly to a capital-intensive service business that requires capital

1 investment to meet customer needs, such as is the case with telecommunications. Mr.
2 Dougherty fails to represent this relationship accurately. Excessive dividend payments
3 that harm the business ultimately will harm shareholders as well (I specifically will
4 address the combined company's expected low pro forma dividend payout ratio relative
5 to industry peers later in this testimony). In fact, when MCI failed and went bankrupt,
6 the business went forward without any disruption to customers, as far as I know, while
7 equity investors lost all of their invested capital. Mr. Dougherty points to the importance
8 of improved credit ratings and an appropriate balance sheet. Lower debt costs and better
9 credit ratings are never accomplished without the attraction of meaningful levels of
10 equity capital at competitive rates. All of these stakeholder groups are important and
11 serving all of their interests in a balanced fashion must be the goal of any successful
12 company. CenturyLink has an established track record of successfully meeting the
13 interests of these key stakeholders and there is no reason to believe that the Company will
14 alter its approach as a result of the proposed Transaction.

15
16 **Q. Mr. Dougherty asserts that there is the potential that "shareholder positives"**
17 **including dividend payments could lead the Company to place "higher priority on**
18 **paying dividends to shareholders than maintaining service quality and investing in**
19 **business operations."**³⁵ **Please comment.**

20 **A.** There is no factual basis for this concern raised in Mr. Dougherty's testimony. There is
21 no such risk. The record of the Company is consistent and responsible, and should
22 outweigh the speculation in Mr. Dougherty's testimony. CenturyLink has invested in its

³⁵ Staff/100, Dougherty/13, lines 4-6

1 customer-serving network consistently and at levels sufficient to provide high-quality
2 service, all while maintaining a sound relationship with investors. CenturyLink believes
3 that if the Company were to invest at levels that do not support customers and market
4 demand, the business would suffer, results would turn negative and shareholders would
5 quickly shed their investments. Long-term shareholder interests and long-term customer
6 value are aligned, meaning there is no need for competing prioritizations. CenturyLink
7 believes in achieving a prudent and balanced approach to running and funding the
8 business. The Staff is speculating about a scenario that has not occurred in
9 CenturyLink's lengthy history. There is no meaningful risk that shareholder interests will
10 override the needs of customers as a result of the proposed Transaction, and CenturyLink
11 urges the Commission to consider actual past experience as opposed to speculations
12 regarding the future.

13
14 **Q. Can a company pay a dividend that is higher than its earnings per share ("EPS")?**

15 **A.** Yes. As a result of non-cash items that impact book earnings, a company may have cash
16 flows per share that are in excess of EPS. In fact, the ILEC industry, on average, has
17 cash flows per share that exceed EPS as the companies are investing at levels that are
18 lower than annual depreciation levels. While this may at first appear to be
19 underinvestment, there are factors that explain the phenomenon where capital investment
20 across the industry is averaging 50% to 80% of annual depreciation. First, historical
21 levels of investment are amortized over an extended period that is defined in accounting
22 regulations, so that past investment continues to be reflected in depreciation today.
23 However, the price of replacement equipment is falling, which means that a carrier can

1 replace, and often enhance, network assets at prices lower than historical levels. Second,
2 the carriers are losing customers at rates that range from approximately 6% to 10%
3 annually, so that certain replacement expenditures are declining as the number of
4 customers served is declining. CenturyLink seeks to improve upon or reverse that
5 decline in customers (including in the current Qwest operating territories), but it is
6 important to note that matching investment with depreciation levels would result in
7 higher per-line investment than has been typical in recent years. In addition,
8 mechanically investing at historical levels in spite of a declining customer base would
9 increase the likelihood of inefficient or stranded investment, which in itself could be
10 harmful to Oregon and Oregon customers. As a result, cash flows per share tend today to
11 be higher than EPS in the telecommunications industry. Mr. Dougherty is mistaken when
12 he argues that a company cannot pay out dividends at a rate higher than EPS. In fact,
13 CenturyLink and Qwest have been able to maintain their dividends even while ensuring
14 appropriate levels of capital expenditures and meeting all other operating obligations.
15 Further, with the realization of the estimated synergies, CenturyLink and Qwest expect to
16 be able to achieve enhanced financial flexibility through improved earnings and cash
17 flows going forward.

18
19 **VI. THE INSIGNIFICANCE OF GOODWILL IN A CASH-FLOW DRIVEN**
20 **INDUSTRY.**

21 **Q. Does the merged company's level of goodwill create a risk for the public interest?**

22 A. No. Goodwill is an accounting convention that permits a company to book on its balance
23 sheet the value of intangible assets that may not be captured in the tangible assets or

1 liabilities accounts. While goodwill most often is created when a premium is paid in an
2 acquisition, it can also occur to account for the value of licenses, customer lists, or other
3 intangible assets. By contrast with book accounting conventions, most businesses
4 generally are valued on the basis of their potential to generate cash flows, regardless of
5 the tangible or intangible nature of the assets on the balance sheet. To illustrate the
6 discrepancies between book accounting and market-based valuation, it might be noted
7 that, at the end of 2009, Qwest had an equity market capitalization (based on the shares
8 outstanding and the trading price of the stock) of \$7.3 billion in spite of the fact that the
9 equity book value was a *negative* \$1.2 billion. The reason for the higher market
10 capitalization (\$8.5 billion higher) is that equity investors value the projected cash flows,
11 which are well above the value assigned in book accounting. Regardless of the level of
12 goodwill on a company's balance sheet, it is the company's ability to generate cash flows
13 that in most cases will drive the value and sustainability of the business.

14
15 **Q. Why does Mr. Dougherty believe that the level of goodwill could be a risk for the**
16 **merged company?**

17 A. Mr. Dougherty testifies:

18 "The potential problem with a large amount of goodwill on a company's books is
19 that goodwill cannot be amortized over a given period of time. According to
20 Generally Accepted Accounting Principles (GAAP), goodwill must be tested for
21 impairment on an annual basis. Impairment occurs when the fair value of a long-
22 term asset group is less than the book value. If goodwill is impaired, its carrying
23 amount is reduced and an impairment loss is recognized on a company's income
24 statement. *As a result, impairment losses could potentially create earnings*
25 *volatility with no cash flow effects and signal a loss in economic value of the*
26 *company.*"³⁶ [Emphasis added.]
27

³⁶ Staff/100, Dougherty/26, line 15 through Dougherty/27, line 3.

1 Mr. Dougherty is correct that, due to current accounting rules, goodwill cannot be
2 amortized on the income statement, and he is correct that a “test” occurs at regular
3 intervals to determine whether the value captured in goodwill has declined, which could
4 lead to lower book earnings if there were a write-down in value. However, the reduction
5 in book earnings is non-cash in nature, which is the critical insight that Mr. Dougherty
6 himself acknowledges (“earnings volatility *with no cash flow effects*”). If cash is
7 unaffected, then regardless of changes in the value of goodwill, the same level of cash
8 flows remain available to fund operating expenses, investment, service of equity and
9 debt, etc. I explained earlier that investors focus on cash flows. In fact, they value
10 enterprises, as does CenturyLink, on cash-generating characteristics. This past summer,
11 CenturyLink disclosed in SEC filings the estimated goodwill that will be created as a
12 result of the acquisition of Qwest. However, there was no material negative change in
13 CenturyLink’s share price as a result of this disclosure. Investors understand that the
14 creation of goodwill and any potential future goodwill impairment charge will have no
15 impact on the cash flow generation capabilities of the combined company. Mr.
16 Dougherty’s conclusion that volatility in earnings based on non-cash charges will create
17 risk is incorrect. Changes in the value of goodwill do not, of themselves, create volatility
18 in cash flows or a risk to the economic value of the company, contrary to the testimony of
19 Mr. Dougherty.

1 **VII. THE RISK IN “RING FENCING”³⁷ A TELECOMMUNICATIONS**
2 **COMPANY RATHER THAN AN ALLEGED RISK IN THE INABILITY**
3 **TO “RING FENCE”.**

4 **Q. Mr. Dougherty states that it is a “challenge” to ring fence the merged company’s**
5 **Oregon properties and that a non-consolidation opinion for the Oregon operations**
6 **could not be obtained. Do you agree?**

7 **A.** Yes. Mr. Dougherty provides commentary about the differences between “ring fencing”
8 an energy utility versus a telecommunications company.³⁸ Mr. Dougherty refers to the
9 ability to obtain a non-consolidation opinion, which, as I understand it, is a third-party
10 assessment that a subsidiary company can operate distinct from its parent, and can
11 maintain its own books and credit rating. The Oregon Commission believes that it is
12 necessary to “ring fence” and possibly obtain non-consolidation opinions in the
13 acquisitions of Oregon energy companies by out-of-state parent operations; however, for
14 the various reasons Mr. Dougherty cites, “ring fencing” telecommunications companies is
15 not practical or appropriate. I note that telecommunications traffic and assets today are
16 less “local” than they might once have been, and a customer relies on voice and data
17 communications that are without boundaries.

³⁷ Ring fencing is a practice employed in regulating a public utility business. The regulator seeks to financially and legally separate the assets of an entire operating entity, such as a state’s utility business, from other operations, which may involve a parent company based in another state. Alternatively, the financial separation involves a regulated business that is required to be legally distinct from a non-regulated business. The goal is to create legal protections for consumers of utility services such as power or water from potential financial instability in other operating entities.

³⁸ Staff/100, Dougherty/22, line 10 through Dougherty/23, line 12.

1 **Q. Does the Commission’s inability to “ring fence” the Oregon subsidiary operations**
2 **create a risk in this Transaction?**

3 A. No. Mr. Dougherty argues that, because it is not possible to “ring fence” the combined
4 company’s Oregon operations, there is a risk posed by the Transaction.³⁹ However, “ring
5 fencing” is a mechanism to protect the viability of a utility against a financial failure of a
6 related entity out of state. If such financial distress occurs in a related but geographically
7 separate operating entity or parent company, the “ring fenced” local utility subsidiary is
8 presumed to be able to continue functioning for its customers as it is an entirely distinct
9 operating unit from the problematic out-of-state operations. As Mr. Dougherty explains,
10 “ring fencing” is more difficult to accomplish for telecommunications companies today.
11 However, it appears that Mr. Dougherty assumes that telecommunications companies are,
12 or should be, like energy companies and, therefore, ideally should be “ring fenced”—
13 except that it is not practically realizable. CenturyLink believes that energy companies
14 are profoundly different from telecommunications companies such that “ring fencing” is
15 not only difficult to employ but is actually inappropriate. The telecommunications
16 industry is without boundaries, relies on services that are interstate and even global, is not
17 a monopoly, and in fact is subjected to fierce competitive and rapidly changing pressures
18 that cannot, and likely should not, be insulated. Telecommunications is a very different
19 business from the monopoly-like and relatively slow-changing energy business, as
20 telecom is competitive in reality and subject to rapid technological changes. Setting aside
21 theoretical matters, Qwest is not now “ring fenced” in Oregon, nor is CenturyLink. The
22 testimony that “Oregon will not be able to ring fence” does not add a new risk or harm to

³⁹ Staff/100, Dougherty/2, lines 19-20; Dougherty/14, lines 9-10; Dougherty/17, lines 12-13; Dougherty/59, lines 6-8.

1 customers resulting from the proposed Transaction, as Oregon does not now ring fence
2 the standalone companies. Mr. Dougherty is incorrect that this is a new harm or net
3 negative in the Transaction. In fact, Qwest, which serves 88% of the Oregon customers
4 of the pro forma company, is combining with CenturyLink which has superior financial
5 characteristics.

6
7 **Q. How does Mr. Dougherty propose resolving the alleged risk related to the**
8 **Commission's inability to "ring fence?"**

9 A. Mr. Dougherty testifies that the risk related to the inability to "ring fence" can be offset
10 by broadband commitments:

11 "In UM 1431 (Commission Order No. 10-067), *the parties agreed to replace the*
12 *Staff recommended ring fencing condition with a broadband commitment that*
13 *invests up to \$25 million in Oregon and increases broadband availability in 18*
14 *wire centers in Oregon. The commitment includes a fast (two-year) completion,*
15 *which ensures broadband investments will be quickly focused towards Oregon.*
16 *As a result, the Commission should require a similar broadband commitment from*
17 *CenturyLink. There are significant risks, most notably financial, competition, and*
18 *corporate focus, to the transaction. A broadband commitment would offset risks*
19 *of the transaction with a benefit for customers."*⁴⁰
20

21 CenturyLink objects to this approach. CenturyLink is committed to provide its customers
22 high-quality services using an advanced communications network, which includes
23 ongoing broadband deployment. However, the Company believes that it is not
24 appropriate to micromanage when and how it invests in upgrading its network to respond
25 to a competitive marketplace that is driven by rapid changes in technology. CenturyLink
26 believes that there is not a new risk or harm to Oregon or Oregon customers arising from
27 the inability to "ring fence" the Oregon operations. Interestingly, as of year-end 2009,

⁴⁰ Staff/100, Dougherty/23, lines 13-22.

1 88% of CenturyLink’s Oregon access lines were DSL-enabled and Qwest had broadband
2 availability of 88% in Oregon—clearly indicating that broadband deployment in Oregon
3 has been a priority for both of the companies and will continue to be for the combined
4 company. Therefore, no broadband investment condition is necessary or appropriate to
5 offset a harm created by the lack of “ring fencing.” Further, Oregon did not impose a
6 *quid pro quo* broadband obligation in the CenturyLink merger with Embarq, and such an
7 obligation likewise is not appropriate here. The Staff’s justification for a broadband
8 condition on the basis of an inability to *add* “ring fencing” is not appropriate. In addition,
9 given the Staff’s apparent concern regarding CenturyLink’s credit ratings, it is important
10 to note that Moody’s has indicated that its affirmation to-date of CenturyTel’s ratings
11 “assumes that any conditions that may be imposed will not have a material impact on the
12 Company’s financial profile.”⁴¹ CenturyLink is concerned that proposed conditions that
13 have meaningful financial impacts, such as “ring fencing” and mandated levels of
14 broadband investment, could be perceived by the credit rating agencies as negatively
15 impacting the Company’s financial profile and jeopardizing its credit ratings.
16 CenturyLink believes that this potentially unintended consequence of certain proposed
17 conditions should be given serious consideration by the Commission.

⁴¹ Moody’s Investors Service, “Rating Action: Moody’s changes CenturyTel’s outlook to negative; reviews Qwest’s ratings for upgrade,” April 22, 2010, p.1.

**VIII. PERSPECTIVES ON USE OF THE RISK SECTION OF THE FORM S-4
IN THIS PROCEEDING.**

Q. Mr. Dougherty and several of the intervenor witnesses cite the SEC Form S-4 that CenturyLink filed on July 16, 2010, noting the “Risk Factors” associated with the Transaction as reasons to be concerned. Can you respond?

A. Yes. Obviously, there are numerous benefits associated with the Transaction, which also are detailed in the CenturyLink S-4 and in the CenturyLink and Qwest testimonies in this proceeding. Mr. Dougherty and certain intervenor witnesses highlight the recitation of Risk Factors as if CenturyLink is suggesting some degree of probability that OSS systems will be changed or that integrations or other risks noted are *likely* problems.⁴² It is important to understand the purpose of the “Risk Factors” section in SEC filings by companies with publicly-traded securities. These items are mentioned as a matter of full disclosure of any and all risks to shareholders, as would be included in any public company’s SEC Form S-4 or annual Form 10-K. As described, these “Risk Factors” represent general recitals of risks of which companies and the public are generally well aware. The disclosure of risk factors provides legal protection to investors and to the company whose securities are publicly-traded; but the disclosures are not intended to suggest that the risks are likely outcomes. As noted previously, however, CenturyLink has a long history of successfully executing ILEC transactions, a fact that underscores that the Company fully understands the importance of the customer, and is capable of managing operating risks, and delivering superior service through these types of combinations. In summary, there is no evidence that failures or problems such as those

⁴² See, e.g., Staff/100, Dougherty/14, line 21 through Dougherty/16, line 6; Joint CLECs/1, Ankum/48 line 12 through Ankum/49, line 4; Dr. Ankum cites a risk recital related to expenses to argue that CenturyLink “has put CLECs on notice to expect changes.”

1 recited in the “Risk Factors” have occurred in past CenturyLink transactions and
2 CenturyLink believes there is little likelihood that those types of problems will occur
3 here. I also note that, if undue emphasis were placed upon the risk factors, mergers and
4 financings for new investment likely would never occur. Despite the cited risk factors,
5 recently the shareholders of CenturyTel and Qwest overwhelmingly approved the
6 proposed transaction because they concluded that the likely benefits of the proposed
7 merger outweighed the potential risks.

8
9 **Q. Are all the S-4 Risk Factors cited by Staff the result of the proposed Transaction?**

10 A. No. In fact, the S-4 operating risks cited include those that are industry-related as well as
11 transaction-related. So, for example, Mr. Dougherty cites thirteen operational risks.⁴³ Of
12 those risks, eight are risks that CenturyLink and Qwest would face with or without the
13 merger, that is, the companies may not be able to retain key employees; access lines
14 losses could lead to financial pressures; competitive pressures could intensify;
15 technology changes could put the company at risk; the industry is undergoing change and
16 the company cannot assure that its diversification will be successful; the company may
17 not be able to grow through future acquisitions; in the future, the relationship with other
18 key communications companies may be at risk; and network disruptions could harm
19 performance. The remaining five items listed by Mr. Dougherty included risks that
20 CenturyLink will incur substantial merger-related expenses; the Company *may* not be
21 successful in integrating the businesses such that it can realize anticipated benefits;
22 CenturyLink will serve additional urban markets where it has less experience competing;

⁴³ Staff/100, Dougherty/14, line 21 through Dougherty/15, line 40.

