BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1484

In the Matter of CENTURYLINK, INC. Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.

TESTIMONY REGARDING STIPULATION

OF

TIMOTHY J GATES

ON BEHALF OF

tw telecom of oregon, llc, COVAD COMMUNICATIONS COMPANY, LEVEL 3 COMMUNICATIONS, LLC, AND CHARTER FIBERLINK OR–CCVII, LLC

PUBLIC VERSION

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HAS BEEN REDACTED

December 14, 2010

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I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING ON AUGUST 24, 2010, AND SUPPLEMENTAL TESTIMONY ON NOVEMBER 12, 2010?

A. Yes.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. My testimony is being filed on behalf of a number of competitive local exchange carriers ("CLECs"): tw telecom of oregon, llc, Covad Communications Company, Level 3 Communications, LLC, and Charter Fiberlink OR-CCVII, LLC (referred to in my testimony collectively as "Joint CLECs").

Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.

A. CenturyLink and Qwest have reached a proposed Stipulation, including settlement conditions, with the Staff of the Public Utility Commission of Oregon ("Staff") and Citizens' Utility Board of Oregon ("CUB").[1] Pursuant to the Administrative Law Judge's November 30, 2010, Conference Report and Ruling, the procedural schedule was amended to allow for the Stipulation to be filed, for testimony to be filed addressing the Stipulation,

[1] CenturyLink, Qwest, Staff and CUB are collectively referred to in my testimony as "settling parties."

and to reschedule the hearing. The Stipulation was filed on December 2, 2010,[2] and the parties to the Stipulation filed testimony in support of the Stipulation on December 8, 2010.[3] According to the Stipulation and testimony of the settling parties, the Stipulation and associated settlement conditions resolve the outstanding issues among the settling parties related to CenturyLink's proposed acquisition of Qwest, except for two.[4] The purpose of my testimony is to address the Stipulation and settlement conditions, as well as the settling parties' testimony in support of the proposed settlement. My testimony will explain why the Stipulation's settlement conditions do not adequately address certain concerns critical to the Joint CLECs – concerns that will lead to merger-related harm to local competition and the public interest.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony will focus on four particularly critical areas: (i) inadequate extension of Qwest Operations Support Systems ("OSS"); (ii) inadequate extension of wholesale agreements; (iii) failure to include an Additional Performance Assurance Plan ("APAP"); and (iv) inadequate moratoriums on non-impairment filings and forbearance petitions. I

2 Stipulation between CenturyLink, Inc., Qwest Communications International, Inc., the Staff of the Public Utility Commission of Oregon and the Citizens' Utility Board of Oregon, Oregon Docket UM 1484, filed December 2, 2010, as revised on December 3, 2010 (referred to in this testimony as "Stipulation"). The settlement conditions are in Attachment 1 to the Stipulation.

3 On December 8, 2010, the settling parties jointly filed "Testimony in Support of Stipulation by the Parties to the Stipulation." On the same day, individual testimony was filed by CenturyLink, Staff and CUB addressing the two remaining issues. *See,* Testimony in Opposition to Adoption of Additional Staff Conditions by John Jones on behalf of CenturyLink, Inc., Docket UM 1484, December 8, 2010; Staff Supplemental Testimony of Michael Dougherty on behalf of Public Utility Commission Staff, Docket UM 1484, December 8, 2010; and Testimony in Support of Imposition of Most-Favored State Commitment Conditions and Broadband Trouble Report Complaint Reporting Condition of the Citizens' Utility Board of Oregon, Docket UM 1484, December 8, 2010. The settling parties also filed Errata Testimony in Support of Stipulation on December 10, 2010.

4 The remaining two issues in dispute between the settling parties relate to a Most Favored State condition and trouble report complaint reporting for broadband services.

understand that Charter Fiberlink witness, Mr. Pruitt, will also file testimony on several additional significant issues of concern to the Joint CLECs including, cross-state adoptions (or "porting") of interconnection agreements, prohibitions on the continued reliance on the rural exemption, affirming rights to a single point of interconnection, and certain directory issues. I will also briefly comment on the need for a Most Favored State condition,[5] which is one of the two remaining disputed issues between the settling parties. In their prior testimony, the Joint CLECs explained in detail the merger-related public interest harms posed by the proposed transaction in relation to the remaining critical issues addressed in my testimony – OSS integration, continued availability of wholesale products and services at current rates, and post-merger wholesale service quality deterioration – and those critical issues addressed by Charter Fiberlink witness Mr. Pruitt. I will explain why the settlement conditions do not adequately address these issues and how they should be supplemented to rectify these shortcomings. The Commission should not approve the proposed transaction without the addition of a limited number of additional commitments/conditions proposed in my testimony.

Q. ARE YOU ADDRESSING ALL OF THE SETTLEMENT CONDITIONS IN THE STIPULATION?

[5] A "Most Favored State" condition would allow the Commission to adopt commitments or conditions from other states that are adopted after the final order in UM 1484.

A. No. My testimony focuses only on the settlement conditions related to wholesale operations to the extent that they do not go far enough to protect the public interest in preserving local competition.[6]

Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE WHOLESALE CONDITIONS IN THE STIPULATION?

A. Yes. I appreciate Staff's acknowledgment that conditions related to the Merged Company's wholesale operations are needed in order for the proposed transaction to be in the public interest, as well as Staff's efforts in attempting to craft settlement conditions to address concerns of Qwest's wholesale customers. The primary problem with the Stipulation is that it falls short of addressing merger-related harms associated with the proposed transaction in a number of critical areas. In addition to those items identified by Charter Fiberlink witness Mr. Pruitt, the most important conditions not addressed or addressed inadequately by the Stipulation that should be added are:

1. The Merged Company will use and offer to wholesale customers the legacy Qwest OSS for at least three years.
2. Robust, transparent third party testing will be conducted for any replacement OSS that replaces a Qwest system that was subject to third party testing; and the replacement OSS should be required to perform at current performance levels (which will be benchmarked to measure future performance).
3. The Applicable Time Periods for non-UNE commercial and wholesale agreements and tariffs should be the Defined Time Period[7] initially proposed by Joint CLECs, or at a minimum, three years.

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6 Stipulation settlement Conditions 27 through 41 relate to wholesale operations.

7 "Defined Time Period" is defined in Joint CLECs/16, Gates/1 as follows: "refers to a time period of at least 5-7 years after the Closing Date or, alternatively, a time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues thereafter until the Applicants are granted Section 10 forbearance from the condition. With respect to

4. The extension of non-UNE commercial and wholesale agreements and tariffs, including term and volume discount plans, should apply to wholesale agreements in place as of the merger filing date. As noted in (3) above, the minimum time period for these agreements should be three years.
5. Conditions applicable to non-UNE wholesale tariffs should not be limited to intrastate tariffs, but should also include interstate tariffs.
6. The Additional PAP should apply in addition to the QPAP.
7. The moratorium on Qwest requests to reclassify wire centers as "non-impaired" and requests for forbearance should apply for the Defined Time Period initially proposed by Joint CLECs.
8. A Most Favored State condition should be adopted.

