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September 23, 2010

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

Re: UM-1484

Dear Ms. Nichols Anglin:

Attached for filing please find an original and five (5) copies of Qwest's Corrected Rebuttal Testimony of Robert Brigham, filed September 21, 2010.

The correction made is to the *header only*; no testimony was changed.

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

Sincerely,

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

Carla M. Butler

Enclosures
cc: Certificate of Service

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

In the Matter of

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

REBUTTAL TESTIMONY

OF

ROBERT BRIGHAM

QWEST COMMUNICATIONS INTERNATIONAL, INC.

SEPTEMBER 21, 2010

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1

I. IDENTIFICATION OF WITNESS

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

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

8

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

11 A. No.

12

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

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

18 I began my employment with Qwest (formerly Mountain Bell and U S WEST) in
19 1976. Between 1976 and 1980, I held various positions in the Mountain Bell
20 Commercial (marketing) department. In 1980, I accepted the position of Analyst
21 in the Cost, Rates and Regulatory Matters department, working primarily on the
22 development of embedded cost data. In June 1987, I accepted the position of
23 Manager in the U S WEST Service Cost organization, with responsibility for
24 economic analysis and the development of incremental costing methodologies. In
25 September 1992, I accepted the position of Director- Product Cost Specialist, and
26 assumed responsibility for developing and supporting U S WEST cost studies in

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

12

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

15 A. Yes. I have submitted testimony before this Commission on several occasions.
16 Most recently, in 2005, I presented testimony in Docket No. UX 29.¹ I have also
17 testified in Docket No. UM 125,² Docket No. UT 138,³ Docket No. UM 773⁴ and
18 Docket No. UM 351.⁵

19

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

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

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

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

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

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

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

6 **II. PURPOSE OF TESTIMONY**

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

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

21

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

1

III. COMPETITIVE IMPACT OF THE MERGER

2

A. Intervenor Claims of Competitive “Harm”3 **Q.**

4

5

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

6 **A.**

7

8

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16

17 **Q.**

CAN YOU PROVIDE AN EXAMPLE OF THIS LACK OF EVIDENCE?

18 **A.**

19

20

21

22

23

24

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

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

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

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

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

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

⁸ Joint CLECs/8, Gates/6.

⁹ Joint CLECs/8, Gates/88.

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

¹¹ Joint CLECs/1, Ankum/38.

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

12
13 **Q. DO DR. MARINOS, MR. GATES AND DR. FRENTRUP MAKE SIMILAR**
14 **CLAIMS?**

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

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

¹³ Joint CLECs/1, Ankum/40.

¹⁴ Joint CLECs/1, Ankum/40.

¹⁵ Joint CLECs/1, Ankum/44.

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

¹⁷ Staff/500, Marinos/8-9.

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

8

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

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

¹⁸ Staff/500, Marinos/9.

¹⁹ Joint CLECs/8, Gates/37.

²⁰ Sprint/1, Frentrup/15.

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

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

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

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

6

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

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

23

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

1 A. Yes. Qwest has been providing outstanding service quality to CLECs over the
2 past years, even as it has been carefully monitoring and reducing its costs and
3 improving its balance sheet. On the wholesale side, Qwest payments based on the
4 QPAP have generally declined in Oregon over the years, as Mr. Williams
5 describes. This high level of service quality has occurred at the same time that
6 Qwest's total headcount has declined from approximately 41,000 in December
7 2004 to approximately 30,000 in December 2009.²¹ The bottom line is that
8 pressures to reduce costs and operate efficiently are not new phenomena resulting
9 from the merger; like every company, Qwest has always been under pressure to
10 keep costs as low as possible. Even so, Qwest has continued to improve
11 wholesale service quality while pursuing all available efficiencies. Given past
12 performance and the legal and contractual protections that CLECs already
13 possess, the intervenors' claims that any synergies realized by the combined
14 company and any potential future headcount reductions will harm wholesale
15 service quality are unfounded and represent nothing more than speculation.

16
17

C. The Competitive Environment in Oregon

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

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

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

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

9

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

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

²² Joint CLECs/1, Ankum/21.

²³ Joint CLECs/1, Ankum/21.

1

1. The Retail Market

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

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

16

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

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

²⁴ Joint CLECs/8, Gates/17.

²⁵ Sprint/1, Fentrup/5.

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

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

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

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

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

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

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

6

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

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

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

³¹ See, for example: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 21-26.