1 future results *may* be affected if CenturyLink does not effectively manage expanded
2 operations; and CenturyLink *may* incur substantial costs in rebranding initiatives. If one
3 considers the risks outlined above, it is apparent that these are general disclosures of
4 what might go wrong in any business in the telecommunications industry, and the
5 merger-related items are potential costs which are typical in any combination, against
6 which the thoughtful investor or observer or manager will weigh the potential benefits
7 associated with greater efficiencies and capabilities. One-time costs for rebranding or
8 integration generally are good trade-offs for longer term capacity to serve customers
9 more effectively and more efficiently. As I noted at the outset of my testimony, the
10 identification of risks is merely the initial step, and assessment of the likelihood and
11 degree of those risks is the next step. To point to the risk factor discussion in the S-4
12 filing does not provide evidence of such a critical assessment. The Applicants' boards of
13 directors, management and investors believe that the risks are manageable and there is a
14 net benefit to the core operations—serving its customer base—of the Company in
15 moving forward.

16
17 **IX. ADDITIONAL STAFF PROPOSED FINANCIAL CONDITIONS.**

18 **Q. Commission Staff has proposed numerous financial conditions. Are there any of**
19 **these finance related conditions which are acceptable to CenturyLink?**

20 **A.** As part of a comprehensive settlement agreement recommending an approval of the
21 proposed Transaction, CenturyLink could agree to accept the following conditions that
22 address certain financial issues as proposed by Commission Staff:

- 23 • Condition 1 – Addresses the Commission's access to CenturyLink's accounting
24 records pertaining to the Transaction.

- Condition 2 – Addresses the Commission’s right to review the financial aspects of this Transaction in future rate proceedings or earnings review under and alternative form of regulation.
- Condition 3 – Requires notification to the Commission of any substantive material changes to the Transaction’s terms and conditions.
- Condition 8 – Addresses cost of capital issues in future rate proceedings.
- Condition 9 – Addresses CenturyLink’s commitment that it will not seek recovery of one-time transition, branding or transaction costs in intrastate regulated rate proceedings or through wholesale service rates.
- Condition 10 – Requires CenturyLink to hold retail and wholesale customers harmless for increases in overall management costs that result from the Transaction.
- Condition 16 – Requires CenturyLink to provide the Commission Staff with certain pre- and post-merger financial information.
- Condition 17 – Requires CenturyLink to comply with Oregon statutes regarding encumbering of assets of the Oregon operating companies.
- Condition 18 – Commitment by CenturyLink to record any acquisition premium at the parent company level and to not seek recovery in Oregon intrastate regulated retail or wholesale rates of such premium.
- Conditions 20 and 21 – Requires certain financial reporting but allows the requirement to be waived if an investment grade rating is affirmed.

Q. Can you respond to Staff’s proposed condition 15 concerning the limitation on the post-merger company’s ability to pay dividends to the parent if the quarterly Net Debt-to-Trailing 12-month EBITDA rises higher than 2.6 times?

A. Yes. CenturyLink objects forcefully to condition 15. Staff is proposing a limitation on the Company’s financial flexibility, even as the merger *strengthens* the financial condition of the specific operating company (Qwest) serving the overwhelming number of Oregon customers. First, Qwest has no such limitation constraining the ability of its

1 operating companies to dividend cash to the parent company headquartered in Denver.
2 Second, this merger clearly is strengthening Qwest (88% of the Oregon lines) in terms of
3 potential its credit rating, the net leverage ratio, and the ability to generate free cash flow.
4 Third, Staff is proposing to impose a leverage ratio threshold which is set *below* the level
5 of Qwest's current Net Debt-to-EBITDA, which is 2.7 times. So, the Staff is indicating
6 that, for no compelling reason, leverage ratios that were acceptable up to the present, and
7 at much higher levels, are no longer acceptable in the future. Fourth, the potential
8 limitations on the flow of cash within the merged carrier will send signals to investors,
9 including the credit rating agencies, that financial risk is *higher* rather than lower because
10 the Company may not be able to access cash flows generated by its operating businesses
11 to support investment and financing requirements. Fifth, other states might attempt to
12 follow the Oregon lead based on a similar misunderstanding of the financial risks
13 involved, and the net effect would be serious limitations on the Company's ability to
14 respond to operating and financial challenges, to the detriment of Oregon and Oregon
15 customers. Sixth, to the best of my knowledge, no such limitation was imposed in
16 previous ILEC merger transactions, except that a minor condition was imposed on
17 CenturyTel in the merger with Embarq with the potential for *de minimis* impacts on the
18 total Company's cash flows. In this case, however, it is possible that this limitation could
19 constrain the Company's access to significant cash flows (i.e., the cash flows generated
20 by Qwest Corporation), which is far more serious and would *raise, not reduce*, the
21 financial risks associated with the overall merger. Seventh, CenturyLink objects as this
22 condition does not respond to any new harm created by the potential Transaction, but
23 effectively creates a potential new harm. In summary, it is difficult to understand how

1 the Staff could propose such a condition which departs from the way in which the
2 Commission has regulated the industry, which creates cash-flow-related risks in a rapidly
3 changing industry, and in fact imposes new risks on a business that is improving its
4 financial profile.

5
6 **Q. Could you comment on Staff proposed condition 11 regarding certain financial**
7 **reporting requirements for the Oregon operating entities?**

8 A. This proposed condition would require each CenturyLink operating company to submit
9 the Commission standard Annual Report Form O and Oregon Separated Results of
10 Operations Report Form I unless otherwise approved by the Commission. CenturyLink's
11 concern with this proposed condition is that Qwest does not currently file Form O and
12 Form I using the Commission's standard format. My understanding is that this approach
13 resulted from Qwest working collaboratively with the Commission Staff in the past to
14 streamline the reporting of the information included in the Form O and Form I reports.
15 Rather than require Qwest to revert to the standard format, CenturyLink is willing to
16 continue discussions with the Commission Staff to determine how to provide the
17 necessary information, while maintaining the efficiencies that have been gained through
18 the more streamlined reporting process.

19
20 **Q. Please comment on Mr. Dougherty's testimony regarding the need for conditions to**
21 **monitor affiliated interests.**

22 A. Mr. Dougherty notes "two affiliated interest (AI) issues: (1) Qwest being exempted from
23 affiliated interest filings resulting from UM 1354, Qwest's price plan; and (2) the current

1 status of the management service AI agreement between CenturyLink and CenturyLink
2 operating companies, including the three CenturyLink ILECs.”⁴⁴ Commission Staff
3 proposes conditions 54 and 55 to address these concerns. Staff proposed condition 54
4 would require CenturyLink to comply with all applicable Commission statutes and
5 regulations regarding affiliated interest filings and reporting, consistent with the Oregon
6 operating entities’ respective form of regulation. As part of a comprehensive settlement
7 agreement, CenturyLink could agree to this proposed Staff condition. Staff proposed
8 condition 55 would require CenturyLink to file affiliated interest agreements and an
9 updated Cost Allocation Manual with the Commission within nine months of the close of
10 the merger. While CenturyLink does not disagree in principle with the intent of this
11 condition, CenturyLink has concerns with the nine month timeframe, and with Staff’s
12 expectations for the information to be included in an updated Cost Allocation Model.
13 CenturyLink is willing to continue discussions with the Commission Staff in resolving
14 remaining issues associated with this proposed Staff condition.
15

16 **X. THE CLECS’ RECOMMENDATION THAT CENTURYLINK AND**
17 **QWEST SHOULD BE REQUIRED TO SHARE SYNERGY SAVINGS**
18 **WITH WHOLESALE OR OTHER CUSTOMERS.**

19 **Q. Please respond to the intervenor witnesses who argue that the Commission should**
20 **require sharing of the financial benefits of the merger?**

21 **A.** Dr. Ankum, Mr. Gates, and Dr. Frentrup each argue that wholesale customers should
22 “share” in the benefits that flow from the merger. Dr. Frentrup testifies that his company,

⁴⁴ Staff/100, Dougherty/40, lines 2-8.

1 Sprint Nextel, seeks not only to be protected from risks associated with the Transaction,
2 but also that Sprint Nextel should be a direct beneficiary of lower wholesale rates
3 resulting from an allocation of merger synergy savings that are calculated on the basis of
4 Oregon's percentage of the total company's access lines.⁴⁵ Dr. Ankum testifies similarly:
5 "And without a concrete commitment that allows CLECs to *rightfully share in the cost-*
6 *savings* the combined company achieves, this will be very low on CenturyLink's priority
7 list post-transaction."⁴⁶ [Emphasis added.] Mr. Gates argues that "CenturyLink should
8 not be permitted to keep all of the benefits of increased economies and efficiencies for
9 itself."⁴⁷ As such, the intervenor witnesses are not satisfied that the Commission should
10 protect the public interest by ensuring no net harm consistent with the standard of review
11 (i.e., with stable rates or the maintenance of service quality), but contend that the
12 Commission should make approval of the transfer of control contingent on competitive
13 and wholesale carriers being direct financial beneficiaries of the Transaction.

14
15 **Q. Please respond to the intervenor witnesses' argument that the merged company**
16 **should "share" directly with wholesale customers the financial benefits that flow**
17 **from the proposed Transaction.**

18 A. CenturyLink believes that the intervenor witnesses have no right to claim a financial
19 share of the efficiencies or other benefits. CenturyLink believes that the Commission is

⁴⁵ Sprint/1, Frentrup/15, line 14 through Frentrup/16 line 2; Frentrup/13, line 21 through Frentrup/14 line 5.

⁴⁶ Joint CLECs/1, Ankum/62, lines 1-6.

⁴⁷ Joint CLECs/8, Gates/113, lines 13-16; Mr. Gates footnotes the concept, citing to the FCC's *Local Competition Order* ("Order") from 1996, ¶11, and his footnote selectively states "...the local competition provisions of the Act require that these economies be shared with entrants." In reality, the Order's paragraph concerns setting initial rules based on "economies of density, connectivity, and scale [that have] traditionally . . . been viewed as creating a natural monopoly." Nowhere does the FCC's Order suggest that there should be a sharing of economic benefits resulting from a merger.

1 evaluating this Transaction to determine whether the public interest is served, in part as
2 measured by the merged company's financial capabilities. As noted above, Mr.
3 Dougherty points to the risk concerning the merged company's credit rating and debt
4 load, which means that he believes that cash flows should be used, at least in part, to
5 *reduce debt*, but the intervenors here are suggesting the redirection of those same cash
6 flows to narrowly benefit CLECs and other wholesale customers.⁴⁸ CenturyLink and
7 Qwest are committed to goals that are the same as those of the Commission—achieving
8 financial flexibility to respond to its customers and market conditions—through improved
9 balance sheet characteristics, network investment, more compelling service offerings, or
10 some combination of these or other benefits. Requiring that retail or wholesale customers
11 should “share” directly in the cost savings that are to be realized through the merger
12 would undercut the combined company's ability to respond to a challenging industry and
13 the Company's efforts to strengthen the merged entity's financial position. Importantly,
14 the two companies have made a commitment to merge, to bear the integration risk, and to
15 create a stronger service provider for the benefit of all Oregon customers.

16
17 **Q. As an element of analyzing whether the Commission “should consider . . . if**
18 **CenturyLink should be required to share merger synergies with its wholesale**
19 **customers,” Dr. Frentrup points to CenturyLink's “high” dividend.⁴⁹ Can you**
20 **comment?**

21 **A.** Yes. Dr. Frentrup urges the Commission to reflect on the “high level” of CenturyLink's
22 dividend, as he apparently believes the dividend is an indication of excess profitability

⁴⁸ Staff/100, Dougherty/2, lines 10-13.

⁴⁹ Sprint/1, Frentrup/17, line 17 through Frentrup/18, line 7.

1 that should be shared with wholesale customers. In response, CenturyLink believes that
2 equity investors deserve to be compensated for their capital, just as debt-holders deserve
3 to be paid interest. Dividends represent a payment for the use of capital in an industry—
4 such as wireline telecommunications—in which earnings growth (often a proxy for share-
5 price appreciation potential) is slow. As explained above, access to capital is critical in a
6 capital-intensive business.

7
8 **Q. Is the dividend too high and does it represent a risk?**

9 A. No. I note that Mr. Dougherty also explicitly cites the dividend as a risk associated with
10 this transaction.⁵⁰ I explained earlier on page 22 in response to a related matter that
11 CenturyLink pays dividends out of cash flows available after meeting all other
12 obligations including the costs of operating the business and capital investment. Here,
13 responding to Dr. Frentrup's concern about whether CenturyLink's cost of equity is
14 excessively high, the Company believes it has a prudent approach as it pays out in
15 dividends an amount that, as a percentage of its free cash flow, is *lower* than that paid by
16 any of its peers. Specifically, the merged company's pro forma dividend payout ratio
17 (dividends paid divided by free cash flow after operating costs and capital expenditures
18 are paid), based on 2009 figures and before any assumed synergies, is estimated to be
19 approximately 50.4%, which is lower than the ratio for any of the peer companies in the
20 wireline-only industry.⁵¹ And, assuming that the merged company is able to achieve
21 estimated synergies, the payout ratio, based on pro forma 2009 cash flows, is expected to
22 be 45.1%, making it even lower (better) when compared with the merged company's

⁵⁰ Staff/100, Dougherty/2, line 9.

⁵¹ Merger Conference Call, slide 7.

1 peers. CenturyLink's equity investors are provided a competitive, market-based return,
2 while additional free cash flow prudently is retained for network investment, debt
3 reduction, or other appropriate uses. Mr. Dougherty and Dr. Frentrup are not correct in
4 speculating that the dividend is a risk, as telecommunications companies often pay
5 dividends to gain access to equity capital, and stable levels of equity capital are necessary
6 to gain access to competitively priced debt capital. Without appropriate levels of
7 dividend payments, the Company would bear higher risks, and the Company is confident
8 that its dividend policy is conservative compared with other comparable carriers. On the
9 contrary, the Joint CLECs are not putting any capital at risk as part of the proposed
10 Transaction, are not incurring any of the transaction costs, and are not assuming any of
11 the risks to create a stronger service provider for Oregon. As such, there is no rational
12 basis for why wholesale and CLEC customers should demand a direct financial benefit
13 from the Transaction.

14
15 **Q. Do you have concluding remarks?**

16 A. Yes. CenturyLink wishes to serve its customers—retail and wholesale—in a manner
17 consistent with the history of CenturyLink and Qwest, while striving to improve that
18 service over time. CenturyLink objects to unverified and speculative risks that lead to the
19 imposition of costly and inefficient conditions to achieve benefits that appear not to be
20 required under Oregon's standard of review. CenturyLink will abide by all regulatory
21 and negotiated agreements and terms, and is committed to superior telecommunications
22 services. At the same time, the Company objects to the imposition of unnecessary costs
23 or conditions. Specifically, the Company is concerned about regulatory conditions that

1 might be perceived by the credit rating agencies or other investors as creating higher
2 levels of financial risk. CenturyLink believes that this potentially unintended
3 consequence of certain proposed conditions should be given serious consideration by the
4 Commission. Both Qwest and CenturyLink have been good public institutions in Oregon
5 and plan to make additional investments toward serving customers. CenturyLink
6 requests that the Commission evaluate the alleged risks presented by the intervenor
7 witnesses to determine whether those risks are speculative and unfounded or real and
8 require conditions. CenturyLink could not find evidence that any of the risks outlined by
9 the Staff were likely to result in net harm to Oregon or Oregon customers as a result of
10 the Transaction. In fact, the vast majority of the combined company's Oregon
11 customers—the current Qwest customers—clearly will benefit from the improved
12 operating performance and financial strength of the post-merger company when
13 compared to Qwest today. Thus, there will be a meaningful net benefit, not net harm, for
14 Oregon customers as a result of the Transaction. Further, I believe that CenturyLink and
15 Qwest have given the Commission data and history that provide assurance that the
16 merged company will have the resources and capabilities to provide services in the public
17 interest.

18
19 **Q. Does this complete your Rebuttal Testimony?**

20 **A.** Yes.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1484

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the Indirect
Transfer of Control of QWEST
CORPORATION

REBUTTAL TESTIMONY OF

TODD SCHAFER

PRESIDENT, MID-ATLANTIC REGION

ON BEHALF OF

CENTURYLINK, INC.

SEPTEMBER 21, 2010

1 **Q. Please state your name and business address.**

2 A. My name is Todd Schafer and my business address is 14111 Capital Blvd, Wake Forest,
3 NC 27587.

4

5 **Q. Who is your employer and what is your position?**

6 A. I am employed by CenturyLink as the President for the Mid Atlantic Region.

7

8 **Q. Are you the same Todd Schafer that filed direct testimony in this proceeding?**

9 A. Yes, I am.

10

11 **Q. What is the purpose of your rebuttal testimony?**

12 A. I am responding to certain issues and proposed conditions identified by the Commission
13 Staff in the testimonies of Staff witnesses Michael Dougherty and John Reynolds.

14

15 **Q. Staff witness Reynolds recommends CenturyLink be required to file a strategic plan**
16 **evaluating its switches¹ in Oregon and providing a proposed replacement plan if**
17 **necessary (Condition 24). Is such a plan necessary?**

18 A. No. CenturyLink's switches in Oregon currently support the provision of quality service
19 to customers, including advanced services. There currently are no technological or
20 service triggers that would cause us to replace these switches within the near future.
21 Technological advancements in digital switching have reached a point where switch

¹ Staff/300, Reynolds/7-8.

1 functionality is primarily controlled through software changes and upgrades rather than
2 through physical hardware changes. Additional functionality to increase efficiency,
3 expand capacity, or offer new and advanced services is often accomplished through
4 upgrades to the software of the switch rather than a physical change-out of the switch.
5 Technology continues to advance allowing for multiple options to address long term
6 solutions for customers. CenturyLink routinely reviews the status of network elements
7 and works to ensure customer impacting exposures, as well as desired functionalities, are
8 part of the analysis. The Commission should not require CenturyLink to commit
9 resources to develop a plan for switch replacements when there is currently no need for
10 such switch replacements. Additionally, because of the rapidly evolving technologies,
11 any plan built long before a trigger event occurred would likely need to be redone so that
12 it can take into account relevant technological changes.