II. PRIMARY SHORTCOMINGS OF THE STIPULATION

A. The Stipulation is based largely on a settlement with one CLEC that reflects one CLEC's perspective and does not adequately protect other CLECs or competition in general.

Q. ARE THE WHOLESALE CONDITIONS IN THE STIPULATION BASED ON THE CONDITIONS IN THE SETTLEMENT BETWEEN CENTURYLINK/QWEST AND INTEGRA?

A. Yes. On November 9, 2010, a Settlement Agreement between CenturyLink, Qwest and Integra was filed with the Commission ("Integra Settlement").[8] According to the Integra Settlement, it settles all issues between CenturyLink/Qwest and Integra related to the proposed transaction in all state proceedings, including in Oregon, and before the FCC. The wholesale conditions in the Stipulation are very similar to or are the same as the

agreements, the Defined Time Period applies whether or not the initial or current term of an agreement has expired ('evergreen' status)." (footnotes omitted)

[8] Settlement Agreement between CenturyLink, Qwest and Integra, filed November 9, 2010 (referred to in my testimony as "Integra Settlement.")

conditions in the Integra Settlement.[9] Furthermore, the wholesale conditions in the Stipulation are very similar to or the same as the wholesale conditions in the proposed settlement between Qwest/CenturyLink and the Arizona Corporation Commission Staff in the Arizona merger review proceeding,[10] and the Arizona Commission Staff testified that the Arizona wholesale conditions are based on the Integra Settlement.[11]

Q. THE SETTLING PARTIES STATE THAT THE STIPULATION BETWEEN THE APPLICANTS AND INTEGRA "ALLOWS CONFIDENCE THAT THE CONCERNS OF COMPETITIVE CARRIERS WERE ADEQUATELY ADDRESSED BY CENTURYLINK."[12] DO THE CONDITIONS IN THE INTEGRA SETTLEMENT ADEQUATELY ADDRESS ALL MERGER-RELATED HARMS TO CLECS AND COMPETITION?

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9 Compare the following: Stipulation Condition 27 (wholesale) to Integra Settlement Condition 12; Stipulation Condition 28 to Integra Settlement Condition 3; Stipulation Condition 29 to Integra Settlement Condition 4; Stipulation Condition 31 to Integra Settlement Condition 6; Stipulation Condition 32 to Integra Settlement Condition 7; Stipulation Condition 33 to Integra Settlement Condition 5; Stipulation Condition 34 to Integra Settlement Condition 2; Stipulation Condition 36 to Integra Settlement Condition 9; Stipulation Condition 37 to Integra Settlement Condition 10; Stipulation Condition 38 to Integra Settlement Condition 11; Stipulation Condition 39 to Integra Settlement Condition 8; Stipulation Condition 40 to Integra Settlement Condition 14; and Stipulation Condition 41 to Integra Settlement Condition 13.

10 Compare the following: Stipulation Condition 27 (wholesale) to Arizona settlement Condition 19; Stipulation Condition 28 to Arizona settlement Condition 23; Stipulation Condition 29 to Arizona settlement Condition 27; Stipulation Condition 31 to Arizona settlement Condition 29; Stipulation Condition 32 to Arizona settlement Condition 4; Stipulation Condition 33 to Arizona settlement Condition 28; Stipulation Condition 34 to Arizona settlement Condition 20; Stipulation Condition 36 to Arizona settlement Condition 25; Stipulation Condition 37 to Arizona settlement Condition 26; Stipulation Condition 38 to Arizona settlement Condition 24; Stipulation Condition 39 to Arizona settlement Condition 30; and Stipulation Condition 41 to Arizona settlement Condition 31.

11 Direct Testimony of Elijah Abinah on behalf of Arizona Corporation Commission Utilities Division in Support of the Settlement Agreement, Arizona Docket Nos. T-01051B-10-0194, et al., December 1, 2010, at p. 9, lines 1-8 ("Just before the hearing in Arizona and Colorado, the Joint Applicants were able to reach agreement with Integra, one of the largest CLECs now operating in Arizona, on many wholesale conditions. The Joint Applicants proposed some of the Integra conditions in lieu of the [Arizona] Staff conditions. After review, certain of the Integra conditions, with modifications requested by Staff, were agreed to by Staff, RUCO and the Joint Applicants, in lieu of Staff's original conditions.")

12 Errata Joint Testimony of Staff, CUB, CenturyLink and Qwest, December 10, 2010 at p. 24, lines 13-15.

A. No. It is important to put the Integra Settlement into context. That Settlement reflects the perspective and business needs of a single CLEC out of the numerous CLECs that have intervened in this proceeding, and other CLECs who did not intervene. Indeed, the Integra Settlement expressly states that it addresses "Integra's concerns" and reflects "Integra's perspective[.]"[13] The Integra Settlement reflects compromises that Integra believed were in its own business interests, presumably taking into account its strategy for competing in the market and its own systems or operations. None of the other Joint CLECs – each with a different business plan – was party to that settlement or a participant in its negotiation.

Q. WHY IS A SINGLE PARTY SETTLEMENT NOT SUFFICIENT TO PROTECT THE PUBLIC INTEREST?

A. Integra negotiated the settlement to meet its specific business needs. The settlement was limited to the issues of greatest concern to Integra. The public interest in (and benefit from) competition depends on the availability of services from more providers than the ILEC and only one CLEC. Robust competition encompasses multiple CLEC options for consumers, each with different network approaches, target markets and business plans. It also anticipates and encompasses a marketplace that is sufficiently open to new competitors in the future. Hallmarks of effective competition are the existence of multiple alternatives (not just one or two), diversity among alternatives, and conditions conducive to efficient entry today and in the future. The Joint CLECs differ from Integra in a number of important ways, and as such, conditions designed to address "Integra's concerns" – based

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[13] Integra Settlement at p. 1.

substantially on Integra's need for conditioned loops – does *not* ensure that the proposed transaction will *not* negatively impact other CLECs or competition in general.

Q. PLEASE ELABORATE ON SOME OF THE DIFFERENCES BETWEEN INTEGRA AND OTHER CLECS THAT CAUSES THEIR CONCERNS AND PRIORITIES TO DIFFER.

A. CLECs have different OSS capabilities and use different functions and interfaces of Qwest's OSS, depending on the development of their own systems and network. CLECs use different UNE services and different non-UNE commercial and wholesale agreements and tariffs in order to provide divergent services to their end user customers, all in competition with the ILEC. CLECs also have different networks, and business models, which dictate the differences in the ways in which CLECs rely upon Section 251, 271 and other wholesale inputs provided by Qwest. In addition, not all CLEC agreements have the same expiration date which means that Integra may have been willing to compromise on the length of extensions for commercial and/or wholesale agreements, including tariffed offerings, in order to obtain other conditions that were more important to it. As a result, the compromises made by Integra were not acceptable to the Joint CLECs.