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

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

³² Dr. Dennis Weisman and Dr. Timothy Tardiff provide an example: “Consider, for example, a particular market in which the ILEC and a cable company compete. Suppose the cable company quickly garners 5 percent of the customers and the ILEC files for deregulation. There may be a tendency to conclude that the ILEC continues to maintain market power since it has 95 percent of the customers. And yet, if capacity is truly the relevant measure of market share, and both the ILEC and the cable company are able to address 100 percent of the customers, the ILEC’s market share is actually only 48.72 percent (95/(95 + 100))” See: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest’s Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 23-24.

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

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

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

³³ Sprint/1, Fentrup/4.

³⁴ Sprint/1, Fentrup/12.

³⁵ Sprint/1, Fentrup/12.

³⁶ Sprint/1, Fentrup/12.

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

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

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

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

23

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

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

³⁸ Staff/300, Reynolds/13.

³⁹ Staff/300, Reynolds/11.

1 **DISTANCE, ENTERPRISE AND BROADBAND MARKETS.”⁴⁰ PLEASE**
2 **COMMENT.**

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

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

⁴⁰ Sprint/1, Fentrup/3.

⁴¹ According to a recent study by Atlantic/ACM, the AT&T and Verizon combined share of the long distance market is more than 70% in the U.S., with the Qwest and CenturyLink share less than 10% combined. *Wireless Wins, Wireline Wanes: U.S. Telecom Wired and Wireless Sizing and Share 2010-2015*, Atlantic/ACM, 2010.

⁴² Sprint 2009 10K Report, filed February 26, 2010, p. 18. See: <http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-sec>.

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

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

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

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

⁴⁵ Qwest/1, Pepler/14.

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

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

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

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

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

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

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

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

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

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

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

⁴⁸ Staff/500, Marinos/4.

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

3

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

7 A. Yes. Dr. Ankum argues that:

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

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

17

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

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

⁴⁹ Joint CLECs/1, Ankum/45.

⁵⁰ *Id.*

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

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

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

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

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

⁵¹ Staff/500, Marinos/7.

⁵² *Id.*

⁵³ Staff/500, Marinos/8.

⁵⁴ *Id.*

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

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

19

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

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

⁵⁵ Includes retail and wholesale access lines, as of December 31, 2009.

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

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

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

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

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

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

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

16 **2. The Wholesale Market**

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

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

⁵⁷ Joint CLECs/1, Ankum/8.

⁵⁸ Joint CLECs/1, Ankum/8.

1

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

3 A. No. After the merger transaction is consummated, the Qwest subsidiary (QC) will
4 still be subject to Sections 251, 252 and 271 of the Telecommunications Act, just
5 as it is today. Thus, CLECs will have access to Qwest “last mile” facilities in all
6 Oregon wire centers. UNE loops will still be available to CLECs at TELRIC-
7 based prices⁵⁹ based on Section 251 of the Telecommunications Act in all wire
8 centers except those that this Commission has declared “non-impaired” based on
9 the FCC’s *Triennial Review Remand Order* (“*TRRO*”) criteria.⁶⁰ In Oregon, only
10 three wire centers—Portland Capitol, Salem and Eugene—have been declared
11 non-impaired for DS3 loops, and only one wire center—Portland Capitol—has
12 been declared non-impaired for DS1 loops.⁶¹ In all other wire centers, CLECs
13 may purchase unbundled loops at TELRIC-based prices.⁶² In the three “non-
14 impaired” wire centers described above, CLECs may purchase DS3 last-mile
15 facilities at non-TELRIC-based rates per Section 271 of the Telecommunications
16 Act, and in the Portland Capitol wire center, CLECs may purchase DS1 last-mile

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

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

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

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

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

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

12

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

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

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

⁶⁴ Joint CLECs/8, Gates/17.

⁶⁵ According to the FCC:

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

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

8

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

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

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

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

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

7 **3. Summary of Competitive Impact**

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

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

19 **C. Merger Benefits**

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

⁶⁷ Joint CLECs/1, Ankum/23.

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

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

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

⁶⁸ Joint CLECs/1, Ankum/10.

⁶⁹ Sprint/1, Frentrup/18.

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

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

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

15

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

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

⁷⁰ Sprint/1, Fentrup/18.

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

⁷² Joint CLECs/1, Ankum/60.

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

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

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

⁷³ Sprint/1, Frentrup/16.

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

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

3

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

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

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

⁷⁵ Joint CLECs/1, Ankum/35-36.

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

6 **IV. CONCLUSION**

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

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

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

20 A. Yes, it does.

21

CERTIFICATE OF SERVICE

UM 1484

I hereby certify that on the 23rd day of September, 2010, I served the foregoing QWEST'S CORRECTED REBUTTAL TESTIMONY OF ROBERT BRIGHAM, in the above entitled docket on the following persons via e-mail, and via U.S. Mail (on September 27th) by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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(w) denotes waiver of paper service

* denotes signed Protective Order No. 10-192

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