13
14 **Q. Does Centurylink believe that construction of a redundant route between Lincoln**
15 **City and Newport should be required as a condition to approval of this transaction,**
16 **as proposed by Staff Condition 28?**

17 A. No, CenturyLink does not believe that construction of a redundant route between Lincoln
18 City and Newport is an appropriate condition to place on the approval of this transaction.
19 A condition of this nature would require CenturyLink to direct financial resources in a
20 specific manner to address redundancy issues in particular locations of the state and, as
21 such, is outside the scope of this docket. CenturyLink is willing to agree, as part of a
22 comprehensive settlement agreement recommending approval of the proposed
23 Transaction, to a plan for provisioning redundant facilities between Lincoln City and

1 Newport. However, Staff's proposal to also mandate a method of delivery and a level of
2 capacity is problematic because it would interfere with CenturyLink's ability to make
3 reasonable and efficient network investment and engineering decisions within its
4 managerial judgment. For example, it may be more efficient for the Company to lease the
5 redundant facility rather than "construct" it as Staff has suggested, and the traffic load
6 may not require an OC 192 as Staff also proposes. CenturyLink believes that the
7 Company itself is in the best position to determine the proper engineering of the route to
8 ensure efficient and adequate levels of network redundancy.

9
10 **Q. Can you comment on Commission Staff proposed conditions 26 and 27 dealing with**
11 **safety issues?**

12 **A.** Yes. Staff's proposed condition 26 requires CenturyLink to comply with all applicable
13 safety standards and requirements. Staff's proposed condition 27 requires CenturyLink
14 to provide the Commission a listing of CenturyLink primary and secondary points of
15 contact for safety and pole attachment matters within seven (7) days of the close of the
16 transaction. As part of a comprehensive settlement agreement recommending an
17 approval of the proposed Transaction, CenturyLink could accept both of these conditions
18 as proposed by the Commission Staff. CenturyLink is firmly committed to ensuring a
19 safe working environment for its employees, customers and the general public and fully
20 intends to continue compliance with all existing rules and statutes. In addition,
21 CenturyLink would commit to providing the Commission Staff with points of contact for
22 safety and pole attachment matters at the close of the merger.

1 **Q. Moving on to another subject, Staff witness Reynolds proposes condition 13**
2 **regarding broadband expansion. Can you comment on Staff's proposed condition?**

3 A. Yes. CenturyLink witness Clay Bailey addresses this condition from a financial
4 perspective and CenturyLink witness John Jones addresses it from a policy perspective.
5 From an operations perspective, CenturyLink has been investing in a broadband-capable
6 infrastructure with the overall goal of increasing the availability of broadband service
7 while also increasing broadband speeds in areas where broadband service already exists.
8 After the merger, the combined company will continue to invest in bringing robust
9 broadband services to its Oregon customers. CenturyLink is a broadband leader in the
10 areas it serves. Broadband services provide an opportunity to improve the lives and
11 welfare of the customers and businesses in these areas. Economic development,
12 education, healthcare, and government services all benefit from the effective use of
13 broadband networks, but these benefits must be balanced with the cost of deployment.
14 CenturyLink is proud of its historical commitment to build and operate broadband
15 networks. However, the economic factors to deploy broadband services in the highest
16 cost, lowest population density areas are challenging as there are sometimes too few
17 consumers living in these areas to cover the costs of building and providing advanced
18 network services. Despite these economics, CenturyLink has been a leader in providing
19 broadband services and will continue to seek innovative solutions that allow the
20 Company to expand the reach of its high bandwidth services.

1 **Q. Please describe the current status of broadband deployment for CenturyLink and**
2 **Qwest in Oregon**

3 A. Approximately 89% of CenturyLink's access lines in Oregon are broadband capable.
4 CenturyLink has several broadband speeds available to Oregon customers, with
5 download speeds ranging from 768Kbps up to 10 Mbps in selected markets.
6 CenturyLink's customers generally purchase speeds lower than 3.0 Mbps, a speed that is
7 widely deployed across our Oregon service area. With respect to Qwest's Oregon
8 broadband deployment, based on information provided by Qwest personnel,
9 approximately 89% of living units served by Qwest in Oregon are broadband capable.
10 Qwest also has several broadband speeds available to Oregon customers, with download
11 speeds ranging from 1.5 Mbps up to 40 Mbps in selected markets. Qwest's customers
12 generally purchase speeds lower than 3.0 Mbps, a speed that is widely deployed across its
13 Oregon service area.

14
15 **Q. What are CenturyLink's future plans for broadband?**

16 A. CenturyLink will continue to expand its broadband footprint in those areas of the state
17 where doing so is economically viable and technically practical. In addition,
18 CenturyLink will continue to increase broadband speeds in those areas where broadband
19 service already exists.

20
21 **Q. Do you have any concluding remarks?**

22 A. Yes. The Transaction brings together two leading communications companies with
23 complementary networks and operating footprints. By building on each company's

1 operational and network strengths, the combined company will have an impressive
2 national presence with the local depth that will allow it to better serve all of its customers.
3 The combination creates a company that will be well-positioned to lead in the
4 deployment of advanced services as well as successfully manage the challenging and
5 rapidly changing telecommunications environment.

6
7 **Q. Does this conclude your testimony?**

8 **A. Yes.**

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1484

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the Indirect

Transfer of Control of QWEST
CORPORATION

REBUTTAL TESTIMONY OF

MICHAEL R. HUNSUCKER

DIRECTOR, CLEC MANAGEMENT

ON BEHALF OF

CENTURYLINK, INC.

SEPTEMBER 21, 2010

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

2 A. My name is Michael R. Hunsucker. My business address is 5454 W. 110th Street,
3 Overland Park, Kansas 66211.

4
5 **Q. WHO IS YOUR EMPLOYER AND WHAT IS YOUR POSITION?**

6 A. I am employed by CenturyLink, Inc. (“CenturyLink”) as Director – CLEC Management.

7
8 **Q. ARE YOU THE SAME MICHAEL R. HUNSUCKER THAT FILED DIRECT**
9 **TESTIMONY IN THIS PROCEEDING?**

10 A. Yes, I am.

11
12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. I am providing rebuttal testimony concerning wholesale issues and proposed conditions
14 raised in reply testimonies in the proceeding before the Public Utility Commission of
15 Oregon (“Commission”) related to the proposed merger of Qwest Communications
16 International, Inc. (“Qwest”) and CenturyLink (the “Transaction”). Specifically, I will
17 address the testimonies of Mr. Michael Dougherty¹ who provides reply testimony on
18 behalf of the Staff of the Commission (collectively “Staff”); Dr. Kay Marinos² who
19 provides reply testimony on wholesale issues on behalf of Staff; Mr. Timothy Gates, who
20 provided direct testimony on behalf of tw telecom of Oregon, LLC, Integra Telecom of
21 Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of

¹ Michael Dougherty, Public Utility Commission of Oregon, Staff Exhibit 100, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter “Staff/100, Dougherty”].

² Kay Marinos, Public Utility Commission of Oregon, Staff Exhibit 500, Reply Testimony, Case UM 1484, September 3, 2010 [hereafter “Staff/500, Marinos”]

Oregon, Inc., and United Telecommunications Inc, d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII (collectively, these competitive local exchange carriers are the “Joint CLECs”)³; Dr. August H. Ankum, who also provided direct testimony on behalf of the Joint CLECs⁴; Mr. Richard E. Thayer, who provided direct testimony on behalf of Level 3 Communications, LLC⁵, and Dr. Chris Frentrup, who provided direct testimony on behalf of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc. (collectively “Sprint Nextel”)⁶.

Q. PLEASE DESCRIBE THE STRUCTURE OF YOUR REBUTTAL TESTIMONY.

A. First, I will reinforce the rebuttal testimony of Mr. John Jones that CenturyLink’s acquisition of Qwest is in the public interest as it relates to the provision of wholesale services by CenturyLink to interconnected carriers and that the CLEC testimony does not accurately reflect current or post-merger operations of CenturyLink and Qwest but demands self-serving conditions. Second, my testimony explains the positions of

³ Direct Testimony of Timothy J. Gates on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/8, Gates”].

⁴ Direct Testimony of August H. Ankum, Ph.D., on Behalf of tw telecom of Oregon, LLC, Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, Level 3 Communications, LLC and Charter Fiberlink OR-CCVII, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Joint CLECs/1, Ankum”].

⁵ Direct Testimony of Richard E. Thayer on Behalf of Level 3 Communications, LLC, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Level 3 Communications/100, Thayer”].

⁶ Sprint Direct Testimony of Chris Frentrup, August 24, 2010, In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel Inc. and Qwest Communications International, Inc., UM 1484 [hereafter “Sprint/1, Frentrup”].

1 CenturyLink and Qwest regarding the proposed merger conditions and related assertions
2 made in the testimony of Staff. Third, my testimony explains the positions of
3 CenturyLink and Qwest regarding the proposed merger conditions and related assertions
4 of CLECs.

5
6 **I. PUBLIC INTEREST AND PRE-/POST-MERGER OPERATIONS**

7 **Q. THE TESTIMONY SUBMITTED BY STAFF AND THE CLECs ASSERTS THAT**
8 **THE COMMISSION SHOULD PLACE SEVERAL CONDITIONS ON ITS**
9 **APPROVAL OF THIS TRANSACTION SO IT “DOES NOT HARM THE**
10 **INDUSTRY.”⁷ DO YOU AGREE WITH THIS ASSERTION?**

11 **A.** No. There are several reasons why the conditions proposed by the CLECs are
12 unnecessary to protect the CLEC industry. First, the existing CenturyLink and Qwest
13 operating entities, including wholesale operations, will stay in place post-merger, so the
14 relationships between the companies and the CLECs will remain status quo and there will
15 be none of the impacts that CLECs might encounter with completely new incumbent
16 entities and completely new Operations Support Systems (“OSS”). Next, CLECs have
17 significant legal protections in place today that remain in place post-merger. These
18 protections include the provisions and obligations of the federal Telecommunications Act
19 (“FTA” or “Telecom Act”), federal and State orders, interconnection agreements
20 (“ICAs”), tariffs, and Qwest’s § 271 protections, Performance Assurance Plans, and
21 Change Management Process commitments. Additionally, the Commission retains its

⁷ Joint CLECs/8, Gates/110.

1 jurisdiction, including its oversight of interconnection agreement terms and its ability to
2 resolve disputes related to such interconnection agreements.

3
4 Furthermore, I believe CLECs will benefit from the merger without imposition of their
5 requested conditions. A financially stronger company promotes stability and thus
6 furthers the goal of continuing to have a solid and resilient provider of quality wholesale
7 services to CLECs and other carriers. As I documented in my Direct Testimony,
8 CenturyLink already has a very robust and experienced Wholesale Operations team in
9 place today. Likewise, Qwest has a very robust and experienced Wholesale Operations
10 team in place and the result of this merger will be the combination of two quality teams and
11 companies. The combining of these two quality teams and companies ensures that the
12 post-merger organization will be able to draw upon the best wholesale and
13 interconnection practices, capabilities and personnel of each entity, thereby continuing to
14 provide quality service to interconnecting carriers. Thus, the premise that this
15 Transaction would cause harm to the industry is speculative, unsubstantiated, and, in my
16 opinion, false.

17
18 **Q. HAS THE COMPANY MADE ANY RECENT STAFFING DECISIONS IN**
19 **REGARDS TO POST-MERGER WHOLESALE OPERATIONS AND IF SO,**
20 **PLEASE DESCRIBE THE DECISIONS AND THE IMPACT ON CLECs?**

21 **A.** Yes, there was an internal announcement on Monday, September 20, 2010 regarding the
22 Tier 2 leaders, including Wholesale Operations, effective with the close of the merger

1 Transaction. Specifically, in regards to Wholesale Operations, Bill Cheek, President-
2 Wholesale Operations announced the wholesale structure and Tier 2 leaders as follows:

3 Eric Bozich, Vice President-Product and Marketing who is currently Vice
4 President-Product Management for Qwest.

5
6 Paul Cooper, Director-National Public Access who is currently Director-Public
7 Access for CenturyLink.

8
9 Craig Davis, Vice President-Sales and Account Management who is currently
10 Vice President-Wholesale Sales and Account Management for CenturyLink.
11 Mike Hunsucker, Vice President-Wholesale Services and Support who is
12 currently Director-CLEC Management and Service for CenturyLink.

13
14 Warren Mickens, Vice President-Wholesale Operations who is currently Vice
15 President-Customer Service Operations for Qwest.
16

17 This leadership team represents leaders from both CenturyLink and Qwest and represents
18 experienced employees (in excess of 100 years of experience in the telecom industry)
19 who are not only well-equipped to provide quality service but also committed to
20 continuing to provide quality service to wholesale customers. As I stated earlier in my
21 testimony, the provision of quality service to wholesale customers is a priority and will
22 remain so after the merger closing. Staff and the CLECs have expressed concerns
23 regarding CenturyLink's decision to have a CenturyLink executive at the top of the
24 wholesale organization but this announcement demonstrates that CenturyLink
25 understands the need to have experienced personnel from both CenturyLink and Qwest.
26 In fact, in the Wholesale Operations organization, CenturyLink will be retaining the same
27 Qwest executives in the areas of wholesale operations, including OSS, and product
28 development that are currently responsible for the Qwest systems and products that the
29 CLECs are most concerned with.
30

1
2 **Q. IS CENTURYLINK COMMITED TO PROVIDING QUALITY WHOLESALE**
3 **SERVICES TO CLECS? IF SO, WHY?**

4 A. Yes. CenturyLink recognizes the value of its wholesale customers to its business
5 operations and created the current organizational structure described in my Direct
6 Testimony to ensure high quality services for its customers. CenturyLink's Wholesale
7 Operations organization is sufficiently staffed with experienced employees who are well-
8 equipped to provide quality service to wholesale customers. This fact is evident in my
9 description of the Wholesale organization that I provided in my Direct Testimony and is
10 further reinforced with the most recent announcements on Tier 2 leaders in the combined
11 company, post-merger closing. CenturyLink and Qwest have a long-standing history of
12 and commitment to providing quality wholesale services. The provision of quality service
13 to wholesale customers is a priority and will remain so after the merger closing.

14
15 Specifically in the Wholesale Operations area, CenturyLink has recently completed the
16 migration of legacy CenturyTel's CLEC customers to the legacy Embarq's EASE
17 wholesale OSS system ahead of the timeframe required by the Federal Communications
18 Commission's (FCC's) Order in the CenturyTel/Embarq merger. CenturyLink agreed to
19 this migration to ensure that CLEC customers had an automated system for order
20 processing. This attention to providing quality customer service to CLECs is an integral
21 part of CenturyLink's commitment to the wholesale market and will be maintained post-
22 merger closing.

23

1 The CLECs assert that CenturyLink has incentives to discriminate against them in favor
2 of CenturyLink's retail operations. While CenturyLink certainly will compete for all
3 customers on a retail basis, CenturyLink also has a strong interest in ensuring that our
4 network is utilized by CLECs on a wholesale basis. The CLECs completely ignore the
5 existence of other competitors in the market such as cable telephony providers, wireless
6 providers and other voice over internet protocol ("VOIP") providers who do not
7 necessarily utilize CenturyLink's network in the provision of retail end user services.
8 CenturyLink and Qwest have invested billions of dollars in their networks in an effort to
9 promote universal service and it should be self-evident that it is in CenturyLink's best
10 interest to provide high quality wholesale services to CLECs that utilize those
11 investments to provide retail services versus the worst possible outcome of losing
12 customers to telecom providers who do not use CenturyLink's investment at all. Plain
13 and simple, if CenturyLink loses on a retail basis, it has every incentive to win on a
14 wholesale basis.

15
16 **Q. THE STAFF AND THE CLECS ASSERT THAT THE "RELATIVE**
17 **MAGNITUDE OF THE WHOLESALE SERVICES" PROVIDED BY**
18 **CENTURYLINK AND QWEST IS "EXPONENTIALLY" DIFFERENT AND**
19 **CENTURYLINK LACKS THE EXPERIENCE TO EFFECTIVELY COMPLETE**
20 **THIS TRANSACTION ABSENT CONDITIONS. DO YOU AGREE?**

21 **A.** No, I do not. The testimonies of Staff and CLECs attempt to base their arguments on an
22 Oregon specific analysis, however Staff witness Dr. Marinos states that "Qwest
23 wholesale market dwarfs CenturyLink's in terms of size, customers and service offerings

1 at a national level as well.” This statement does not appropriately reflect the realities of
2 the CenturyLink Wholesale Operations as compared to Qwest’s Wholesale Operations on
3 a national basis and lacks merit. As I stated in my direct testimony, CenturyLink has
4 almost two thousand active CLEC agreements on a national basis and in excess of five
5 hundred agreements with wireless carriers across its 33-state region. Based on May 2010
6 YTD order volumes, CenturyLink is on pace to process almost one million ASRs and
7 LSRs in 2010. The facts are that CenturyLink has more interconnection agreements than
8 Qwest and the volume of orders processed are not “dwarfed” by the Qwest volumes at
9 all. In addition, CenturyLink has experience with a CLEC performance plan in Nevada
10 that is substantially similar to Qwest’s Performance Assurance Plan as discussed in more
11 detail in Mr. Williams’ testimony. In addition, CenturyLink provides certain 271
12 services including line sharing and local wholesale solutions, which is the successor to
13 the unbundled network element – platform (“UNE-P) product. The appropriate and
14 relevant comparison of the CenturyLink and Qwest wholesale operations is on a national
15 basis not a state-specific basis as systems, services and staffing requirements are based on
16 national operations and commercial volumes, not state-specific requirements. And, as
17 demonstrated above, CenturyLink compares quite well.