Q. CAN YOU PROVIDE SOME EXAMPLES?

A. Yes. For example, one of the concerns that is particularly important to Integra – that was not so important to other CLECs due to differing business plans – is line conditioning for xDSL loops. The Integra Settlement contains Condition 14 that discusses an extensive line conditioning amendment and related issues, and presumably Integra was willing to compromise on other issues to receive the line conditioning commitment. As such, the conditions in the Integra Settlement were established, in part, due to the availability of the line conditioning commitment that is less important to the Joint CLECs. Charter and tw telecom, for example, do not offer xDSL service to Oregon customers and have no plans to do so. Therefore, the concerns that led Integra to pursue line conditioning concessions and make compromises to get this commitment are not shared by these CLECs because of their differing business plans.

Another key difference between CLECs is the extent to which they rely on Qwest's non-UNE wholesale offerings as opposed to UNEs provided pursuant to Section 251 of the Act, as well as the expiration dates of the non-UNE wholesale agreements CLECs have with Qwest. As discussed below, the Stipulation does not adequately protect the interests of a CLEC like tw telecom who purchases special access services from a tariff that is not subject to extension under the Stipulation, and who has a non-UNE wholesale agreement with an expiration date that could pre-date the merger closing (because any wholesale agreement that expires prior to the merger closing date is not eligible for extension under the Stipulation).

Q. ARE THERE OTHER EXAMPLES?

A. Yes. An additional example relates to OSS. CLECs use different systems and functionalities of Qwest's OSS. And, importantly, some CLECs have developed their own internal interfaces and back-office systems for the purposes of electronically bonding and exchanging information with Qwest's existing application-to-application OSS. Some

CLECs, like Integra, currently use Qwest's Graphical User Interface ("GUI") OSS to submit orders; other CLECs, like tw telecom and PAETEC,[14] use Qwest's application-to-application (XML) OSS; and other CLECs, like Charter, use both XML and GUI OSS depending on the function required. CLECs that have developed more internal OSS interfaces, systems and software will naturally need more time to adjust to post-merger changes to Qwest's existing OSS than other CLECs who have not developed as many internal interfaces and systems. This is a significant concern in Oregon due to the extent to which CLECs rely on Qwest's application-to-application OSS. As discussed in my direct testimony,[15] **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]**. Because CLECs need to develop their own internal interfaces and

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[14] One CLEC that has developed significant internal interfaces and back office systems to electronically bond with Qwest's application-to-application OSS is PAETEC, a CLEC I represent in a number of merger review proceedings in other states. PAETEC relies more heavily on Qwest's application-to-application OSS than does Integra, and has therefore, developed more internal interfaces and systems. For example, PAETEC's systems take Qwest line loss data received through the XML interface, and feed that information directly into PAETEC's billing system, which results in the termination of billing for end users for whom the line loss data has been received via the interface without manual intervention. The interconnectivity of systems has effectively eliminated the "billing after downgrade" issues that plagued CLECs and end users that existed for a number of years (assuming the line loss data provided by Qwest is accurate). A similar linkage is made by PAETEC between Qwest's OSS interfaces and the PAETEC's own systems for directory listings to ensure accurate directory listings for the CLECs' customers. Another example is for trouble ticket reporting. PAETEC has established electronic bonding capability with Qwest that allows automated escalation of the trouble ticket, and automated resolution or closing of the trouble ticket and notification to the customer. In other words, by establishing the electronic bonding with Qwest, a CLEC trouble ticket can go from "open" to "closed" with little or no intervention by the CLEC's technicians. These automated capabilities are possible because the CLEC undertook a substantial effort to develop its own back end systems and processes and then code, test and link those systems and processes to Qwest's systems and interfaces. These CLEC back end systems would be subject to change if the Merged Company changed Qwest's legacy OSS post-transaction, which would take significant time, effort and money. These changes could also require CLECs to revert to significantly less efficient, manual processes if the modified OSS offered by the Merged Company does not afford CLECs access to the same degree of the Merged Company's back end systems and data via the electronic interface.

[15] Joint CLECs/8, Gates 50-51 (confidential).

systems to electronically bond with Qwest's application-to-application OSS, this data shows that **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]**. While it may have been acceptable for Integra to accept a two year extension of Qwest's OSS as a compromise for the line conditioning commitment, for example, this two-year period is not acceptable for other CLECs who have built more extensive internal systems and software based on Qwest's existing OSS – internal systems that would need to be modified or replaced when Qwest's OSS changes.

B. Joint Applicants have not made adequate commitments regarding OSS.

Q. PLEASE EXPLAIN HOW THE OSS CONDITIONS IN THE PROPOSED SETTLEMENT ARE INADEQUATE.

A. In the Qwest legacy territory, the Merged Company should use and offer to wholesale customers the legacy Qwest Operational Support Systems ("OSS") for a minimum of *three* years following merger closing date (Joint CLEC Condition 19).[16] This is the absolute minimum time period associated with the three to five year integration/synergy timeframe CenturyLink has repeatedly forecasted.[17] The Stipulation states that the Merged Company

[16] The Joint CLEC proposed conditions list is attached to my direct testimony as Joint CLECs/16.

[17] In the Arizona hearings related to the proposed merger between Qwest and CenturyLink held this week on December 13, 2010, CenturyLink witness Jeff Glover stated in his oral summary that the synergy period was "two to five years." On cross-examination, however, Mr. Glover admitted that a "two to five year" period was not found in any previous testimony, Application or other materials submitted by CenturyLink. This was an apparent late attempt on CenturyLink's part to justify the two-year period in the settlement conditions. Importantly, the record evidence in the Oregon merger proceeding, as well as the record evidence in all merger review proceedings

will use and offer to wholesale customers the legacy Qwest OSS for at least *two* years or until July 1, 2013, whichever is later (Stipulation Condition 27, wholesale). The timeframe in the Stipulation is inadequate because it does not cover the minimum synergy timeframe, and as a result, CLECs would face significant risk of harm related to OSS post-merger (albeit for a shorter time period than would otherwise be the case absent the Stipulation).

Q. WHAT IS THE "SYNERGY TIMEFRAME" YOU REFER TO ABOVE?

A. The "synergy timeframe" is the time period during which the Merged Company will be integrating the two companies (i.e., Qwest and CenturyLink) and making merger-related changes to achieve synergy cost savings.[18] CenturyLink has stated that they anticipate total synergy savings of $625 million to be "fully recognized over a three-to-five year period following closing."[19] Therefore, the "synergy timeframe" associated with the proposed transaction is three to five years (and potentially longer if the Merged Company experiences integration problems[20]). Under CenturyLink's "best case scenario" assumptions, three years is the absolute minimum synergy timeframe, and the time period during which consumers and CLECs will be most at risk as a result of the integration activities.

Q. WHY IS IT IMPORTANT THAT THE TIME PERIOD FOR QWEST OSS AVAILABILITY BE FOR AT LEAST THREE YEARS?

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in which I have participated, indicate that CenturyLink's own projections of the synergy timeframe is <u>three</u> to five years.