18
19 In addition, Staff witness Dr. Marinos expresses a concern that CenturyLink operates
20 under “its rural carrier status under the Telecom Act” which has enabled CenturyLink to
21 be exempt from wholesale requirements imposed on larger ILECs such as Qwest. It
22 should be noted that on a national basis, less than 15% of CenturyLink’s ILEC’s retail
23 access lines are in companies that are covered under the Telecom Act’s “rural

1 exemption.” The inverse is that approximately 85% of CenturyLink’s retail access lines
2 are not operating under the “rural exemption” and thus have been and will continue to be
3 subject to the same Section 251/252 of the Telecom Act as Qwest. This fact, ignored by
4 the Staff and the CLECs, serves as the foundation for the number of interconnection
5 agreements and order volumes discussed previously. The fact is that CenturyLink is
6 more similar to Qwest in serving wholesale customers (CLECS) than suggested and
7 perhaps more importantly acknowledged by the Staff and CLECs.
8

9 **Q. MR. GATES ADDRESSES OSS SYTEMS. DOES HE FAIRLY ACCOUNT FOR**
10 **THE OSS CAPABILITIES OF THE POST-MERGER COMPANY?**

11 A. No. A considerable portion of Mr. Gates’ testimony is related to intermittent discussion
12 of OSS issues. Mr. Gates begins this discussion with a reference to Qwest’s § 271
13 compliance requirement and circles back to that topic several more times. In Mr. Gates’
14 opinion, because CenturyLink’s OSS systems have not been subject to regulatory
15 litigation under § 271, he believes CenturyLink has no experience with § 271
16 obligations.⁸ To Mr. Gates, it follows that the post-merger systems may not remain § 271
17 compliant.⁹ Mr. Gates is misconstruing § 271. Under the Telecommunications Act,
18 under which CenturyLink has been performing for years, the obligations to provide OSS
19 are the same as they are under § 271. Qwest did undergo testing of its systems in order to
20 obtain approval to provide long-distance services, while CenturyLink did not undergo
21 that process because it was never restricted from providing inter-LATA services, but

⁸ Joint CLECs/8, Gates/25.

⁹ Joint CLECs/8, Gates/ 34 and 42.

1 there is no evidence that its systems do not meet the requirements of the Act. Qwest
2 witness Chris Viveros will address § 271 issues in greater detail in his rebuttal testimony.

3
4 Mr. Gates' speculation regarding post-merger OSS degradation is also unfounded. As
5 stated previously, CenturyLink is not merely acquiring territory from Qwest, but instead
6 is acquiring the entire company with its existing systems, personnel and documented
7 policies and processes. The Qwest experience and OSS knowledge will still reside in the
8 post-merger company, and Mr. Gates' speculation that § 271 compliant systems might
9 just "disappear" is nonsense.

10
11 As regards the future OSS to be used by the merged company, CenturyLink and Qwest
12 have publicly stated that they are each dedicated to having strong OSS for wholesale
13 operations, that they have met their obligations to wholesale customers in the past and
14 will continue to do so. The merged company will have the option to retain Qwest's
15 existing § 271 compliant systems or to choose an OSS that better addresses the provision
16 of service to the merged company's entire customer base. Having said that, nothing
17 about the Transaction will excuse the merged company from its important ICA and §251
18 obligations, as well as the obligations under § 271 where those apply.

19
20 **Q. A COMMON THEME IN THE CLEC TESTIMONY IS A COMPLAINT**
21 **REGARDING CENTURYLINK NOT PROVIDING DETAILED**
22 **DOCUMENTATION OF ITS FUTURE PLANS AND INTENT. HOW DO YOU**
23 **RESPOND?**

1 A. As Mr. John Jones testifies, it is unreasonable to believe that CenturyLink and Qwest
2 should have conducted a thorough operating capabilities and operating expense review of
3 the legacy systems and practices by this point in time. It is also incorrect to assume that
4 the merged company has made the decisions regarding which systems and practices will
5 be used post-merger.

6
7 This Transaction is not like other acquisitions that were cited in CLEC testimony.
8 Because the immediate plan is to maintain both companies' separate OSS and continue
9 operations as usual, there was no need for CenturyLink and Qwest to have rushed to
10 decide OSS integration issues so early in the process. Wholesale customers in
11 CenturyLink areas and in Qwest areas will not face immediate changes in their existing
12 systems interfaces and existing OSS arrangements will not be disrupted. This stands in
13 stark contrast to the FairPoint and Hawaiian Telcom transactions cited by the CLECs,
14 both of which involved the creation of entirely new OSS. The ILECs involved in those
15 other acquisitions had to quickly develop integration plans because they had to operate
16 under new systems and processes on Day One after the acquisition closed. Unlike those
17 ILECs, CenturyLink will have legacy systems, processes and experienced personnel in
18 place post-merger so CenturyLink can undertake a highly disciplined process to convert
19 systems and processes as necessary for smooth integration. Accordingly, CenturyLink
20 will take a deliberate and thorough approach to considering how it will operate in the
21 future. CenturyLink wants to ensure that it makes its operational decisions based on a)
22 sound quality of service and fiscal responsibility principles; that also b) meets the needs
23 of its entire customer base. The CLECs should want no less.

1
2 CenturyLink and Qwest recognize that any future changes to OSS will require significant
3 advance planning by wholesale customers, and CenturyLink pledges to give its CLEC
4 customers ample and adequate notice of any future changes in compliance with all rules
5 and terms of the interconnection agreements and accepted business practices.
6 Additionally, CenturyLink acknowledges that any future CenturyLink changes must
7 comply with state and federal laws and rules and with other formal obligation such as
8 Qwest's Performance Indicator Definitions and Performance Assurance Plans.¹⁰ As Mr.
9 Jones states in his rebuttal testimony, it is to benefit of all of CenturyLink and Qwest'
10 retail and wholesale customers for CenturyLink to conduct a thorough review of the
11 legacy systems and to make decisions regarding the systems and practices to be used
12 post-merger in a timely manner.

13
14 **Q. CAN YOU PROVIDE THE COMMISSION WITH SOME INSIGHT INTO THE**
15 **INTEGRATION ACTIVITIES THE COMPANY IS CONDUCTING?**

16 A. Yes. CenturyLink is leveraging key learnings from its Embarq systems evaluation,
17 selection and implementation, as well as 20+ years of successful integration experience
18 with other acquisitions. An in-depth analysis will be conducted on systems capabilities,
19 skill sets required for operation, and overall business processes before any decisions are
20 made. Senior level management will then review and approve all core system selections

¹⁰ Qwest witness Mike Williams will provide greater insight into the provisions of the Performance Indicator Definitions and Performance Assurance Plans.

1 and implementation plans. The critical systems migration criteria CenturyLink is using
2 include:

- 3 - Minimal impact to customers,
- 4 - Systems scalability,
- 5 - Ease of operation,
- 6 - Overall support of key business needs, including functionality, efficiency,
- 7 dependability, and quality of service.
- 8 - IT systems infrastructure simplification where possible,
- 9 - Meeting legal and contractual obligations, and
- 10 - Meeting all State and Federal notification requirements.

11
12 As I previously stated, CLECs will continue to operate with Qwest and CenturyLink as
13 they do today and, when the necessary determinations have been made that would cause a
14 change in that operation, CenturyLink will provide appropriate notice and the required
15 information and training. Having said that, CenturyLink should not be required to
16 provide business plan information that affords the CLECs advantages in the marketplace
17 and to which CLECs are not entitled under applicable law.

18
19 **Q. HOW HAS CENTURYLINK LEVERAGED ITS PREVIOUS ACQUISITION**
20 **EXPERIENCE TO BENEFIT ITS WHOLESALE CUSTOMERS?**

21 A. CenturyLink in recent years has completed significant upgrades to its billing, wholesale,
22 financial, and human resources systems in order to successfully accommodate its growth
23 and future growth opportunities. To date much of the systems integration that
24 CenturyLink planned as part of its integration of Embarq has been completed on or ahead

1 of schedule. This real-world experience puts CenturyLink in the best position to assess
2 and address impacts to its wholesale customers as a result of this Transaction.

3
4 **II. DISCUSSION OF STAFF CONDITIONS**

5 **Q. STAFF HAS INCLUDED A LIST OF SUGGESTED WHOLESALE MERGER**
6 **CONDITIONS IN THEIR TESTIMONIES.¹¹ ARE THESE SUGGESTED**
7 **CONDITIONS REQUIRED FOR THE MERGER TO MEET THE PUBLIC**
8 **INTEREST?**

9 A. No. As discussed is the testimony of CenturyLink witness John Jones the Oregon
10 standard for approval of this Transaction is that it is in the public interest and that no
11 harm results.¹² As I have previously discussed, given CenturyLink's and Qwest's
12 acknowledgement of the value they place upon their wholesale customers and the
13 protections the CLECs already have under applicable law, ICA terms and other existing
14 commitments, Staff's suggested conditions are not required to meet the public interest in
15 Oregon. To illustrate this point, of the twenty-one states and the District of Columbia
16 requiring applications or review of this merger, to date, ten have concurred that this
17 Transaction is very much in the public interest and no conditions have been applied.¹³

18
19 Further, the existing, lawful ICA terms the CLECs agreed to or arbitrated have been
20 approved by this Commission as consistent with the public interest by the Commission.

21 The conditions proposed by the CLECs would constitute new or amended terms to

¹¹ CTL/801 (Hunsucker).

¹² CTL/500, Jones/9.

¹³ The merger also has cleared regulatory review from the United States Department of Justice and Federal Trade Commission.

1 Qwest's and CenturyLink's ICAs, and if imposed would result in the bypassing of the
2 good faith negotiations called for by §§ 251 and 252 of the FTA, in direct contradiction
3 of the intent of that law.
4

5 **Q. IN STAFF SUGGESTED CONDITION 29, STAFF SUGGESTS THAT THE**
6 **QWEST LEGACY OPERATIONS SUPPORT SYSTEMS ("OSS") REMAIN**
7 **INTACT FOR THREE YEARS AND THAT APPROVAL BE REQUESTED**
8 **FROM THE COMMISSION SIX MONTHS IN ADVANCE OF A PROPOSED**
9 **CHANGES. IS THIS CONDITION NECESSARY?**

10 A. No, it is not. CenturyLink is dedicated to having strong OSS for wholesale operations.
11 Staff and CLEC offer no evidence that this merger will negatively impact OSS but yet
12 prefer to rely on speculation primarily focused on comparisons to the Fairpoint and
13 Hawaii Telecom transactions. As Mr. Jones states in his rebuttal testimony "**ALL**
14 (emphasis added) Qwest systems, including the back office systems (OSS) and all
15 personnel will convey to CenturyLink as part of the merger." This factor clearly
16 eliminates any speculative risk described by Staff and the CLECs. In stark contrast to
17 the Fairpoint and Hawaii Telecom transactions where OSS had to be converted Day One
18 post Transaction closing, this Transaction conveys the entirety of the Qwest systems and
19 personnel and allows for both systems to be continued pending a thorough and
20 methodical review of the systems and integration aimed at ensuring the continued
21 provision of quality service to wholesale customers.
22

1 Mr. Bill Cheek, currently President-Wholesale Operations for CenturyLink who will
2 remain in the same position post Transaction closing, stated to the FCC in his affidavit,
3 that “CenturyLink recognizes the importance of having industry leading OSS, and
4 acknowledges the value of OSS for wholesale operations.” In addition, Mr. Cheek stated
5 that CenturyLink plans to operate both the CenturyLink and the Qwest OSS systems for
6 12 months, in the very least. CenturyLink is willing to commit to this 12 month time
7 period but is unwilling to extend this time period for the Staff suggested three years as
8 three years is unreasonably long if, after a thorough review, CenturyLink determines that
9 it is in the best interest of the company and customers for the Qwest OSS system to
10 change.

11
12 Both CenturyLink and Qwest have processes and procedures in place to ensure a smooth
13 transition in regards to changes in OSS systems. Qwest and CLECs have included a
14 detailed process in their negotiated interconnection agreements which have been
15 subsequently approved by the Commission. This process and document is called the
16 Change Management Process (“CMP”). This process will remain in place and will be the
17 controlling document for changes to OSS systems, just like it is today. Nothing in this
18 Transaction eliminates or changes the CMP process and CenturyLink should not be
19 required to give up its rights to seek changes to OSS or the CMP documents itself as a
20 part of this merger proceeding. The obligations and the rights of both the CLECs and
21 Qwest should remain unchanged in this proceeding.

1 **Q. IN STAFF SUGGESTED CONDITIONS 30 AND 31, MR. DOUGHERTY WANTS**
2 **THE MERGED COMPANY TO ASSUME OR TAKE ASSIGNMENT OF**
3 **OBLIGATIONS UNDER QWEST’S INTERCONNECTION AGREEMENTS AND**
4 **TARIFFS, AND TO MAINTAIN THE SAME UNCHANGED FOR SPECIFIED**
5 **PERIODS OF TIME. IS THIS CONDITION NECESSARY?**

6 A. No. These conditions are unnecessary given the structure of this Transaction – a
7 complete acquisition of a corporate entity and all of its existing obligations under law and
8 contracts. The post-merger Qwest affiliate will continue to be the provider of service to
9 the CLECs under the terms of their current contracts so an assignment is unnecessary.

10 As regards an artificial extension of ICA terms, the CLECs have voluntarily negotiated
11 and consented to the terms contained within existing ICAs. It is not appropriate for a
12 merger process to be used to mandate a lengthy extension that would not be required
13 under federal law, let alone necessary to protect the public interest. Having said that,
14 CenturyLink recognizes that most ICAs already have a term of two or three years and it is
15 likely that the Company itself will want to maintain many existing ICAs “as is” for some
16 undetermined length of time. As part of a comprehensive settlement agreement
17 recommending approval of the proposed Transaction, CenturyLink could agree to extend
18 existing interconnection agreements in their initial term for 24 months post-Transaction
19 closing and expired or evergreen interconnection agreements for 12 months post-
20 Transaction closing.

21
22 As regards the tariffs, the Commission already has jurisdiction for approving tariff
23 changes. Since no party in this proceeding can predict what future tariff changes might

1 be necessary to serve the public interest, the Commission and the post-merger affiliates
2 must all retain the flexibility to work within the established rules rather than be
3 constrained from addressing regulatory and competitive needs in an appropriate manner.
4

5 **Q. IN STAFF SUGGESTED CONDITIONS 32 AND 33, STAFF SEEKS TO SUSTAIN**
6 **CERTAIN EXISTING SERVICES IN AN UNCHANGED FASHION. DO THESE**
7 **CONDITIONS SERVE THE PUBLIC INTEREST?**

8 A. No. As we just discussed in regards to the tariffs, no party in this proceeding can predict
9 what future changes might be necessary to serve the public interest. The post-merger
10 affiliates must retain the flexibility to address market needs in an appropriate manner and
11 as permitted under applicable law and regulation.
12

13 **Q. WITH SUGGESTED CONDITIONS 42 AND 43, STAFF ESSENTIALLY**
14 **DUPLICATES ICA-RELATED CONDITIONS THAT WERE ALSO PROPOSED**
15 **BY THE CLECs:**

- 16 - **THE USE OF PRE-EXISTING INTERCONNECTION AGREEMENTS AS**
17 **THE BASIS FOR NEGOTIATING NEW REPLACEMENTS,**
- 18 - **NEGOTIATING POST-MERGER FROM AN ALREADY IN-PROGRESS**
19 **DRAFT, AND**
- 20 - **THE ABILITY TO OPT INTO ANY QWEST OREGON**
21 **INTERCONNECTION AGREEMENT AND APPLY IT TO LEGACY**
22 **CENTURYLINK AFFILIATES.**

**CAN YOU PROVIDE THE COMMISSION A PREVIEW OF YOUR ANSWERS
TO THE CLECS REGARDING SUCH PROPOSED CONDITIONS?**

A. Yes. Both parties to an interconnection negotiation, ILECs as well as CLECs, have the right under applicable law to propose the terms they think are most appropriate for an interconnection agreement. CenturyLink should not be constrained before the fact from utilizing the same right under law that the CLECs will use. CenturyLink will consider the use of existing terms and operations in a renegotiation process but any renegotiation must consider changes of law and updating of processes and capabilities that make the relationship function more smoothly, and competitive industry issues and conditions that did not exist at the time of the first negotiation. It is to both parties' benefit to minimize future disputes by renegotiating terms that do not lend themselves to more than one interpretation.

Regarding negotiations for a replacement ICA that are in progress before the Closing Date, CenturyLink has no plans to terminate and restart negotiations with a different template. In any event, no condition or restriction on this issue is needed because the CLECs have the protection of applicable law, inclusive of the Commission review and arbitration processes.

As far as adoptions are concerned, agreements are entered into between specific legal entities and such terms cannot be involuntarily imposed on a non-signatory third party legal entity. Further, the Commission reviewed and approved Qwest ICA terms as only applicable to Qwest and its network, systems, processes and costs, and not to CenturyLink and its network, systems, processes, and costs. This proposed condition

1 circumvents contractual obligations and would bind a third party legal entity to a contract
2 it did not negotiate and may not be able to accommodate.

3
4 **Q. SUGGESTED CONDITION 34 WOULD REQUIRE CENTURYLINK AND ALL**
5 **OF ITS ILEC AFFILIATES TO COMPLY WITH THE STATUTORY**
6 **OBLIGATIONS OF 47 U.S.C. §§ 251 AND 252. FURTHER, THE QWEST**
7 **AFFILIATE MAY NOT SEEK AN EXEMPTION PURSUANT TO §§ 251(F)(1)**
8 **OR § 251(F)(2) OF THE ACT. SIMILARLY, IN SUGGESTED MERGER**
9 **CONDITION 35, QWEST WOULD CONTINUE TO BE CLASSIFIED AS A BOC**
10 **AND REMAIN SUBJECT TO ALL BOC REQUIREMENTS. WOULD**
11 **CENTURYLINK EVER SEEK ANYTHING DIFFERENT THAN COMPLIANCE**
12 **WITH APPLICABLE LAW?**

13 **A.** No. CenturyLink can agree to remain in compliance with applicable law but imposing
14 such a condition is unnecessary since the affiliates must comply with the law regardless.
15 As regards §§ 251(f)(1), § 251(f)(2) and BOC status, as I understand it, Qwest
16 Corporation is a BOC and will remain such under federal law post merger. Again, no
17 condition need be ordered for Qwest Corporation to adhere to federal law, inclusive of
18 BOC obligations.

19
20 **Q. IN SUGGESTED CONDITIONS 36, 37, AND 40, STAFF WISHES TO SUSTAIN**
21 **EXISTING REGULATORY AND CONTRACTUAL (ICA, TARIFF AND CMP)**
22 **QWEST PERFORMANCE REQUIREMENTS AND PLANS FOR A SPECIFIED**

**PERIOD OF TIME. SHOULD THESE REQUIREMENTS AND PLANS BE
SUSTAINED?**

A. As already discussed, the post-merger company intends to adhere to the terms of existing regulatory and contractual requirements and plans pursuant to the obligations of those regulations and contracts, inclusive of any time-bound terms. The post-merger Qwest affiliate must retain the ability to seek modifications as permitted under current regulations and applicable law to address future wholesale needs in an appropriate manner. For example, the artificial extension of a plan could constrain Qwest from proposing an overall improvement that would benefit the wholesale customers but could not be accommodated if another plan requirement was sustained unchanged. Assuming the company retains the right to seek modifications, it would be willing to retain the existing requirements and plans for a reasonable period of time, perhaps up to but no greater than twenty four months.

Specific to Condition 37, Staff is proposing to continue the Qwest Performance Assurance Plan ("QPAP") for four years post-Transaction closing. The rebuttal testimony of Qwest witness Mr. Williams provides a complete discussion of the existing QPAP which I will not reiterate here, however, there are a couple of points that I would like to reinforce. First, the QPAP is an integral part of the interconnection agreement and is included as Exhibits to the interconnection agreements. The QPAP does not cease to exist upon Transaction closing but rather continues uninterrupted as an integral part of the agreements, thus limiting CenturyLink's and Qwest's ability to unilaterally change the QPAP anyway. As mentioned, CenturyLink has stated that it would agree to extend

1 existing interconnection agreements in their initial term for 24 months post-Transaction
2 closing and expired or evergreen interconnection agreements for 12 months post-
3 Transaction closing as part of a comprehensive settlement. If the interconnection
4 agreements are extended as part of a comprehensive settlement, the QPAPs are likewise
5 extended for the same time periods.

6
7 Condition 40 relates to a requirement for CenturyLink to maintain the Qwest Change
8 Management Process (“CMP”). Just like the QPAP discussion above, the CMP is
9 incorporated in the interconnection agreement via an attached exhibit. In addition, Qwest
10 and the CLECs have certain rights and obligations outlined in the document that should
11 remain unchanged as part of this proceeding. Any condition that seeks to have
12 CenturyLink waive its rights or expand its obligations related to the CMP is not
13 warranted and unnecessary. Qwest and CLECs have been operating under the
14 requirements of the CMP and this Transaction does nothing to change these
15 requirements. As stated, CenturyLink would agree to extend existing interconnection
16 agreements in their initial term for 24 months post-Transaction closing and expired or
17 evergreen interconnection agreements for 12 months post-Transaction closing as part of a
18 comprehensive settlement. Similar to the QPAP, if the interconnection agreements are
19 extended as part of a comprehensive settlement, the CMP is likewise extended for the
20 same time periods.

1 **Q. STAFF SUGGESTED CONDITION 38 REQUIRES PROVIDING AND**
2 **MAINTAINING CONTACT AND SUPPORT INFORMATION. WOULDN'T**
3 **CENTURYLINK DO THIS REGARDLESS OF AN IMPOSED CONDITION?**

4 A. Yes, as appropriate. As I stated earlier in my testimony, providing quality wholesale
5 service to CLECs is a priority at CenturyLink. Providing and updating contact and
6 support information is not an issue as this already occurs today under CenturyLink's and
7 Qwest's existing CMP processes. Further, the subjects of contact information provision
8 and notice are already covered in ICA terms and those terms will govern any required
9 timeframes. No conditions need be imposed to cover obligations that already exist in
10 contracts or regulatory requirements. Additionally, no conditions should be imposed that
11 do not take into account unforeseen circumstances that may prevent adherence. For
12 example, should a designated contact employee leave the company suddenly, or a support
13 center be temporarily closed due to an Act of God, advance notice to the CLECs is not
14 possible. For these reasons, this condition is not necessary.

15
16 **Q. THE ONGOING PROVISION OF INFORMATION RELATED TO OSS AND**
17 **BUSINESS PRACTICES AND PROCEDURES IS THE SUBJECT OF**
18 **SUGGESTED CONDITION 39. WHAT ASSURANCES CAN YOU GIVE THE**
19 **COMMISSION ON THIS TOPIC?**

20 A. Because the immediate plan is to maintain CenturyLink and Qwest' separate OSS and
21 continue operations as usual post-merger, and because in-place ICAs will continue
22 pursuant to their terms, wholesale customers in CenturyLink areas and in Qwest areas
23 will not face immediate changes in their existing operations with the post-merger

1 affiliates. CenturyLink and Qwest recognize that any future changes to OSS or business
2 practices and procedures will require significant advance planning by wholesale
3 customers, and CenturyLink pledges to give its CLEC customers ample and adequate
4 notice of any future changes in compliance with all rules and terms of the interconnection
5 agreements and accepted business practices. Additionally, CenturyLink acknowledges
6 that any future CenturyLink changes must comply with state and federal laws and rules
7 and with other formal obligations such as Qwest's Performance Change Management
8 Process. With these existing obligations in place, no condition is necessary.

9
10 It will, however, take at least twelve months for CenturyLink to complete its evaluations
11 and make its determinations. It will also take some as yet undetermined time to make a
12 conversion to whatever system is ultimately selected. CenturyLink can commit that it
13 will retain the existing OSS systems for the legacy CLEC relationships for at least the
14 period of time it needs for evaluation and pre-transition activities.

15
16 **Q. STAFF SUGGESTED CONDITION 41 GENERALLY OBLIGATES THE**
17 **MAINTENANCE OF AN EXISTING QUALITY OF SERVICE STANDARD FOR**
18 **WHOLESALE OPERATIONS. SHOULD THERE BE ANY CONCERN THAT**
19 **THIS IS NOT ALREADY A CENTURYLINK PRIORITY?**

20 **A.** No, no imposed condition will affect the priority that CenturyLink already maintains in
21 this area. In my Direct Testimony, I went into some detail regarding CenturyLink's
22 Wholesale Operations, its expertise, and its commitment to excellence. As the continuing
23 head of this organization, Mr. Bill Cheek has already made clear to his organization the

1 company's ongoing commitment to service quality. CenturyLink has a long-standing
2 history of and commitment to providing quality wholesale services. The provision of
3 quality service to wholesale customers is a priority and will remain so after the merger
4 closing.

5
6 **III. DISCUSSION OF CLEC CONDITIONS**

7 **Q. DO YOU HAVE ANY INITIAL COMMENTS THAT YOU WOULD LIKE TO**
8 **MAKE REGARDING THE LISTED CLEC CONCESSIONS/CONDITIONS?**

9 A. Yes. Both CenturyLink and Qwest take very seriously their wholesale provisioning
10 obligations and opportunities. Serving their wholesale customers is important to each
11 company, and is crucial to the future financial success of the combined company. As I
12 discussed when addressing Staff's suggested conditions, considering the combination of
13 CenturyLink's and Qwest's recognition of the value of their wholesale customer base and
14 the protections the CLECs already have under applicable law, ICA terms and other
15 existing commitments, the proposed conditions are not necessary to promote the public
16 interest in Oregon.

17
18 Further, the Commission should not permit CLECs to use this proceeding to attempt to
19 obtain concessions that substantially modify the existing, lawful ICA terms the CLECs
20 agreed to or arbitrated, and that have been approved as consistent with the public interest
21 by the Commission. The Commission should also not allow the CLECs to bypass the
22 good faith negotiations called for by §§ 251 and 252 for further agreements. To the extent
23 that the CLECs believe they have legitimate disputes over the quality or availability of

1 wholesale services, CenturyLink and Qwest will continue to work with these wholesale
2 customers to expeditiously resolve those disputes and the appropriate process for dealing
3 with intercarrier disputes are contained in the interconnection agreements.
4

5 **Q. THE CLECS BELIEVE CENTURYLINK SHOULD HAVE NO PROBLEM**
6 **ADOPTING THEIR PROPOSED CONDITIONS BECAUSE CENTURYLINK**
7 **REPRESENTED “NO IMMEDIATE CHANGES POST-MERGER AND NO**
8 **HARM TO EXISTING WHOLESALE PROCESSES, SYSTEMS AND SERVICE**
9 **QUALITY POST-MERGER.”¹⁴ CAN YOU RESPOND TO THAT CLAIM?**

10 A. The CLECs’ characterization of the Transaction only serves to demonstrate that the
11 CLEC proposed conditions are unnecessary. If there are no immediate changes post-
12 merger and no harm to existing processes, systems and service quality, then everything is
13 status quo for the CLECs and the CLECs’ competitive and financial outlook. No
14 concessions are needed. If the Commission were to grant concessions under these
15 conditions, the concessions would only serve to increase CLECs’ profits by pushing
16 CLECs’ costs of doing business onto CenturyLink or otherwise hobbling CenturyLink’s
17 ability to compete fairly.
18

19 **Q. ARE THE CLEC CONDITIONS SOMEWHAT SIMILAR TO THE STAFF’S**
20 **CONDITIONS?**

21 A. Yes. Many of the CLEC’s conditions are similar to the Staff’s suggested conditions and
22 have already been addressed in my rebuttal testimony as it relates to the Staff’s

¹⁴ Joint CLECs/8, Gates/113.

1 testimony. In most cases, the CLECs go well beyond the Staff's proposals and as such, it
2 is necessary to respond to the CLEC's proposals with additional discussions on each
3 condition.

4
5 I would also note that Level 3 submitted its own separate lists of proposed conditions. To
6 the extent Level 3's proposed conditions overlap those of the other CLECs, my testimony
7 is meant to address the similar Level 3 proposed conditions as well. I will separately
8 address any unique Level 3 or Sprint proposed conditions later in this testimony.

9
10 To assist the Commission, I will reproduce the CLEC's proposed conditions in an exhibit
11 (CTL/802 (Hunsucker)) to this testimony.

12
13 **Q. IS THERE A GENERAL THEME IN THE INTERCONNECTION CONTRACT**
14 **RELATED CONDITIONS?**

15 A. Yes. The CLECs' proposed conditions alter the established terms and conditions
16 negotiated by the contracting parties and approved by this Commission under §§ 251 and
17 252 of the FTA. They therefore deny CenturyLink's right to negotiate new terms and to
18 operate under existing approved terms pursuant to that law. In other words, granting the
19 proposed conditions would unilaterally extract new interconnection terms that are above
20 and beyond the ILEC obligations required by the FTA or otherwise negotiated in good
21 faith.

1 Once again, Mr. Gates' own words provide the context for these demands: the CLECs
2 "are [CenturyLink's and Qwest's] rivals, and ... their economic incentive (as profit-
3 maximizing firms) is to undermine – not help – the other provider's ability to compete for
4 end user customers..."¹⁵ The CLECs proposed conditions undermine CenturyLink's
5 ability to compete fairly and may not be terms the CLECs would obtain in the negotiation
6 and arbitration process contemplated under applicable law. Further, the proposed
7 interconnection-related conditions are not required to protect the public interest from any
8 alleged harm arising from the Transaction, or have already been addressed through
9 existing laws or contracts, thus this proceeding is not the proper forum to explore and
10 adjudicate any of these issues.

11
12 **Q. THE CLECS ARE CONCERNED ABOUT THE "LARGE SUMS OF MONEY"**
13 **THEY HAVE SPENT TO GET INTERCONNECTION TERMS FROM**
14 **INCUMBENT LOCAL EXCHANGE CARRIERS ("ILECS") SUCH AS**
15 **CENTURYLINK AND QWEST.¹⁶ WOULD THIS CHARACTERIZATION BE**
16 **EQUALLY APPLICABLE TO CENTURYLINK?**

17 **A.** Yes as we likewise spend considerable resources of time and money on the
18 interconnection process but I take exception to Mr. Gates' assertion that CLECs must
19 spend "enormous amounts of time and money attempting to ensure that the BOCs comply
20 (and continue to comply) with the obligations set forth in approved ICAs and §§ 251 and
21 271 of the FTA."¹⁷ CenturyLink takes its obligations very seriously and there is no

¹⁵ Joint CLECs/8, Gates/13.

¹⁶ Joint CLECs/8, Gates/19.

¹⁷ Joint CLECs/8, Gates/20.

1 evidence to the contrary. To imply that we comply only because the CLECs spend
2 “enormous amounts of time and money” is wrong.

3
4 **Q. IN CONDITION 6, THE CLECS WANT THE MERGED COMPANY TO**
5 **ASSUME OR TAKE ASSIGNMENT OF OBLIGATIONS UNDER QWEST’S**
6 **INTERCONNECTION AGREEMENTS, TARIFFS, COMMERCIAL**
7 **AGREEMENTS AND ARRANGEMENTS AND ALTERNATIVE FORM OF**
8 **REGULATION PLANS WITHOUT REQUIRING WHOLESALE CUSTOMERS**
9 **TO EXECUTE ANY DOCUMENTS(S) TO EFFECTUATE THE MERGED**
10 **COMPANY’S ASSUMPTION. IS THIS CONDITION NECESSARY?**

11 **A.** No. As I previously stated in regards to the similar suggested condition from Staff, this
12 condition is unnecessary given the structure of this Transaction – a complete acquisition
13 of a corporate entity and all of its existing obligations under law and contracts. The post-
14 merger Qwest affiliate will continue to be the provider of service to the CLECs under the
15 terms of their current contracts; the post-merger CenturyLink companies will not become
16 parties to those contracts or become the providers of the services. Thus, it would be an
17 inaccurate identification of the named parties to the contracts for the CenturyLink entities
18 to assume the Qwest wholesale contracts

19 .
20 **Q. THE CLECS ALSO SUGGEST THAT AGREEMENTS SHOULD NOT BE**
21 **TERMINATED OR CHANGED DURING THE UNEXPIRED TERM OF ANY**
22 **ASSUMED AGREEMENT OR UP TO A MAXIMUM ”DEFINED TIME**
23 **PERIOD,” WHICH MAY BE UP TO SEVEN YEARS. IS THIS REASONABLE?**

1 A. No. The CLECs' Defined Time Period of up to seven years under which they argue that
2 certain merger conditions should last, is unreasonable and unprecedented. CLECs have
3 voluntarily negotiated and consented to the terms contained within existing ICAs. It is
4 not appropriate for competitors to use the merger process to unilaterally seek to enforce a
5 lengthy extension. Furthermore, the CLECs have not offered any evidence that such a
6 unilateral condition would even *be* appropriate under federal law, let alone necessary to
7 protect the public interest. For example, Dr. Frentrup states these extensions should be
8 allowed "[a]s long as the terms are satisfactory to the requesting carrier, ..." ¹⁸ There is no
9 consideration here whether or not the terms are consistent with the agreements as
10 approved by the Commission, applicable to the public interest or satisfactory to the ILEC.
11 A unilateral ability for CLECs to extend an ICA is an outcome not contemplated within
12 the context of the bilateral negotiations ordered by Congress. It is contrary to the FTA
13 and should be rejected.

14
15 Accordingly, as regards the rest of the concessions demanded in Condition 6, such as
16 CenturyLink affiliates offering commercial agreements at prices no higher, and for time
17 periods no shorter, than those offered in the legacy Qwest ILEC territory, the negotiated
18 and approved contract terms govern in legacy CenturyLink territory, and CenturyLink
19 will abide by those contractual terms. The CLECs willingly negotiated and agreed to
20 those same contractual conditions or, where the parties did not agree, the terms were
21 arbitrated and ordered and approved by the Commission. The CLECs must abide by
22 those contracts just as CenturyLink must abide by them.

¹⁸ Sprint/1, Frentrup/26.

1
2 Condition 8, extending existing interconnection agreements in “evergreen” status, for at
3 least the Defined Time Period, falls into the same category as Condition 6. Agreements
4 may continue in “evergreen” status only as permitted by the term and termination clauses
5 that the CLECs negotiated and willingly agreed to. For all the reasons already stated,
6 CLECs should not be allowed to unilaterally change the contract terms to extend existing
7 ICAs for as much as seven years.

8
9 **Q. DR. FRENTRUP ASSERTS THAT EXTENDING THE ICAs WILL ALLOW THE**
10 **COMPANIES TO FOCUS RESOURCES ON PROVIDING THE BEST SERVICE**
11 **OFFERS FOR RETAIL CONSUMERS INSTEAD OF EXTENDED AND COSTLY**
12 **NEGOTIATIONS.¹⁹ IS THIS REASONABLE?**

13 A. No. Dr. Frentrup’s proposal is unreasonable because it fails to account for the status of
14 specific interconnection contracts that may be outdated, and because it presumes that
15 there will be no changes to regulations, no new technologies that must be addressed, no
16 marketplace changes, and no changes to costs. There are very good reasons all ICAs
17 have a designated term. Agreements become outdated within a short span of time. And
18 changes to the industry and marketplace fuel more and more disputes over what is and is
19 not covered in the ICAs, and how existing terms should be interpreted in new situations
20 that have arisen since the terms were negotiated.²⁰ I know from personal experience that

¹⁹ Id.

²⁰ For example, many LECs, including CenturyLink, are currently engaged in interpretation disputes over the application of existing ICA terms to new IP-based services. Amendment negotiations have not borne fruit in many of these disputes. CLECs moving to or adding a wholesale business model under existing ICA terms is another example of an interpretation issue that is so comprehensive, it does not lend itself to an ICA amendment.

1 disputes can be exponentially more costly and time intensive as compared to normal
2 negotiations. Further, the FTA places an emphasis upon company to company
3 negotiations to promote agreements that address the business concerns of both parties. It
4 is simply unwise to unilaterally impose artificial time extensions on the terms of contracts
5 and an effective ban upon contract negotiations. Existing laws that require bilateral
6 negotiations, change-of-law provisions, and term provisions are proven vehicles for
7 keeping a contractual relationship current and balanced – arbitrary unilaterally imposed
8 extensions of contract terms are not and may have unintended and unanticipated
9 consequences.

10
11 **Q. MR. ADAMS DISCUSSES AMENDING ICAS RATHER THAN NEGOTIATING**
12 **NEW ICAS. DOES CENTURYLINK EVER AGREE TO AMEND AN ICA?²¹**

13 A. Yes, of course. If CenturyLink concurs that if the type of situation described by Mr.
14 Adams in his testimony exists, it also would seek to amend a current ICA rather than
15 negotiate a new one. The issue here is not whether amendment vs. complete replacement
16 of terms is appropriate for any specific situation,²² the issue is about universally
17 sustaining terms that may be not be appropriate because the terms hamper contract
18 administration and fair competition, rather than promote them. Enforced adherence to
19 older terms negotiated in a different competitive and operating environment is not in
20 Oregon consumers' best interest.