18 Joint CLECs/8, Gates/123, lines 14-20.

19 Joint CLECs/8, Gates/114, lines 11-12, quoting CTL/300, Bailey14, line 3.

20 Joint CLECs/8, Gates/114-115.

A. The ultimate question regarding appropriate time frames for merger conditions is what time period is necessary to protect the public interest.[21] Here, the need for protection is greater than in prior mergers. The proposed transaction involves the purchase of a Bell Operating Company ("BOC") by a non-BOC incumbent local exchange carrier ("ILEC") that has been acting in many cases as primarily a rural carrier claiming exemption from ILEC, much less BOC, obligations. Because the BOC has greater wholesale obligations and more complex systems than a non-BOC ILEC – and certainly more obligations and complex systems than an exempt (or, self-proclaimed exempt) rural ILEC – such ILECs have no experience in fulfilling such commitments. Further, CenturyLink has never processed the number and types of wholesale orders that Qwest routinely processes. In other words, the more complex merger integration will be, the longer it takes to integrate the companies to produce synergy savings. By way of example, for the acquisition of Embarq, CenturyLink estimated that it would fully recognize its estimated synergy savings "within the first three years of operation."[22] However, because integrating Qwest will be more complex than integrating Embarq, CenturyLink has estimated that it would fully recognize its estimated synergy savings from the proposed transaction over a longer period: three-to-five years following the merger. While a time period shorter than three years may have been

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21 *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries,* Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 ("Oregon Embarq-CenturyTel Merger Order"), 2009 Ore. PUC LEXIS 152, *11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period "serves to protect customers should a significant negative event occur with the new parent" and "is a more reasonable means to protect customers.")

22 *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-239, FCC 09-54, June 25, 2009 ("FCC CenturyTel/Embarq Merger Order"), ¶ 7 and Declaration of R. Stewart Ewing, Jr. on behalf of CenturyTel, WC Docket No. 08-238, ¶ 2.

appropriate for conditions related to the CenturyTel/Embarq merger due to the shorter synergy timeframe for that merger and the less complex integration requirements, a time period of less than three years for OSS conditions associated with the proposed transaction is inadequate because of the proposed transaction's longer synergy timeframe.

Wholesale customers therefore need sufficient conditions in place throughout the time that merger-related changes are occurring in order to insulate them from the tendencies of the Merged Company to seek OSS synergies and unwarranted market advantages at the expense of competitors and competition. As I explained at pages 37-38 of my direct testimony,[23] out of the numerous ways the Merged Company could integrate Qwest and CenturyLink to the detriment of CLECs and competition, degrading the quality or access to OSS would be the most effective, as well as one of the most difficult to detect and remedy. An extension of Qwest's OSS for less than three years would provide the means for the Merged Company to act upon its incentive to integrate OSS in such a way that degrades the quality or access by CLECs.

The "at least three-year" timeframe in the Joint CLEC proposed Condition 19 is objective and minimally adequate because it is based on CenturyLink's own projections and covers the minimum synergy timeframe. The timeframe in Stipulation Condition 27 (at least two years or July 1, 2013, whichever is later) is arbitrary and inadequate because it is not based on CenturyLink's projections (or any other facts in the record associated with the proposed transaction that I am aware of) and is shorter than the synergy timeframe. The facts

[23] Joint CLECs/8, Gates/37-38.

demonstrate that the Merged Company's integration efforts will extend well beyond two years as well as July 1, 2013, which means that the time period is too short to adequately address merger-related harms to the public interest.

Q. THE JOINT CLECS ARE ESSENTIALLY ASKING FOR THE QWEST OSS TO BE MADE AVAILABLE FOR AT LEAST ONE ADDITIONAL YEAR THAN IS PROVIDED IN THE STIPULATION. IS THIS A REASONABLE REQUEST?

A. Yes. Given the enormous amount of time, money and effort that has been invested over the last decade to get Qwest's OSS to where they are today and to build CLEC internal systems to interface with Qwest's OSS, the Joint CLECs' modest request for the Merged Company to make available Qwest's OSS for one year longer than the current commitment is perfectly reasonable. It took more than three years just to test and evaluate Qwest's OSS to determine if it was sufficient to meet the requirements of Section 271.[24] So, when the Merged Company decides to modify or replace Qwest's OSS post-merger, it is reasonable to assume that it will take at least three years (i) to decide which OSS the Merged Company intends to use going forward, (ii) to make changes to Qwest's OSS, (iii) to test and evaluate the new OSS to ensure that it can handle the commercial volumes in Qwest's territory and continue providing functionality equal to current benchmarked standards, (iv) to allow cooperative testing of the systems with the CLECs to ensure that they meet the CLEC needs; and (v) to enable CLECs to develop internal systems to interface with the new OSS systems.

[24] Joint CLECs/10, Gates/2.

Q. IS THE ADDITIONAL YEAR JUSTIFIED BASED ON THE CLEC REQUIREMENT TO INTERFACE WITH THE NEW OSS?

A. Yes. Recall that the CLECs cannot begin to develop and deploy their own systems to interface with the Merged Company's systems, unless and until they know exactly what OSS is being deployed. Currently CLECs have different levels of electronic bonding with Qwest. Some CLECs continue to use manual processes while others have developed extensive system enhancements to allow automated exchange of information. Regardless of the level of system development, however, the CLECs cannot begin their development and testing of their own systems until CenturyLink has finished its OSS planning. Developing and testing the CLEC systems can take years and extensive capital and human resources.

Q. IS THE TWO-YEAR TIME PERIOD IN CONDITION 19 OF THE STIPULATION BASED ON THE INTEGRA SETTLEMENT?

A. Yes, apparently so. Both the Stipulation Condition 27 and Integra Settlement Condition 12 require the Merged Company to, in the Qwest ILEC service territory, use and offer to wholesale customers the legacy Qwest OSS "for at least two years, or until July 1, 2013, whichever is later…"

Q. IS IT SAFE TO ASSUME THAT A TIME PERIOD FOR QWEST OSS EXTENSION AGREED TO BY INTEGRA ADEQUATELY ADDRESSES MERGER-RELATED HARM TO OTHER CLECS, OR TO COMPETITION IN GENERAL?

A. No. The two-year time period in the Integra Settlement is obviously a compromise from Integra's perspective,[25] but it cannot be taken as an appropriate compromise for other CLECs. As noted above, some CLECs have developed their own internal interfaces, back office systems and software for electronically bonding with Qwest's application-to-application OSS, and rely more heavily on those internally-developed interfaces, systems and software than does Integra. Therefore, while an approximate two-year extension of Qwest's OSS may be an acceptable compromise for Integra, based on Integra's unique circumstances, it is not adequate for other CLECs who would need to revamp more of their own internal systems, databases and software in response to a change to Qwest's OSS as well face a greater challenge and potentially higher costs to adapt to such changes on a shorter timeframe.

Q. BESIDES THE DURATION OF QWEST'S OSS EXTENSION, ARE THERE OTHER SIGNIFICANT SHORTCOMINGS IN THE STIPULATION'S CONDITIONS REGARDING OSS?

A. Yes. Absent from the Stipulation is any requirement for third-party OSS testing. This is a serious omission. The Merged Company should be required to conduct independent third-party testing similar to that used in the Regional Oversight Committee process during the Qwest 271 proceedings for any OSS that replaces a Qwest OSS that has undergone third-party testing.[26] Third-party testing is critical in determining the commercial readiness of OSS. Third party testing is defined by our extensive experience with this process. Further,

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[25] Integra originally proposed to require the Merged Company to maintain legacy Qwest OSS for at least three years. *See,* Joint CLEC proposed Condition 19.