²¹ 360networks/100, Adams/ 8-9.

²² It must also be pointed out that as multiple amendments are added to an ICA, it becomes increasingly more difficult for both parties to properly administer the ICA.

1 **Q. AS CONDITION 9, THE CLECS WANT TO USE PRE-EXISTING**
2 **INTERCONNECTION AGREEMENTS AS THE BASIS FOR NEGOTIATING A**
3 **NEW REPLACEMENT INTERCONNECTION AGREEMENTS. IS THIS**
4 **CONDITION NECESSARY?**

5 A. No. As I addressed on Staff's conditions, the CLECs have the right to propose an
6 existing ICA as the starting point for negotiations. CenturyLink also has the right to
7 propose its suggested structure as well and should not be constrained before the fact from
8 doing so.

9
10 Notwithstanding the above, if the question is whether the combined company will
11 consider the use of existing terms and operations in a renegotiation process, the answer is
12 "of course." The existing terms came about for a reason, whether due to legal obligations
13 or as a result of bilateral negotiations. However, as we just discussed regarding Dr.
14 Frentrup's testimony, any renegotiation must consider changes of law, updating of
15 processes and capabilities that make the relationship function more smoothly, and
16 competitive industry issues and conditions that did not exist at the time of the first
17 negotiation. It would be inappropriate, for example, for the Commission to in effect pre-
18 approve agreements that may have been negotiated or arbitrated ten or more years ago as
19 complying with the FTA in 2010 or beyond. Again, ICA negotiations are governed by
20 and encouraged under §§ 251 and 252; it is inconsistent with applicable law and
21 underlying policies to impose restraints upon the negotiation process.

1 **Q. MR. DENNEY BELIEVES IT IS ACCEPTABLE TO USE EXISTING ICAS AS**
2 **THE STARTING POINT FOR REPLACEMENT ICA NEGOTIATIONS**
3 **BECAUSE THE MERGED COMPANY WILL BE PROTECTED BY**
4 **INCORPORATED CHANGE OF LAW PROVISIONS.²³ IS THIS TRUE?**

5 A. Only to a point. Change of law provisions only cover changes of law. Such provisions
6 do not address interpretation deficiencies within an existing ICA that were only
7 discovered *after* ICA implementation or that arose pursuant to technology or other
8 changes within the industry. In my experience, most ICA disputes are caused by the
9 parties asserting differing interpretations of specific or interrelated ICA terms. It is to
10 both parties' benefit to minimize disputes by renegotiating terms that do not lend
11 themselves to more than one interpretation.

12
13 **Q. DOESN'T PROPOSED CONDITION 9 ALSO ADDRESS ATTEMPTS TO**
14 **INSERT A NEW TEMPLATE INTO ICA NEGOTIATIONS THAT ARE**
15 **ALREADY UNDERWAY?**

16 A. Yes. Regarding negotiations for a replacement ICA that are in progress before the
17 Closing Date, I have already stated that CenturyLink has no plans to terminate and restart
18 negotiations with a different template. In any event, no condition or restriction on this
19 issue is needed because CenturyLink could not unilaterally impose new provisions or
20 terms on CLECs. CLECs retain the right to arbitrate if they disagree with any proposal
21 made during the negotiation process, and the Commission will retain the jurisdiction to
22 determine the appropriate resolution of any such disagreement through the existing § 252

²³ Integra/1, Denney/24.

1 arbitration process and applicable legal standards. Because the CLECs have the
2 protection of applicable law, no concession is needed.

3
4 **Q. CONDITION 10 WOULD PERMIT CLECS TO OPT INTO A QWEST**
5 **AGREEMENT IN NON-QWEST LEGACY AREAS. IS THIS CONSISTENT**
6 **WITH THE EXPECTATONS OF THE PARTIES THAT NEGOTIATED THE**
7 **QWEST AGREEMENT OR THAT NEGOTIATED THE AGREEMENTS IN**
8 **NON-QWEST LEGACY AREAS?**

9 A. No. As an initial matter, I will again note that agreements are entered into between
10 specific legal entities and such terms cannot be involuntarily imposed on a non-signatory
11 third party legal entity. Once again, the CLECs are asking for the right to unilaterally
12 terminate contracts that they voluntarily negotiated and signed with CenturyLink, and to
13 cherry-pick the best ICA terms from the Qwest agreements for themselves outside of the
14 standard negotiation process. The CLECs attempt to get terms they may perceive as
15 more accommodating, without having to negotiate and arbitrate whether the other terms
16 are even appropriate for the ILEC at issue or whether the contract on balance is one both
17 parties would agree upon. Again, the Commission should be wary of determining that
18 agreements with one company comply with the FTA's requirements for another company
19 without examining each proposed agreement individually under the FTA's existing
20 negotiation and, if necessary, arbitration processes and standards.

21
22 As I addressed in regards to Staff's conditions, CenturyLink's and Qwest's ICAs were
23 negotiated with the particular network and facilities in mind, and it would be contrary to

1 the parties' expectations that an ICA could be involuntarily and arbitrarily imposed upon
2 another entities' network and facilities. It would also be contrary to the review and
3 approval process conducted by the Commission; in other words, that the Commission
4 reviewed and approved Qwest ICA terms as only applicable to Qwest and its network,
5 systems, processes and costs, and not to CenturyLink and its network, systems, processes,
6 and costs. Finally, referring back to my initial answer to the question, post-merger, the
7 Qwest and legacy CenturyLink ILECs will be operated as separate legal entity affiliates.
8 So this proposed condition is really an attempt to circumvent contractual obligations and
9 bind a third party legal entity to a contract it did not negotiate and may not be able to
10 accommodate.

11
12 **Q. DOES DR. FRENTRUP'S DEMAND THAT CLECS BE ALLOWED TO ADOPT**
13 **ANY EXISTING ICA OF ANY CENTURYLINK AFFILIATE, EVEN IF THAT**
14 **AFFILIATE IS LOCATED IN ANOTHER STATE, COMPORT WITH THE**
15 **CIRCUMSTANCES UNDER WHICH THE ICAS WERE NEGOTIATED AND**
16 **APPROVED?**²⁴

17 A. No, and that condition is neither necessary nor appropriate for this Transaction. Not all
18 negotiated terms can technically and logically be applied to all companies and in all
19 jurisdictions, or to Oregon specifically.²⁵ All sorts of questions abound about how state-
20 specific terms for one legal entity ILEC would apply in Oregon. For example, other state
21 commissions have made differing substantive rulings to address competitive conditions

²⁴ Sprint/1, Frentrup/28-30.

²⁵ For example, a carrier may port a Qwest agreement with §271 obligations, e.g., performance penalty plans and change management process. Such a condition would allow a carrier to place §271 obligations on CenturyLink's territories which are not required by law.

1 specific to those states. As I mentioned when discussing Staff's suggested conditions,
2 importing terms from another state could allow the CLECs to effectively ignore or
3 inappropriately modify Oregon rulings on specific issues. Accordingly this proposal
4 ignores prior Commission decision in this area.

5
6 Because the issue before this Commission is the impact of the merger on the Oregon
7 public interest, it is unreasonable and unnecessary to take terms directed to operations in
8 another state and impose them on CenturyLink's ILEC operations in Oregon. Further, it
9 is not rational, reasonable, or required by §251 for the Commission to order CenturyLink
10 and Qwest to allow competitors to cherry-pick the best ICA terms for themselves outside
11 of the standard negotiation process, merely because CenturyLink and Qwest are engaging
12 in a merger.

13
14 Second, conditions negotiated and agreed to in other states result from a myriad of
15 different circumstances and considerations. For example, the ICA terms of a rural
16 Louisiana CenturyLink affiliate were negotiated with an understanding of Louisiana
17 issues, not with any expectation that they would govern the provision of services by a
18 post-merger Qwest affiliate as it operates as a Bell Operating Company in Oregon. Even
19 if one can get past some of the logistical and practical questions of which conditions
20 could theoretically be applied to CenturyLink's ILECs in Oregon, there still remains the
21 fundamental problem of the lack of fairness in simply imposing such a broad condition
22 under the facts of this particular Transaction and under the statutory standard of review.

1 **Q. SEVERAL OF THE CONDITIONS, SPECIFICALLY 21, 23, 26, AND 27, SPEAK**
2 **TO REQUIRING CENTURYLINK TO COMPLY WITH APPLICABLE LAW**
3 **AND AGREEMENT TERMS. MR. DENNEY THINKS THE MERGED**
4 **COMPANY SHOULD NOT HAVE ANY ISSUE WITH AGREEING TO THIS**
5 **TYPE OF CONDITION.²⁶ WHY IS AGREEING TO COMPLY WITH THE LAW**
6 **AN ISSUE FOR CENTURYLINK?**

7 **A.** If the conditions requested stopped at wanting compliance with applicable law and
8 agreement terms, then the conditions would be acceptable for CenturyLink. Of course, if
9 the conditions merely required compliance with the law it really is a non-issue that would
10 not require any Commission order since we must comply with the law regardless. What
11 the CLECs have done, however, is much more than ask for compliance with applicable
12 law and agreement terms. They want to establish substantive terms and conditions that
13 are not required by applicable law and can be or have been subject to negotiation or
14 arbitration. These issues -- 911, LNP, network construction and maintenance and the
15 provision of copper loops -- all have specific requirements in 47 CFR § 51 and are also
16 covered within the ICAs that the CLECs have voluntarily negotiated and signed, or that
17 have already been arbitrated and approved by the Commission Once again, the
18 Commission should not permit the CLECs to add new obligations, and unilaterally
19 impose conditions that are more expansive than those required by the law or contractual
20 terms.

²⁶ Integra/1, Denney/28-29.

1 **Q. CONDITIONS 12 AND 14 WANT CENTURYLINK TO WAIVE ALL 251 (f)**
2 **RURAL EXEMPTIONS AND NOT CHANGE THE STATUS OF ANY IMPAIRED**
3 **CENTRAL OFFICES. DO THESE TOPICS INDIVIDUALLY REQUIRE A**
4 **THOROUGH COMMISSION REVIEW AND SUBSEQUENT FINDING?**

5 **A.** Yes. As an initial matter, CenturyLink and Qwest have legal rights granted by the FTA
6 and the FCC, and the CLECs' proposed condition would thwart the important public
7 policies underlying those rules.²⁷ Further, the rural exemption and central office
8 impairment issues require petitions to the Commission, a Commission review of all
9 pertinent facts and mitigating factors, and a subsequent finding. Those legal processes
10 should not be circumvented. This proceeding is not the proper forum to submit the
11 documentation required by law and to conduct the necessary reviews necessary for the
12 required Commission determinations. The CLECs should not be permitted to tell the
13 Commission it should take short cuts with the law, much less ones that do not serve any
14 public interest benefit related to this Transaction.

15
16 **Q. ALSO BROUGHT UP IN THE CONTEXT OF THE LEGACY RURAL STATUS**
17 **OF SOME CENTURYLINK AFFILIATES, ON PAGES 15 AND 16 OF HIS**
18 **DIRECT TESTIMONY, MR. THAYER DISCUSSES TRAFFIC PUMPING.**
19 **WHAT RELEVANCE IS THIS TESTIMONY TO THE MERGER**
20 **PROCEEDING?**

²⁷ For example, not imposing below cost rates on ILECs when CLECs have viable alternatives and the FCC policies aimed at encouraging facilities-based carriers.

1 A. None. CenturyLink does not engage in such practices and Mr. Thayer admits this is the
2 case.²⁸ Furthermore, it is my understanding Qwest continues its pursuit of cases against
3 traffic pumping CLECs in Minnesota, Iowa, and South Dakota, and is vigorously
4 contesting before the FCC any and all forms of traffic pumping, despite the existence of
5 the merger.²⁹ This testimony is unfounded speculation that is meant to impose an
6 unnecessary condition when the facts show to the contrary that no condition is needed.

7
8 **Q. CONDITION 24 APPEARS TO DENY CENTURYLINK THE ABILITY TO**
9 **CHARGE FOR PROVIDING CERTAIN SERVICES TO THE CLECS. IS THAT**
10 **APPROPRIATE?**

11 A. No. As an initial matter, setting charges for services provided to CLECs is an extremely
12 complex and fact-intensive process; it has nothing to do with mergers and is raised
13 merely to be a distraction. Second, independent of the proposed merger, these very
14 issues have already been arbitrated in other state venues, and the rates at issue as
15 contained in interconnection agreements have been approved by state commissions,
16 including Oregon's, as non-discriminatory, compliant with the Telecom Act, and in the
17 public interest.³⁰ To the extent the arbitrating CLECs lost the issues in those venues,

²⁸ Level 3 Communications/100, Thayer/16.

²⁹ See In the Matter of the Complaint by Qwest Communications Company, LLC against Tekstar Communications, Inc. regarding Traffic Pumping, MPUC Docket No. P-5096, 5542/C-09-265; Qwest Communications Company LLC v. Tekstar Communications, Inc., Free Conferencing Corp. and Audiocom, LLC, USDC Case No. 10-cv-490-MJD-SRN; and Qwest Communications Corporation v. Superior Telephone Cooperative, et al., IUB Docket No. FCU-07-2.

³⁰ See for example, AAA Case No. 51 494 Y 00524-07; Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP's Petition for Arbitration with CenturyTel of Eagle, Inc, Colorado Public Utilities

1 what they seek here is to circumvent the arbitration process under applicable law and
2 have their proposed outcome imposed upon CenturyLink in an unrelated proceeding. Mr.
3 Pruitt's testimony demonstrates the inappropriateness of this tactic. Mr. Pruitt devotes a
4 significant percentage of his testimony³¹ to repeating arguments that Charter has made in
5 arbitrations in other states. This is not an arbitration proceeding; it is a merger
6 Transaction approval proceeding, and not the proper forum for raising these issues.

7
8 **Q. ARE THE CLECS ATTEMPTING TO IMPOSE CONDITIONS THAT ARE**
9 **CONTRARY TO APPLICABLE LAW?**

10 **A.** Based on the facts as I understand them, yes. The crux of the NID rate issue, for
11 example, is whether a CLEC can unilaterally use CenturyLink's NIDs for free, or
12 whether a CLEC must submit an order to CenturyLink and compensate CenturyLink for
13 the use of its unbundled NID element to house all or a portion of the interconnection with
14 a customer who elects to obtain telephone service from a CLEC rather than from
15 CenturyLink. I will not provide a complete discussion of this issue such as would be
16 made in an ICA arbitration setting but, in brief, CenturyLink does not dispute a CLEC's
17 right to access the customer access side of the NID for the purpose of disconnecting the
18 customer's inside wire from CenturyLink's local loop. Further, CenturyLink does not
19 seek any compensation from a CLEC with regard to such access or disconnection
20 activity. However, if a CLEC places its facilities in CenturyLink's NID and thus uses the

Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Oregon, Inc., Oregon Public Utility Commission ARB 830.

³¹ Charter/1, Pruitt/1-40.

CenturyLink NID as an unbundled network element, compensation is properly payable to CenturyLink.

Q. WHAT IS THE BENEFIT TO A CLEC OF ATTACHING ITS FACILITIES TO THE PREMISE INSIDE WIRING WITHIN THE CENTURYLINK NID?

A. By using CenturyLink's property, the CLEC avoids the cost of purchasing and installing its own NID.

Q. DOES A CLEC HAVE ANY OTHER CONNECTION OPTIONS BESIDES INSTALLING ITS OWN NID OR USING CENTURYLINK'S NID UNE?

A. Yes. Except for very unusual wiring installations, a CLEC can connect to the inside wiring at any location within the premises; such as the jack nearest the placement of the cable modem for most cable CLECs.

Q. IS THERE ANY APPLICABLE RULE THAT ADDRESSES THIS POINT?

A. Yes. For example, 47 CFR § 51.319(c), addresses the NID as a UNE:

...an incumbent LEC also shall provide nondiscriminatory access to the network interface device *on an unbundled basis*, in accordance with section 251(c)(3) of the Act and this part. The *network interface device element is a stand-alone network element* and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier *to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device*, or at any other technically feasible point. [Emphasis added]

§ 51.307(c) indicates that any use of a UNE whatsoever is included in the UNE definition:

1 . . . access to an unbundled network element, along with *all of the unbundled*
2 *network element's features, functions, and capabilities*, in a manner that allows
3 the requesting telecommunications carrier to provide any telecommunications
4 service that can be offered by means of that network element. [Emphasis added]

5 And finally, § 51.509(h) indicates that there is a price for the stand alone NID UNE:

6 An incumbent LEC must establish a *price* for the network interface device when
7 that unbundled network element is purchased on a stand-alone basis pursuant to
8 Sec. 51.319(c). [Emphasis added]

9
10 **Q. CONDITION 24 WOULD PREVENT LEGACY CENTURYLINK FROM**
11 **ASSESSING A SERVICE ORDER CHARGE FOR ORDERS SUBMITTED FOR**
12 **NUMBER PORTING PURPOSES. IS THAT REASONABLE?**

13 A. No, for two reasons. First, any setting of rate elements by the Commission should be
14 thoroughly examined in the context of a cost docket. Second, it is consistent with the
15 cost recovery provisions of the FTA for one party to recover the administrative costs of
16 service order activity from the other party when that party requests the processing of a
17 number port or any other service ordered and performed pursuant to the terms of the
18 Agreement.³² As the FCC³³ and several other state agencies³⁴ have held, the
19 administrative processing costs that are the subject of this issue are an incidental
20 consequence of number portability, and are not costs directly related to providing number

³² An administrative service order charge is assessed on *all* orders and is therefore not a local number portability “surcharge” as Mr. Pruitt asserts at Charter/1, Pruitt/12.

³³ In the Matter of Telephone Number Portability and BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, released April 13, 2004 in CC Docket No. 95-116.

³⁴ See for example, Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP's Petition for Arbitration with CenturyTel of Eagle, Inc., Colorado Public Utilities Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Oregon, Inc. Oregon Public Utility Commission ARB 830.

1 portability. Recovery of these costs is competitively neutral in that they apply to both
2 carriers when either makes a request of the other. The CLECs only make this charge an
3 issue because they assume they will be sending more porting orders than CenturyLink,
4 and as the greater cost-causer, they seek to avoid paying CenturyLink for services
5 performed at CLEC's request.

6
7 **Q. MR. PRUITT ASSERTS THAT CHARTER MUST SPEND SIGNIFICANT TIME**
8 **AND EXPENSE TO IDENTIFY AND DISPUTE THESE SERVICE ORDER**
9 **CHARGES.³⁵ IS THIS REALLY AN ISSUE?**

10 A. Where this charge is contained in an ICA, it has been either agreed upon or approved by
11 the reviewing regulatory agency as consistent with the public interest. The Commission
12 can see therefore, that this is not the "anticompetitive practice" that Charter claims it is.
13 The assessment of service order charges is not an appropriate issue to resolve in a merger
14 proceeding but rather one best left to ICA negotiations.

15
16 **Q. IN THEIR PROPOSED CONDITIONS, THE CLECS ALSO REFERENCE**
17 **ELIMINATING DIRECTORY LISTING CHARGES. ISN'T THIS ISSUE**
18 **SIMILAR TO THE OTHER SERVICE ORDER CHARGES THAT THEY SEEK**
19 **TO AVOID?**

20 A. Yes, and as with the administrative service order charge, the directory listing fees are
21 independent of and irrelevant to this Petition. It is instructive to know, however, that the
22 CLECs seeking to use CenturyLink's services without cost already have an option to

³⁵ Charter/1, Pruitt/12-14.

1 submit directory listings directly to the same third party directory publishers and DA
2 providers that are used by CenturyLink, with no involvement of CenturyLink in the
3 process, and therefore no charges assessed by CenturyLink. And, like other rate issues
4 for specific services, this issue is best left to the § 251 negotiations and arbitration
5 process that is specifically established in the FTA for just such an obligation and through
6 which the issues can be fully developed and explored.

7
8 **Q. IS A SINGLE POINT OF INTERCONNECTION (“POI”) PER LATA FOR**
9 **TRAFFIC EXCHANGE WITH ALL CENTURYLINK AFFILIATES IN THAT**
10 **LATA (CONDITION 28) A REASONABLE REQUEST?**

11 A. No. The CLECs’ demanded condition here attempts to take a relatively complex issue
12 that has a lengthy and complicated body of decisions, and once again circumvent the
13 FTA’s prescribed process for resolving the issue by having this Commission use a merger
14 review proceeding as a vehicle to grant the CLECs a competitive advantage.³⁶

15
16 The CenturyLink ILECs have long maintained that the FCC’s decision in the
17 Southwestern Bell (“SWBT”) §271 Order that first articulated a requirement that CLECs
18 be permitted to interconnect at a single POI per LATA does not apply to non-RBOCs
19 such as CenturyLink. This is therefore not a “rural” vs. “non-rural” issue as Mr. Pruitt

³⁶ At Charter/1, Pruitt/27, Mr. Pruitt admits that Charter made the POI obligation an arbitration issue in Wisconsin. Charter lost that issue when the Wisconsin Commission declared Charter must establish a POI within the network of each legal entity CenturyLink affiliate and that doing so would provide no barrier to Charter’s ability to complete. Charter Fiberlink, LLC Petition For Arbitration Of Interconnection Rates, Terms, Conditions, And Related Arrangements With The CenturyTel Non-Rural / Rural Telephone Companies Of Wisconsin Pursuant To 47 U.S.C. § 252(B); Dockets 5 MA-148 and 5 MA-149 at page 90

1 characterizes³⁷ but a §271 interpretation issue. Nevertheless, it is not the single POI per
2 LATA as articulated by the FCC in that SWBT §271 Order that the CLECs really seek.
3 In SWBT's case, the issue of a single POI per LATA did not involve the transport of
4 traffic between separate legal entities. What the CLECs really desire is a condition that
5 requires CenturyLink to accept a CLEC's traffic in the territory of one CenturyLink ILEC
6 within a LATA and then transport that traffic to any other CenturyLink ILEC that has
7 territory in that LATA. The CenturyLink Oregon ILECs are separate legal entities,
8 however, that cannot legally be forced to be collectively bound to agreement terms under
9 the FTA and FCC Orders.³⁸

10
11 It might be less expensive for a CLEC to place a single switch in one CenturyLink ILEC
12 territory and then build or (more likely) lease some transport from the other CenturyLink
13 ILECs' territories in order to connect to the first ILEC, rather than establish POIs in each
14 of the CenturyLink ILEC's respective territories. But the CenturyLink ILECs have not
15 built their networks that way, and they typically do not own transport networks between
16 separate ILEC territories. Furthermore, the FTA does not require a CenturyLink ILEC to
17 transport local traffic outside of its certificated territory much less to build facilities if
18 they do not exist. And the FTA does not require an ILEC to provide a form of
19 interconnection or network configuration for the transport of traffic that is superior to
20 what the ILEC provides to itself over its existing network. Each CenturyLink ILEC is

³⁷ Charter/1, Pruitt/36. Additionally, Mr. Pruitt is factually incorrect in stating CenturyLink has seventeen (17) operating companies in Wisconsin. CenturyLink has nine rural and three non-rural operating companies in Wisconsin; CenturyLink has three operating companies in Oregon.

³⁸ Level 3's proposed condition 4 is merely another restatement of this same inter-affiliate transport issue. Level 3 Communications/100, Thayer/17-20.

1 entitled to require that interconnection occur on its network. This proposed condition
2 therefore ignores both the associated legal and technical limitations. Even if the FCC's
3 single POI per LATA "requirement" were clearly applicable to CenturyLink, which it is
4 not, the right to a single POI is not unlimited or clearly applicable in all situations.
5 Federal regulations permit only technically feasible interconnection, and based on
6 network configurations and traffic volumes, at some point interconnection at a particular
7 point on the network may become legally and technically "infeasible." This is one reason
8 why ICAs often have traffic thresholds that dictate when an additional POI must be
9 implemented.

10
11 And once again, the CLECs' proposed condition is not related to any issues that can
12 genuinely be attributed to the impact of the merger on Oregon. An interconnection
13 negotiation or arbitration is the appropriate forum to address the issue of a single POI per
14 LATA, and the Commission should reject the CLEC's attempt in this proceeding to
15 unilaterally impose such a complex and onerous interconnection obligation on
16 CenturyLink and Qwest.

17
18 **Q. IS CONDITION 15, ASKING FOR CONTACT INFORMATION, A SIMPLE AND**
19 **STRAIGHTFORWARD REQUEST?**

20 A. No. Providing and updating the contact information is not an issue. As I testified in
21 regards to Staff's suggested conditions, this already occurs today under CenturyLink's
22 and Qwest's existing CMP processes. Once again, however, the CLECs attempt to go
23 beyond a simple issue and impose new requirements. In this condition, the CLECs want

1 imposed timeframes. The subjects of contact information provision and notice are
2 already covered in ICA terms and those terms will govern any required timeframes. The
3 CLECs should not be permitted to impose new conditions that modify negotiated
4 agreements that are already in place, and to do so without clear and compelling evidence
5 that this protects the public interest from a probable and real harm.

6
7 **Q. WHAT IS THE NEXT GROUP OF PROPOSED CLEC CONDITIONS THAT**
8 **YOU WILL ADDRESS?**

9 A. I will address the CLECs' proposed OSS conditions, which are 16, 19, and 20. I have
10 already touched upon OSS earlier in my testimony but I will now explore this topic in
11 more detail.

12
13 **Q. IN CONDITIONS 16, 19, and 20 THE CLECS SEEK TO BIND THE POST-**
14 **MERGER COMPANY TO A LITANY OF OSS OBLIGATIONS. ARE THESE**
15 **REASONABLE REQUESTS?**

16 A. No. The Transaction itself will not change any of the rights or obligations of any party,
17 and CenturyLink and Qwest will abide by their OSS obligations. As I previously stated,
18 no harm to CLECs will result from the Transaction, and it is unreasonable to impose an
19 arbitrary moratorium upon potential integration practices that could otherwise provide
20 compliant services to CLECs and result in efficiencies for the combined company.

21
22 As an initial matter, both CenturyLink and Qwest take very seriously their wholesale
23 provisioning obligations and opportunities. Wholesale provisioning is governed by a
24 comprehensive array of existing regulations, laws, and contracts, and the Commission

1 should not impose conditions that change the legal obligations or voluntary agreements
2 that the parties have previously entered into. Beyond legal obligations, however, serving
3 wholesale customers is important to each company and is crucial to the future of the
4 combined company. CenturyLink and Qwest are each dedicated to having strong OSS
5 for wholesale operations, and they have long satisfied their various legal obligations.
6 There is no reason to assume that they will suddenly abandon their responsibilities
7 following the close of this Transaction.

8
9 The merger is intended to bring about improved efficiencies and practices in all parts of
10 the combined company, so changes could be expected over time. However, any changes
11 will occur only after a thorough and methodical review of both companies' systems and
12 processes to determine the best system to be used on a going-forward basis from both a
13 combined company and a wholesale customer perspective. And, importantly, any
14 changes will comply with the companies' respective legal obligations, including the
15 obligation to coordinate such changes in advance through the Change Management
16 Process (CMP).

17
18 In the FCC's merger review proceeding, CenturyLink and Qwest have provided a sworn
19 statement that CenturyLink plans to continue operating both CenturyLink and Qwest
20 existing OSS uninterrupted for the immediate future until it completes its evaluation of
21 the best options for all stakeholders. This is expected to take 12 months at the very least.
22 It is reasonable and appropriate from a regulatory, business, and operational perspective
23 for CenturyLink and Qwest to evaluate the strengths and weaknesses of Qwest's and

1 CenturyLink's respective OSS, to consider the desires of the broad, multi-state base of
2 CLEC customers, and to analyze the logistical and economic factors that bear on whether
3 or how to migrate to a single OSS platform for all states. Wholesale customers in
4 CenturyLink areas and in Qwest areas will not face immediate changes in their existing
5 systems interfaces and existing OSS arrangements will not be disrupted. The post-
6 merger entities will continue to comply with existing requirements of the Act and any
7 reporting and testing obligations under law.

8
9 The CLECs claim that the CenturyLink OSS is inferior to the Qwest OSS, but provide no
10 support for their claim. Likewise, the CLECs imply CenturyLink does not have equal
11 OSS experience to that of Qwest. As CenturyLink and Qwest explained in their Reply
12 Comments in the FCC proceeding,³⁹ allegations about performance "differences"
13 between the Qwest and CenturyLink OSS are false, and the alleged limitations of the
14 CenturyLink OSS do not exist. Once again, the CLECs' testimony reveals that their
15 proposed conditions are not directed toward protecting against some verifiable potential
16 public interest harm in Oregon. The proposed Transaction will not change any operations
17 in the near term or obligations of any of the CLECs or of CenturyLink and Qwest, so
18 there is no new and likely harm which merits such a condition.

19
20 In the longer term, post-merger CenturyLink is dedicated to having industry-leading
21 OSS. Whether post-Transaction CenturyLink ultimately chooses an existing OSS or

³⁹ In the Matter of Application Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control; WC Docket No. 10-110

1 selects new systems should be left to be resolved through a refined analysis and the need
2 to respond to marketplace conditions, governed and controlled by existing laws and
3 contracts. For example, the geographic location of the CLEC may have an impact on
4 which system a particular CLEC desires. If a CLEC provides service in only the
5 southeastern part of the country (where Qwest does not operate), it might prefer the
6 CenturyLink OSS system. Likewise a CLEC in the southwest that provides service in
7 only Qwest's territory may want to continue to use the Qwest system. Moreover, if each
8 state commission approving the merger imposes a condition regarding the future OSS
9 system, there could be conflicting, state-specific mandates which will impede proper
10 selections of the most efficient and productive systems. These are just some of the
11 numerous factors that must be considered when making a decision on the future of any
12 OSS system. Accordingly, CenturyLink and Qwest recognize that any future changes to
13 OSS, if and when they occur, will require significant advance planning with wholesale
14 customers, and CenturyLink pledges to give its CLEC customers ample and adequate
15 notice of any future changes, consistent with its legal obligations and accepted business
16 practices.

17
18 Further, CenturyLink contends that it is wrong for CLECs to require onerous reporting
19 requirements, including those above and beyond anything required by current law or
20 regulation, and it is wrong to require new and special review by the FCC and
21 Commission. In a competitive world, CenturyLink's competitors should not have the
22 ability to decide what systems and functionalities are acceptable for CenturyLink
23 operations so long as CenturyLink's system complies with all requirements. This

1 condition might simply delay system and process upgrades that would provide a benefit
2 to the entire post-merger CenturyLink customer base, without addressing any issue that is
3 a merger-related harm. Accordingly, the CLECs' OSS proposed conditions are not
4 reasonable or pragmatic under all the facts and circumstances.

5
6 **Q. THE CLECS SEEM CONCERNED THAT THE MERGED COMPANY MAY**
7 **NOT MAINTAIN CURRENT WHOLESALE SERVICE QUALITY; THAT**
8 **WHOLESALE SERVICE QUALITY MAY BE A LOW PRIORITY; AND THAT**
9 **THERE MAY BE CUTBACKS.⁴⁰ CAN YOU EXPLAIN WHY CENTURYLINK**
10 **WILL NOT PERMIT SUCH OUTCOMES?**

11 A. Yes. The CLECs speculate that the merged company may integrate systems with less
12 functionality than now exists and will discontinue services or provide inferior access.⁴¹
13 None of these assertions explains how CenturyLink might chart such a path in defiance of
14 applicable law and binding contractual terms.

15
16 Further, the operating efficiencies for both CenturyLink and the CLECs are not mutually
17 exclusive. CenturyLink is committed to maximizing its internal efficiencies associated
18 with providing quality service to CLECs which also means that the CLECs benefit from
19 this efficiency. Thus the benefits of these efficiencies inure to the benefit of both
20 CenturyLink and the CLECs.

⁴⁰ Joint CLECs/8, Gates/30.

⁴¹ Joint CLECs/8, Gates/33.

1 **Q. IS THERE ANY OTHER CATEGORY UNDER WHICH YOU CAN GROUP**
2 **PROPOSED CLEC CONDITIONS?**

3 A. Yes. Several of the proposed CLEC conditions appear to be related to products and
4 services. These are proposed conditions 1, 2, 3, and 7.

5
6 **Q. OTHER THAN THE BEING RELATED TO THE RATES THE CLECS WOULD**
7 **PAY FOR ILEC SERVICES, IS THERE ANY OTHER COMMONALITY TO**
8 **THIS SET OF CONDITIONS?**

9 A. Yes. The CLECs propose several rate-associated conditions that are improper and are
10 plainly designed to give them competitive advantages rather than to address any
11 legitimate merger-related concerns. First, each of these rates should be carefully
12 determined in independent proceedings and are inappropriate for resolution here. The
13 Iowa Utilities Board recently made this same determination in the Windstream / Iowa
14 Telecom merger.⁴² As far as I am aware, the Oregon Commission has not imposed
15 wholesale rate changes as a part of any merger review. Next, the CLECs once again
16 argue that certain merger conditions should last an unprecedented seven years. The term
17 is unreasonable, and the effect would be irresponsible in a competitive market. The
18 combined company will continue to face substantial competition, including from much
19 larger carriers, which will discipline its pricing and market conduct. To hobble a
20 company's ability to make important financial business decisions for seven years would
21 not preserve or promote competition, but is more likely to hamper competition

⁴² Order Granting Motion To Strike, In Part, Denying Motion To Strike, In Part, And Requesting Additional Information , *In Re: Windstream Corporation And Minnesota Telecommunications Services, Inc., D/B/A Iowa Telecom* , Docket No. SPU-2009-00010, p. 10 (2010) (“ . . . the Board has consistently declined to decide rate-related issues in the context of a reorganization proceeding.”)

1 substantially by placing an unnecessary anticompetitive burden on one of the market
2 players.

3
4 All of these rate-related conditions are unnecessary. The CLECs do not attempt to portray
5 these conditions as legitimate merger concerns and, in any event, rate setting procedures,
6 including proper review and oversight, are already well established in applicable law and
7 Commission rules,⁴³ and thus no conditions related to rates are necessary. These
8 proposed conditions appear to be attempts to circumvent applicable law and rules to
9 increase CLEC profitability through terms CLECs are unlikely to gain under the current
10 regulatory reviews and processes.

11
12 **Q. WOULD YOU PLEASE SUMMARIZE FOR THE COMMISSION YOUR**
13 **CONCLUSIONS ABOUT THE TERMS SOUGHT BY CENTURYLINK'S**
14 **COMPETITORS IN THIS PROCEEDING?**

15 A. Yes. Each of the pricing issues raised by the CLECs can be reduced to a common theme.
16 The proposed conditions would allow the CLECs to improve their profit margins by
17 shifting their legitimate costs of doing business onto CenturyLink. Each and every
18 condition places a cost on CenturyLink. If the CLECs request work to be performed or
19 want to use CenturyLink property to avoid purchasing their own property, the FTA
20 compels compensation for what is requested or used. If the CLECs believe that there are

⁴³ The Commission should note that through Mr. Adams's testimony, the CLECs question the ability of the Commission to provide proper oversight of any prospective tariff changes. "Similarly, honoring the tariff until the merger closes does not mean that the Merged Company will not soon thereafter seek to increase or change rates, terms or conditions for private line services upon which providers such as 360networks rely; it simply means that *the Merged Company plans to follow the existing processes to change rates.*" 360networks/100, Adams/66. [emphasis added]

1 any legitimate concerns regarding the charges to be levied, the proper forum for
2 investigating them is through negotiations and arbitration of ICA terms, not in the context
3 of a merger approval proceeding.
4

5 **Q CONDITION 11 SEEKS TO SET PROVISIONING INTERVALS. CAN YOU**
6 **COMMENT ON THIS DEMAND?**

7 A. CLEC provisioning intervals reflect retail provisioning intervals for the same or like
8 services because federal law requires a carrier to treat all customers at parity. The
9 CLECs want priority for their needs over those of CenturyLink's end user subscribers
10 and wholesale tariff customers.
11

12 I previously discussed how the legacy OSS and other processes will remain in place for a
13 period of time post-merger. The legacy intervals are inherent in the legacy processes and
14 systems. The Company cannot change existing provisioning intervals for its separate
15 operating subsidiaries without significant process or systems improvements. Most
16 basically, I note that the CLECs have demonstrated no harm to Oregon or Oregon
17 customers resulting from the continuation of the existing provisioning intervals.
18

19 **Q. CAN THE MERGED COMPANY BE CLASSIFIED AS A BOC AS THE CLECS**
20 **DEMAND IN CONDITION 13?**

21 A. No. The definition of "BOC" is a matter of federal law and a state agency like the
22 Commission is not able to alter that definition. As CenturyLink witness John Jones
23 explains in his testimony, the merged company will not be a BOC. Qwest Corporation is

1 a BOC as the successor to US West, and it remains a BOC, but the legacy CenturyLink
2 ILECs are not BOCs and will not become BOCs after this Transaction.