[26] Joint CLECs/8, Gates 124-125 and Joint CLECs/10.

state commissions in the Qwest region and the FCC have relied upon third party testing to validate Qwest's OSS.

Q. PLEASE ELABORATE ON THE ROLE OF INDEPENDENT, THIRD-PARTY TESTING FOR TESTING OSS COMMERCIAL READINESS.

A. The FCC has previously concluded that the most probative evidence that OSS functions are operationally ready is actual commercial usage. CenturyLink has never been through a Section 271 process and its systems have never been found to be 271 compliant. To date, there is no evidence that CenturyLink's legacy OSS (or any other OSS other than Qwest's existing OSS) is capable of handling the actual commercial usage that it would be required to handle in Qwest's legacy territory if the proposed transaction is approved and the Merged Company decided to modify or replace Qwest's OSS. Absent actual commercial usage experience, the second-best option is independent, third-party testing. The FCC said:

> The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. ***The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.***[27]

[27] *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming,* Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released

Internal OSS testing that is not independent and blind is inferior to a truly independent third-party test in determining a BOC's OSS commercial readiness. Though CenturyLink claims that it extensively tests its own OSS, it has admitted that this testing does not involve third-party testing.[28] This means that CenturyLink's OSS testing is not "independent" or "blind," and would therefore, be a step backwards for Qwest OSS that has undergone years of extensive and verifiable third-party testing. CenturyLink has specifically stated that it does not intend to engage in third-party testing post-merger for any replacement OSS that replaces an existing Qwest OSS.[29] So, despite the importance of third-party testing if/when the Merged Company modifies/replaces Qwest's OSS, it is not a commitment in the Stipulation and CenturyLink will certainly not conduct third-party testing of replacement OSS on its own volition. Therefore, the Commission should require CenturyLink and Qwest to commit to the independent third-party testing provisions of Joint CLEC Condition 19(b).[30]

Q. IS THERE ANOTHER IMPORTANT ADDITION THAT NEEDS TO BE MADE TO THE OSS CONDITIONS IN THE STIPULATION?

December 23, 2002 ("Qwest 9 State 271 Order"), Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

28 Joint CLECs/8, Gates/125, line 7, citing CenturyLink Response to Joint CLECs Oregon Data Request #22.

29 Minnesota Docket P-421, et al./PA-10-456, Hearing Transcript Volume 2B (public) at pp. 88-89 ("Q. No. Is it your – should you migrate the Qwest properties onto the CenturyLink OSS, would you engage in third-party testing before that went live? A. We would not engage in third-party testing." (Hunsucker))

30 Joint CLEC proposed Condition 19(b) states: "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."

A. Yes. The conditions should ensure that Qwest's current OSS operational capabilities and functionalities are benchmarked so that any successor OSS does not backslide on performance. Just as carriers in Embarq's ILEC territory did not want to revert to the more manual processes of CenturyTel's OSS in that merger, CLECs do not want Qwest to backslide from the 271-evaluated OSS in Qwest territory to CenturyLink OSS that has not been third-party tested or handled the commercial volumes in Qwest's legacy territory. The Joint CLECs have demonstrated that, left unchecked, a loss of functionality and/or efficiency would be the likely result of CenturyLink integrating its OSS into Qwest's region post-merger.[31] However, Qwest's 271 authority is premised on the functionalities and efficiencies available from its current OSS, and any step backwards in this regard (as would occur if CenturyLink's OSS was imported to Qwest's region), would cause Qwest to backslide on its 271 obligations under the Act. That is why it is vital that the operational capabilities and functionalities of Qwest's OSS be benchmarked; this allows the Merged Company to modify Qwest's OSS after a three-year period, but provides a degree of certainty that the capabilities and functionalities of Qwest's OSS that are available to and used by CLECs today will be available when the Merged Company changes Qwest's OSS.

Q. COULDN'T THE CLECS FILE A COMPLAINT IF THE OSS IS DEGRADED AS A RESULT OF THE MERGER AND INTEGRATION ACTIVITIES?

A. Yes. CLECs always have the opportunity to file complaints which requires time and resources. Relying on that process, however, inappropriately shifts the burden to the CLECs for a responsibility that resides with CenturyLink. Instead, it is reasonable to

[31] Joint CLECs/8, Gates/58-60; Joint CLECs/19, Gates/7-13 and Joint CLECs/20.

expect CenturyLink to maintain the best systems of the merging entities and to ensure that the 271 compliant functionalities remain available to CLECs. To that end, the Commission should require the Merged Company to engage in independent third-party testing as recommended by Joint CLEC Condition 19(b).

C. Joint Applicants have not made adequate commitments regarding the continued provision of non-UNE wholesale services.

Q. ARE QWEST'S WHOLESALE SERVICES ESSENTIAL TO THE ABILITY OF CLECS TO CONTINUE PROVIDING OREGON CONSUMERS WITH COMPETITIVE LOCAL SERVICE ALTERNATIVES?

A. Yes. This is evident from the FCC's recent order denying Qwest's petition for forbearance in the Phoenix Arizona Metropolitan Statistical Area ("MSA"). In this order, issued less than six months ago, the FCC explains that "Qwest remains dominant" in "wholesale markets" and refers to Qwest as the "sole provider of wholesale facilities and services[.]"[32] The FCC also concluded that CLECs relied on Qwest's wholesale services to compete with Qwest for mass market and enterprise end user customers.[33] While this order focused on competition in Phoenix, and surrounding markets, it is reasonable to assume that similar conclusions apply to markets here in Oregon.

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[32] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area,* Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 ("Qwest Phoenix Forbearance Order") at ¶ 34.

[33] Qwest Phoenix Forbearance Order, ¶ 80 ("Although there are several other providers that serve some mass market customers in the Phoenix MSA, they are 'fringe' competitors that are able to compete only by relying extensively on UNEs and other Qwest wholesale services.") and ¶ 87 ("Based on the record evidence, we find competitors offering retail enterprise services in the Phoenix MSA primarily rely upon Qwest's wholesale services…")

Q. IS THIS DEPENDENCE ON QWEST'S WHOLESALE SERVICES LIMITED TO UNBUNDLED NETWORK ELEMENTS ("UNES") PROVIDED UNDER SECTION 251 OF THE ACT?

A. No. Many CLECs rely significantly on non-UNEs purchased from Qwest under commercial and wholesale agreements and tariffs. These non-UNEs are typically the exact same facilities as their UNE counterparts – the only difference is in the terms and rates under which those facilities are provided. Therefore, it is essential for protections against merger-related harm to cover the breadth and diversity of local competition as it relates to the availability of wholesale services on which CLECs rely to provide competitive local service.

Q. DO CLECS RELY ON NON-UNES PURCHASED FROM QWEST TO PROVIDE COMPETITIVE SERVICES TO OREGON CONSUMERS?

A. Yes. For example, CLECs such as Charter and tw telecom rely on Qwest special access services for transport or to gain access to customers. tw telecom's reliance upon special access under a Regional Commitment Program or "RCP" is described later in this testimony.

As noted in the FCC's Qwest Phoenix Forbearance Order, "...there is no record evidence of significant competition for the wholesale products used to serve either mass market or enterprise customers."[34] The pricing and quality of wholesale services, such as QLSP, dark fiber, special access, for example, are critical to the CLECs' provisioning of services to

[34] Qwest Phoenix Forbearance Order at ¶ 96.

consumers in Oregon. This continued dependence supports the Joint CLECs' need for an extension of the non-UNE commercial and wholesale agreements to cover the synergy timeframe, and in no circumstances less than at least three years.

Q. WHAT CONCERNS DO YOU HAVE ABOUT THE STIPULATION CONDITION 28 RELATING TO COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS?

A. A primary problem is the Applicable Time Periods associated with the non-UNE commercial and wholesale agreements and tariffs. The Applicable Time Period represents the length of time by which the wholesale agreement will be made available without termination/grandparenting, changes to terms and conditions, or increases in rates.[35] The Applicable Time Periods in Stipulation Condition 28 for the non-UNE offerings are as follows:

- Commercial Agreements: at least eighteen months (Stipulation Condition 28(b))
- Wholesale Agreements: at least eighteen months (Stipulation Condition 28(c))
- Intrastate Tariffs: at least twelve months (Stipulation Condition 28(d))

These time periods are significantly shorter than the minimum three-year synergy timeframe, and are also significantly shorter than the minimum three-year Applicable Time Period associated with interconnection agreement extensions (Stipulation Condition 28(a)). These shorter timeframes for non-UNE wholesale agreements place CLECs who rely on them at a competitive disadvantage relative to other CLECs who purchase wholesale services as UNEs and interconnection under Section 251 of the Act, and therefore, receive

[35] The Stipulation defines the "Extended Time Period" as the unexpired term or for at least the Applicable Time Period, whichever occurs later. Stipulation Condition 28.

a longer three-year period of service and rate stability. CLECs should not be discriminated against or penalized because of their mode of entry. Instead, the commitments related to wholesale service availability and rate stability should be consistent for all wholesale agreements, whether interconnection agreements, commercial agreements, wholesale agreements, or tariffed products.

The fact that CenturyLink has not committed to leave in place commercial and wholesale agreements and tariffs as long as the agreed-upon three-year interconnection agreement extension shows that CenturyLink does not intend to provide the needed stability regarding these non-UNE wholesale services on its own post-merger. It also confirms that additional commitments are needed, as it signals intent by CenturyLink to eliminate or raise prices for these wholesale services early in the three-to-five year synergy timeframe.

Q. HOW CAN THE COMMISSION SUPPLEMENT THE CONDITIONS IN THE STIPULATION TO ENSURE STABILITY FOR THE NUMEROUS CLECS THAT RELY ON WHOLESALE INPUTS PROVIDED UNDER NON-UNE WHOLESALE COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS?

A. The Commission should condition merger approval on an extension of those agreements and tariffs, at current prices, for a period that corresponds to the synergy timeframe (see, Joint CLECs/16, Joint CLEC Conditions 6(a), 7 and 7(a) and definition of "Defined Time Period"). At an absolute minimum, these agreements and tariffs should be extended for at least three years following merger closing to match the minimum three-year synergy timeframe as well as the three-year Applicable Time Period for interconnection agreements.

Q. WOULD DIFFERENT TIME PERIODS FOR DIFFERENT TYPES OF AGREEMENTS RESULT IN DISCRIMINATION BETWEEN AND AMONG CLECS?

A. Yes. If this treatment of the various agreements was approved, the Stipulation would create "winners" and "losers" by virtue of these artificial distinctions. Such disparate treatment of CLECs would harm the efficient operation of the market.

Q. DOES THE FACT THAT NON-UNE WHOLESALE SERVICES ARE NOT REQUIRED UNDER SECTION 251 OF THE ACT JUSTIFY SHORTER EXTENSIONS FOR NON-UNE WHOLESALE SERVICES UNDER THE STIPULATION?

A. No. This would presume that there are more alternatives for CLECs to Qwest's non-UNE wholesale services than for Qwest's UNE wholesale services, which has no basis in fact. Indeed, the FCC recently rejected the notion that there are suitable available alternatives to Qwest's wholesale services, whether they are UNE or non-UNE wholesale services. In its order denying Qwest's petition for forbearance in the Phoenix Arizona MSA, the FCC found: "the record reveals that no carrier besides Qwest provides meaningful wholesale services throughout the Phoenix marketplace, and that competitors offering business services largely must rely on inputs purchased from Qwest itself to provide service."[36] The FCC also stated: "there is no record evidence of significant competition for the wholesale products used to serve either mass market or enterprise customers."[37] The "wholesale services" and "wholesale products" referred to by the FCC include both UNE and non-UNE wholesale services and products.[38] While these conclusions were made about Qwest's wholesale services in the Phoenix MSA, there is no reason to believe that the conclusions would be any different about Qwest's wholesale services in MSAs in Oregon.[39]

In addition, the FCC expressly rejected the notion that "incumbent LECs, even if not required to offer UNEs, would have an incentive 'to make attractive wholesale offerings.'"[40] In doing so, the FCC concluded that (i) Qwest was still dominant in wholesale markets and had the incentive and ability to discriminate against CLECs in retail markets, (ii) Qwest, as a profit-maximizing firm, had the incentive "to exploit its monopoly position as a wholesaler and charge supracompetitive rates"; and (iii) there is little if any evidence that ILECs/BOCs have voluntarily offered wholesale services at competitive

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[36] Qwest Phoenix Forbearance Order at ¶ 2. See also ¶ 49 ("Although Qwest maintains that 'there are numerous options for carriers to purchase 'last mile' wholesale services that allow them to bypass Qwest's network entirely,' we disagree and find instead that, however evaluated, the record in this proceeding reveals a lack of significant wholesale competitors to Qwest in the Phoenix MSA.")

[37] Qwest Phoenix Forbearance Order at ¶ 96.

[38] *See, e.g.*, Qwest Phoenix Forbearance Order, at ¶ 68 ("These competitors…rely predominantly upon Qwest facilities, including UNEs ***and other wholesale services***, to provide their services.") (emphasis added)

[39] Presumably, if Qwest believed that there was competition for its wholesale services in Oregon it would have filed a petition for forbearance of dominant carrier regulation in Oregon as it has for MSAs in Colorado, Minnesota, Arizona and Washington. It has not. Qwest has also withdrawn the forbearance petitions it filed for other states.

[40] Qwest Phoenix Forbearance Order at ¶ 34.

prices once regulatory requirements governing wholesale prices were eliminated.[41] Given this Qwest dominance as a wholesaler, including dominance over non-UNE wholesale services, market forces cannot be relied upon to provide the post-merger stability that CLECs need.

Furthermore, when a "non impairment" finding is made and a particular wholesale input is no longer required to be provided as an UNE pursuant to Section 251 of the Act, it is incorrect to assume that alternative sources for that wholesale input besides Qwest are reasonably available to CLECs. Non-impairment designations are based on ***inferences*** *of actual or potential* competition, not on a finding that CLECs actually have adequate alternatives to Qwest for essential wholesale facilities.[42]

Q. NON-UNE WHOLESALE AGREEMENTS ARE SUBJECT TO SO-CALLED "MARKET-BASED" RATES AS OPPOSED TO TELRIC[43]-BASED RATES FOR UNE WHOLESALE SERVICES. DOES THIS JUSTIFY EXTENSIONS FOR NON-UNE WHOLESALE AGREEMENTS AND TARIFFS THAT ARE SHORTER THAN EXTENSIONS FOR INTERCONNECTION AGREEMENTS?