3
4 **Q. IN CONDITIONS 17 AND 18, THE CLECS SEEK TO DICTATE THE NUMBER**
5 **OF WHOLESALE EMPLOYEES ON THE CENTURYLINK PAYROLL AND**
6 **ALSO, IN 17, DICTATE CERTAIN PROCESSES. SHOULD THEY BE**
7 **ALLOWED TO DO THAT?**

8 A. No. After arguing for the greatest and best automation of processes, the CLECs now
9 suggest the Company cannot be allowed to reduce its costs through attrition of employees
10 whose functions have been automated or are redundant, and must retain some legacy
11 processes rather than determine if the processes can be automated or improved to benefit
12 both the company and the CLECs. Qwest witness Bob Brigham also notes that Qwest
13 has been reducing its headcount in wholesale operations even as the Company has grown
14 more effective, and as the Qwest penalty payments in Oregon on its QPAP have declined
15 sharply. There is no rationale for this demand other than not allowing the merged
16 company the opportunity to control its costs appropriately and therefore ensure the
17 company has a more difficult time competing financially.

18
19 **Q. CONDITION 29 SEEMS TO BE A “MOST FAVORED NATION” (“MFN”)**
20 **CATCHALL. IS AN MFN CONDITION ACCEPTABLE TO THE COMPANY?**

21 A. No. An MFN condition is neither necessary nor appropriate for this Transaction. FCC
22 conditions, if any, that are *generally* applicable to the post-merger CenturyLink’s
23 operations will automatically apply to CenturyLink’s operations in Oregon even in the

1 absence of an MFN clause in this Commission's Order. However, not all possible FCC-
2 imposed conditions will automatically apply to all jurisdictions, as not all conditions can
3 logically or legally be applied to all jurisdictions, or to Oregon specifically. This
4 limitation on a condition's universal applicability is equally true for conditions that may
5 be imposed by another state.

6
7 For example, hypothetically, another commission that is reviewing this merger in a state
8 where Qwest operates as an RBOC, where there is no legacy CenturyLink presence, and
9 where the review is occurring under a totally different legal standard and a totally
10 different set of facts (e.g., level of market dominance, service quality performance,
11 pricing regulations, CLECs with different issues, etc.) might order a condition that
12 requires Qwest to maintain certain retail rates for a period of time regardless of Qwest's
13 existing legal authority to increase those rates. Now, assume that CenturyLink's rates for
14 those retail services in Oregon are below Qwest's rates in that other state, but that
15 CenturyLink has the legal authority in Oregon to raise its rates.

16
17 First, there is no logic to any suggestion by the CLECs that it would be fair or equitable
18 or legal to impose an MFN condition and then limit the CenturyLink ILECs' ability to
19 raise their retail rates in Oregon to match the Qwest rates in the other state as an MFN
20 consequence. All sorts of questions abound about how such a condition would apply in
21 Oregon, where the Commission's rate regulation jurisdiction is sharply limited (e. g.,
22 could the CenturyLink ILEC raise its rates, but only to the level of the Qwest rates? Are
23 the existing CenturyLink retail rates frozen because the Qwest rates in the other state are

1 frozen? What impact if any do differing state regulations on ILEC earnings have on this
2 issue? Can any condition related to rate regulation in another state be imported into
3 Oregon?). Again, the issue before this Commission is essentially about the impact of the
4 merger on the Oregon public interest, under Oregon law, so it is unreasonable to take
5 conditions imposed on Qwest's ILEC operations in another state and impose them on
6 CenturyLink's ILEC operations in Oregon.

7
8 Second, conditions imposed, or negotiated and agreed to, in other states result from a
9 myriad of different circumstances and considerations. Even if one can get past some of
10 the legal, logistical and practical questions of which conditions could theoretically be
11 applied to CenturyLink's ILECs in Oregon; there still remains the fundamental problem
12 of the lack of fairness in simply imposing such a broad condition under the facts of this
13 particular Transaction and the Oregon statutory standard of review.

14
15 Finally, an MFN condition restricts the incentive for both parties to negotiate state-
16 specific terms in Oregon and elsewhere, because the resulting terms may be imposed in
17 states where the conditions are impractical, overly costly, or unnecessary. So, to the
18 extent parties seek to negotiate terms that acknowledge state-specific needs, issues and
19 conditions, such negotiations would be stymied by such an MFN provision.

20
21
22

1 **Q. PLEASE COMMENT ON CONDITION 30 – THE CLEC PROPOSAL FOR**
2 **ALLOWING DISPUTES TO BE BROUGHT BEFORE THE COMMISSION.**

3 A. This condition is unnecessary. Every Oregon interconnection agreement already contains
4 language allowing a party to seek resolution of interconnection disputes before the
5 Commission at any time.

6
7 **Q. THE CLECS ASSERT THAT CENTURYLINK AND QWEST WANT TO**
8 **DELIBERATELY DRIVE UP THE TRANSACTION-RELATED COSTS FOR**
9 **THE CLECS. MR. GATES CITES CENTURYLINK AND QWEST’ REFUSAL**
10 **TO AGREE TO A STREAMLINED DISCOVERY PROCESS AS AN**
11 **EXAMPLE.⁴⁴ CAN YOU COMMENT?**

12 A. Yes. First, I believe it makes no sense to equate litigation discovery disputes to the actual
13 operation of a business and there were legitimate reasons to disagree with this request as
14 the reply letter from CenturyLink and Qwest attorneys explained. But importantly, the
15 actual question asked of Mr. Gates that resulted in his testimony on the streamlined
16 discovery process was: “Do you have another example that suggests that *integration*
17 could harm CLECs?” [emphasis added] The pre-merger approval discovery process has
18 nothing to do with any speculative *harm* that could be caused by the integration of
19 CenturyLink’s and Qwest’s operations.

⁴⁴ Joint CLECs/8, Gates/73-78.

1 **Q. ARE THERE ANY SPECIFIC LEVEL 3 PROPOSED CONDITIONS THAT**
2 **HAVE NOT BEEN SUFFICIENTLY COVERED IN THE DISCUSSION OF THE**
3 **OTHER PROPOSED MERGER CONDITIONS?**

4 A. Yes. Level 3 seeks to impose an obligation for the merged company to pay a reciprocal
5 compensation rate for all ISP-bound traffic inclusive of Virtual NXX. This is a topic
6 better addressed in a comprehensive arbitration proceeding. In fact, as Mr. Chris Viveros
7 states in his testimony, the Oregon Commission has already addressed this issue in
8 previous proceedings, including in Level 3's interconnection arbitration, Docket ARB
9 665.

10
11 Further, Mr. Thayer incorrectly states that CenturyLink has agreed to pay reciprocal
12 compensation for *all* ISP-bound traffic.⁴⁵ The legacy CenturyTel affiliates do not pay
13 reciprocal compensation to Level 3 for such traffic pursuant to ICA terms that were
14 negotiated between the parties.

15
16 What Mr. Thayer neglected to mention in his testimony regarding the legacy Embarq
17 ICA terms is that Embarq agreed to this payment because Level 3 agreed to POI terms
18 that favored Embarq, agreed to a lower rate than that set in the FCC's Remand Order, and
19 also agreed to use the lower rate in *all* of Embarq's states; including those where Embarq
20 had opted in to the higher Remand Order rate. In other words, the parties negotiated
21 holistic terms that reflected a give-and-take balancing of interests, just as Congress
22 intended with the FTA.

⁴⁵ Level 3 Communications/100, Thayer/12-13.

1
2 The separate CenturyLink affiliates and Level 3 already have existing ICAs that cover
3 any compensation obligations for such traffic. The Commission should not change the
4 terms of these ICAs just because Level 3 seeks a better deal than it agreed to in
5 negotiations or received in arbitrations.

6
7 **Q. LEVEL 3 CLAIMS LEGACY EMBARQ ENGAGES IN 8YY ACCESS**
8 **ARBITRAGE.⁴⁶ IS THIS TRUE?**

9 A. No. First, there are no rules that require a carrier to use the closest tandem, without
10 consideration of tandem ownership, for required database dips. The genesis of this issue
11 dates back to when Embarq was not a standalone ILEC but was a division of Sprint
12 Corporation. When a Sprint wireless subscriber made a call to an 800 number, Sprint's
13 management wanted the call to be dipped in the database owned by Sprint's Local
14 entities. Some limited transport charges do apply to this transited traffic but Mr. Thayer
15 is incorrect in asserting Embarq charges for "all the transport from the point of picking up
16 the call...and back..."⁴⁷ This is traffic that is sent to Embarq for handling and, like all
17 carriers, Embarq does charge for its services. Level 3 seeks to use Embarq to collect this
18 traffic, but then have Embarq "pass it on" to a lower cost provider for further handling so
19 that Level 3 can optimize its costs. As I stated, this is not required by any law or
20 industry rules. Given that this issue predates the CenturyTel acquisition of Embarq, if

⁴⁶ Level 3 Communications/100, Thayer/22.

⁴⁷ Id.

1 this is valid concern for Level 3, it is instructive to note that Level 3 never raised the
2 issue in that past merger.

3
4 **Q. MR. THAYER GETS INTO A DISCUSSION OF BILLING DISPUTE ISSUES TO**
5 **JUSTIFY A LEVEL 3 PROPOSED MERGER CONDITION.⁴⁸ IS THERE ANY**
6 **CREDENCE TO HIS TESTIMONY?**

7 A. No. Mr. Thayer's testimony on billing disputes, the fear that CenturyLink could
8 leverage existing billing disputes with one ILEC affiliate to slow or refuse to provision
9 new services by another ILEC affiliate, falls into the same category that we have seen
10 with other CLEC testimony; that is Mr. Thayer speculates what *might* happen instead of
11 relating any specific facts. Mr. Thayer also fails to state how the merged company would
12 engage in this speculative behavior in defiance of ICA terms that legally dictate the
13 operating relationship between Level 3 and a single legal entity CenturyLink affiliate.

14
15 **Q. DO YOU HAVE ANY FINAL THOUGHTS TO BRING TO THE**
16 **COMMISSION'S ATTENTION?**

17 A. Yes. The CLECs are attempting to use a merger approval proceeding to impose new and
18 specialized interconnection obligations upon CenturyLink and Qwest, obligations which
19 are not authorized by law, and which have not been obtained through good faith
20 negotiations or arbitrations under §§ 251 and 252 of the FTA. The Commission should
21 not permit CLECs to dictate terms different than those already negotiated and approved
22 by the Commission. For the foregoing reasons, and for the reasons stated in the Petition,

⁴⁸ Level 3 Communications/100, Thayer/26 regarding Level 3 proposed condition 6.

1 the Commission should promptly approve the proposed transfer of control without any
2 conditions.

3

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

5 A. Yes.

MERGER CONDITIONS SUGGESTED BY STAFF

Wholesale Services

30. *CenturyLink will honor, assume or take assignment of all obligations under Qwest's existing interconnection agreements. CenturyLink will not terminate, change the conditions of (with the exception of those governing expiration), or increase the rates in, any effective interconnection agreement during the unexpired term of the agreement, or for a period of four years from the Closing Date, whichever occurs later, unless requested by the non-ILEC interconnecting party, approved by the Commission, or required by a change of law. Furthermore, CenturyLink will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired, at least four years from the Closing Date, or the date of expiration, whichever is later.*
31. *CenturyLink will honor or assume all obligations in effect as of the Merger Filing Date under Qwest's current intrastate tariffs, including those for access services, and price lists for wholesale services. CenturyLink will not increase rates for such services for a period of at least four years from the Closing Date.*
32. *CenturyLink will continue to provide intrastate transit service in all ILEC territories subject to the same rates, terms, and conditions that were provided as of the Merger Filing Date unless approved or directed otherwise by the Commission.*
33. *No Qwest wholesale intrastate service offered to competitive carriers as of the Merger Filing Date will be discontinued for four years after closing of the transaction except as approved by the Commission.*

34. *CenturyLink and all of its ILEC affiliates will comply with the statutory obligations applicable to all incumbent local exchange carriers (ILECs) under 47 U.S.C. Section 251 and 252. In the legacy Qwest territory, CenturyLink will not seek to avoid any of its obligations on the grounds that it is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Act.*
35. *After the close of the transaction the legacy Qwest ILEC territory shall continue to be classified as a Bell Operating Company (“BOC”), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the “competitive checklist” set forth in Section 271(c)(2)(B) of the Act.*
36. *In the legacy Qwest ILEC territory, CenturyLink shall comply with all wholesale performance requirements for all wholesale services, including those set forth in regulations, tariffs, and interconnection agreements applicable to legacy Qwest as of the Merger Filing Date, unless otherwise directed by the Commission or agreed to by customers.*
37. *Following the Closing Date, CenturyLink shall continue to comply with the provisions of the Qwest Performance Assurance Plan (QPAP) that are in effect as of the Merger Filing Date for at least four years following the Closing Date, or such period as negotiated by any other party in this docket, whichever is longer. CenturyLink shall provide the monthly reports of wholesale performance metrics that Qwest currently provides to Staff and to each CLEC. Any changes to the PIDs or PAP must be approved by the Commission or agreed to by affected wholesale customers. Staff will monitor QPAP reported data and alert the Commission if service performance appears to be deteriorating from pre-merger levels.*

38. *After the close of the transaction, CenturyLink shall provide and maintain updated escalation information, contact lists and account manager information that is in place at least 30 days prior to the transaction close date. For changes to support center locations, wholesale customer-impacting organizational structures, or contact information, CenturyLink will provide at least 30 days advance written notice to all CLECs and Commission Staff.*
39. *CenturyLink will continue to make available to each wholesale carrier in the Legacy Qwest ILEC territory the types of information that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site, notices, industry letters, the change management process, and databases/tools.*
40. *CenturyLink will maintain the current Qwest Change Management Process (CMP), utilizing the terms and conditions set forth in the CMP Document. Pending CLEC Change Requests shall be completed in a commercially reasonable time frame.*
41. *CenturyLink shall ensure that Wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is comparable to that which was provided in the Legacy Qwest ILEC area prior to the transaction and to ensure the protection of CLEC information from being used for CenturyLink's retail operations.*
42. *The Merged Company shall allow a requesting competitive provider to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacements interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection*

agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement.

43. *In the Legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in Oregon, including agreements in evergreen status.*

PROPOSED CLEC MERGER CONDITIONS

Proposed CLEC Interconnection Related Conditions

6. *As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company's assumption or taking assignment of these obligations.*
 - a. *The Merged Company shall make available to requesting CLECs and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by CLEC, or required by a change of law.*
 - b. *In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.*
8. *The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in "evergreen" status, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.*
9. *The Merged Company shall allow a requesting competitive carrier to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacement interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.*
10. *In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state, including agreements in evergreen status. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection*

agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.

b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.

- 12. The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.*
- 14. For at least the Defined Time Period, the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.*
- 15. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or*

contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.

21. *The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
22. *The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
 - a. *When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.*
 - b. *The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].*
 - c. *The Merged Company shall not limit the number of ports that can be processed.*
23. *The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.*
24. *After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments, including:*

- a. Service order charges assessed upon CLECs submitting local service requests (“LSRs”) for number porting;*
 - b. Access or “use” fees or charges assessed upon CLECs that connect a competitor’s own self-provisioned loop, or last mile facility, to the customer side of the Merged Company’s network interface device (“NID”) enclosure or box; and*
 - c. “Storage” or other related fees, rents or service order charges assessed upon a CLECs’ subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.*
- 25. *The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
- 26. *After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company’s network.*
 - a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.*
 - b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.*
 - c. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.*
- 27. *The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state Commission. Line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state Commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current Commission approved rates unless and until a different rate is approved.*

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

Proposed CLEC OSS Conditions

16. *The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.).*
19. *In legacy Qwest ILEC territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:*
- a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company's plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink's previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to prevent those problems in the planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.*
 - b. For any Qwest system that was subject to third party testing (e.g., as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for*

the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.

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

20. *In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q. pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.*

Proposed CLEC Product and Service Related Conditions

1. *Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.*
2. *The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, "transaction related costs" shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.*
3. *The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.*
4. *In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also*

provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

- a. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or withdrawn for at least five years after the Closing Date and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (e.g., modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date ("Additional PAP").*
 - b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. For each month that the Merged Company fails to meet Qwest's average monthly performance for any of these metrics, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.*
- 5. For at least the Defined Time Period, in the legacy CenturyLink ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy CenturyLink as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy CenturyLink made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.*

- a. *The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company's average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company's average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.*
7. *Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.*
 - a. *The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.*
 - b. *In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.*

Miscellaneous Proposed CLEC Conditions

11. *To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.*
13. *In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the "competitive checklist" set forth in Section 271(c)(2)(B) and the obligation to*

ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.

17. *After the Closing Date, the Merged Company will maintain the Qwest Change Management Process ("CMP"), utilizing the terms and conditions set forth in the CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.*
18. *The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is equal to or superior to that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company's retail operations or marketing purposes of any kind. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company's employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.*
29. *All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.*
30. *In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.*