A. No. As noted above, the FCC has found that market forces are insufficient to control Qwest's incentive and ability to discriminate against CLECs. Based on the commitment

[41] Qwest Phoenix Forbearance Order at ¶ 34.

[42] *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, February 4, 2005 ("Triennial Review Remand Order") at ¶¶ 41-45 and 88. As the FCC stated, non-impairment rests on the FCC's "exercise of discretion to use ***reasonable inferences*** instead of fact-specific proceedings…" (Emphasis added).

[43] TELRIC stands for Total Element Long Run Incremental Cost. TELRIC pricing rules are found in 47 C.F.R. § 51, Subpart F.

embodied in Stipulation Condition 28, it appears that CenturyLink intends to seek rate increases for non-UNE wholesale services (subject to "market-based" prices) before it can seek rate increases for UNE wholesale services (subject to "TELRIC-based prices). Such an outcome makes no sense. If market forces were actually disciplining Qwest's ability to raise rates for non-UNE wholesale services, then prices for these services would be driven *closer to* their underlying cost, and there would be no need for Qwest to seek increases in these rates which already greatly exceed underlying cost. Nothing in the Joint CLEC proposed conditions would prevent the Merged Company from seeking rate *reductions* for these non-UNE wholesale services if competitive pressures ever emerge. The fact that CenturyLink/Qwest has signaled a desire to raise rates for these non-UNE wholesale services after 18 months shows that market forces are not sufficiently disciplining these prices and that the conditions in the Stipulation need to be supplemented to lengthen the Applicable Time Periods for non-UNE wholesale agreements.

Q. DO YOU HAVE OTHER CONCERNS ABOUT STIPULATION CONDITION 28(d) AS IT RELATES TO EXTENSIONS OF TARIFFS?

A. Yes. Stipulation Condition 28(d) applies to "Intrastate Tariffs" and is much less effective for addressing merger-related harm than the comparable conditions in the Integra Settlement, Arizona Settlement, and Joint CLEC proposed Conditions which apply to "Tariffs" generally (which would include interstate, as well as intrastate, tariffs). (Integra Settlement Condition 3(d), Arizona Settlement Condition 23(d) and Joint CLEC proposed Condition 6). Competition in Oregon depends on and is directly impacted by the continued availability of interstate as well as intrastate access services at reasonable rates, and because the Commission must ensure that the proposed transaction is in the public interest, the conditions attached to any merger approval should cover both interstate and intrastate tariffs. For instance, tw telecom and Charter purchase services from Qwest's interstate special access tariff to provide services to Oregon end user customers in competition with Qwest.

Q. HAS THE OREGON COMMISSION PREVIOUSLY APPROVED A MERGER TRANSACTION SUBJECT TO A COMMITMENT TO EXTEND THE TERMS, CONDITIONS AND RATES IN *INTER*STATE ACCESS TARIFFS?

A. Yes. The Oregon Commission issued an order approving the Frontier/Verizon merger transaction on February 24, 2010.[44] The Commission's approval was subject to a Stipulation and numerous settlement conditions. In settlement Condition 5, Frontier committed to assume or take assignment of all obligations under Verizon's "interstate special access tariffs and intrastate tariffs" and not "terminate or change the rates, terms or conditions" of those interstate and intrastate tariffs during the unexpired term or for a period of 24 months from the closing date of that transaction (whichever occurs later). Although the Oregon Commission does not regulate the ILECs' interstate access tariffs, it has in the past recognized the importance of these non-UNE wholesale offerings to competition in the state and has taken steps to ensure that a proposed merger does not harm the public interest by the ILEC eliminating or raising the rates for these interstate tariffed

[44] In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc., Order No. 10-067, Docket UM 1431, February 24, 2010 ("Oregon Verizon/Frontier Merger Order").

services. The Commission should do the same here by, at a minimum, requiring that Stipulation Condition 28(d) apply to both interstate and intrastate tariffs.

Q. DO YOU HAVE OTHER CONCERNS ABOUT STIPULATION CONDITION 28(d) APPLYING ONLY TO INTRASTATE – AND NOT INTERSTATE – TARIFFS?

A. Yes. I have concerns about impacts to CLECs like tw telecom that operate under a Regional Commitment Program ("RCP"). The RCP is an optional pricing plan that allows DS1 and/or DS3 customers to receive discounted rates for committing to minimum monthly recurring revenue on DS1 and/or DS3 circuits for a 48-month term. Because the RCP is an offering from Qwest's *inter*state tariff, it would not be eligible for extension under the Stipulation.

Q. WOULD YOU STILL HAVE CONCERNS RELATED TO RCP IF THE STIPULATION CONDITION 28(d) WAS SUPPLEMENTED TO APPLY TO INTERSTATE AND INTRASTATE TARIFFS?

A. Yes. On June 1, 2010 (after the proposed transaction was announced), Qwest grandfathered its then-existing RCP (effective May 31, 2010) and introduced a new RCP that substantially reduced the discounts previously available under the RCP, and in turn, increased the cost for CLECs who purchase special access facilities under the RCP. For example, tw telecom currently purchases special access facilities from Qwest under a RCP Agreement, and has estimated that its special access costs will increase 22% absent the extension of non-UNE wholesale agreements it is requesting as part of the Joint CLEC merger conditions.

Under Stipulation Condition 28(d)(i), CenturyLink/Qwest has agreed to extend "term and volume discount plans" – of which the RCP is one – in effect on the merger closing date by 12 months beyond the expiration of the then existing term. This condition is apparently based on the identical Condition 3(d)(i) from the Integra Settlement. The 12-month extension may provide sufficient price stability for a CLEC such as Integra and others that have RCP Agreements set to expire in 2013 or later. That is, by extending their RCP Agreements by an additional year as provided in the Integra Settlement, those CLECs will effectively cap the rates they pay for their special access services for at least the minimum three-year synergy period. However, CLECs such as tw telecom with RCP Agreements that expire sooner,[45] will be at a disadvantage since they will be forced onto the higher effective RCP rates well before other CLECs. The result of the condition in the Stipulation is that some CLECs will receive less rate stability than others, and some CLECs will be forced to pay higher prices than others depending on when their RCP Agreements are due to expire. Such disparate treatment of CLECs by operation of the Stipulation will harm the efficient operation of the market by systematically identifying winners and losers based on an expiration date in an agreement instead of on a company's ability to efficiently compete in the market.

Q. DO YOU HAVE OTHER CONCERNS ABOUT THE STIPULATION AS IT RELATES TO RCP AGREEMENTS?

A. Yes. Stipulation Condition 28(d)(i) states that term and volume discount plans "offered by Qwest as of the Closing Date" will be extended by twelve months beyond the expiration

[45] tw telecom has a RCP Agreement with Qwest that is set to expire in June 2011.

date of the then existing term (unless the CLEC opts out). The phrase "offered by Qwest as of the Closing Date" presents a problem for CLECs who rely on RCP Agreements. As explained above, Qwest grandfathered RCP in June 2010, and replaced it with a new RCP that would result in significantly higher costs for CLECs. Qwest is now arguing that the existing RCP Agreements with CLECs (which are based on the now-grandfathered RCP) are no longer "offered by Qwest as of the Closing Date," so the CLECs' current RCP Agreements are not eligible for extension.[46] Based on Qwest's position, there would be no extension for CLECs' existing RCP Agreements under the merger conditions of the proposed settlement.

Likewise, if a CLEC's existing RCP Agreement expires before the Closing Date, the CLEC would be unable to extend its existing RCP Agreement with Qwest and be forced on to the new RCP that increases the CLEC's costs and negatively impacts its ability to compete. Because tw telecom's RCP Agreement with Qwest expires in June 2011, it would not be eligible for extension if the transaction closes after that date.

Under the Stipulation, some CLECs are entitled to no protection (or less protection than other CLECs) from merger-related harm just because the arbitrary expiration date in the CLEC's agreement with Qwest is before the arbitrary (and unknown) merger closing date. This is patently unfair, produces unreasonable results, significantly reduces the

[46] Testimony of Karen Stewart on behalf of Qwest, Arizona Docket Nos. T-01051B-10-0194, et al., December 1, 2010, at p. 12, lines 17-21 ("...certain carriers are demanding extensions of services known as Regional Commitment Plans, which are discount plans for interstate DS1 services that are filed by Qwest with the FCC. An extension is no longer available under the current tariff.") Qwest's argument is flawed because so long as a CLEC's existing RCP Agreement expires after the Closing Date, the now-grandfathered RCP would be "offered by Qwest as of the Closing Date" via existing RCP Agreements.

effectiveness of the commitments in the proposed settlement and provides competitive advantages to some CLECs over others. All CLECs should be entitled to the protections of merger commitments regardless of when they executed their wholesale services agreement with Qwest and regardless of the date on which the merger may close. Qwest should not be allowed to eliminate and raise prices for wholesales services while the proposed transaction is being reviewed, and then tie critical merger commitments to the merger closing date in order to lock in the higher prices and fewer services going-forward. Such an outcome undermines the effectiveness of the merger commitments as well as the public interest in fostering competition for the benefit of consumers.

Q. HOW CAN THE PROPOSED SETTLEMENT BE SUPPLEMENTED TO ADDRESS THE PROBLEM ABOUT EXTENDING RCP AGREEMENTS?

A. In addition to extending them for a minimum period of three years, the extension should make clear that it applies to tariffs generally (not just "intrastate" tariffs), and should also apply to the non-UNE wholesale agreements/tariffs in place as of the merger filing,[47] or at least the agreements in effect at the end of the current year to provide the price stability that CLECs need.

Q. STIPULATION CONDITIONS 28(b)(ii) AND 28(c)(ii) STATE THAT IF THE MERGED COMPANY WITHDRAWS A NON-UNE AGREEMENT AFTER THE 18-MONTH APPLICABLE TIME PERIOD, THE AGREEMENT WILL REMAIN

[47] Joint CLEC proposed Condition 1 states: "[a]ny 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."

AVAILABLE FOR AN ADDITIONAL 18-MONTH PERIOD ON A GRANDPARENTED BASIS TO SERVE EMBEDDED BASE CUSTOMERS CURRENTLY SERVED BY THE AGREEMENT AND SUBJECT TO RATE CHANGES. DOES THIS ADDITIONAL 18-MONTH TIME PERIOD PROVIDE ANY DEGREE OF CERTAINTY OR STABILITY?

A. No. These provisions are inadequate for numerous reasons. First, the lack of a price cap for the additional 18-month time period fails to provide any stability about the price CLECs will pay for these wholesale services. This renders the commitment essentially meaningless because Qwest could simply price the wholesale service at a level that makes using it uneconomic for CLECs. It is irrelevant that the wholesale service is "offered" if the Merged Company sets the price so high that CLECs cannot use it to serve retail customers as they do today. The FCC concluded in the *Qwest Phoenix Forbearance Order*: "there is little evidence, either in the record or of which we otherwise are aware, that the BOCs or incumbent LECs have voluntarily offered wholesale services at competitive prices once regulatory requirements governing wholesale prices are eliminated."[48] Based on this conclusion, it is likely that the Merged Company will seek rate increases for these wholesale services immediately following the initial 18-month time frame as part of its merger integration efforts.

Second, limiting the availability of wholesale services to a CLEC's embedded base being served by the agreement prevents CLECs from using the non-UNE wholesale services to

[48] Qwest Phoenix Forbearance Order at ¶ 34.

expand their business and add new customers. This would have a chilling effect on the ability of CLECs to compete with Qwest using these wholesale services going forward.

Third, limiting the availability of wholesale services to a CLEC's embedded base being served by the agreement effectively eliminates these wholesale services as a replacement to UNEs if/when UNEs are no longer available due to non-impairment designations.

Q. WOULD THE MERGED COMPANY BE HARMED BY EXTENDING THE COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS AT CURRENT RATES FOR THE TIME PERIOD PROPOSED BY THE JOINT CLECS?

A. No. Recall that the Joint CLECs are not seeking rate reductions or a share of the synergy savings – they are seeking rate stability (status quo) during the integration period. The rates under the non-UNE wholesale agreements are already substantially higher than the UNE rates set by the Commission for those same wholesale facilities. For instance, for dark fiber in Oregon, the commercial rate (per mile) is 5 to 8 times higher than the UNE dark fiber rate.[49] In addition, the commercial wholesale rates were set by Qwest unilaterally without any negotiation or input from CLECs. CenturyLink/Qwest has provided no reason why the rates for non-UNE wholesale services should be increased even higher above their underlying cost, particularly at the same time the Merged Company will be pursuing merger-related synergy savings.

[49] Compare the rates for Unbundled Dark Fiber ("UDF") at Sections 9.7.4 and 9.7.5 of Qwest Oregon's Negotiations Template Interconnection Agreement (available at http://www.qwest.com/wholesale/clecs/nta.html) to the rates for Qwest Commercial Dark Fiber ("QDF") in Exhibit A to the QDF Services Agreement between Qwest and Time Warner Telecom of Oregon LLC (available at http://www.qwest.com/wholesale/downloads/2006/060818/Time-Warner-OR-MSA-QDF-V2-8-8-06.pdf)

Q. DO YOU HAVE AN EXAMPLE DEMONSTRATING THAT QWEST IS ATTEMPTING TO UNDERMINE THE EFFECTIVENESS OF THE MERGER CONDITIONS BY INTRODUCING RATE INCREASES BEFORE THE MERGER CLOSING DATE?

A. Yes. One example relates to charges for directory listings. Condition 4(b) in the Integra Settlement prohibits the Merged Company from, in the Qwest legacy territory post-merger, assessing any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than such charges that were approved and assessed by Qwest before the merger closing date (unless Qwest first receives commission approval). This prohibition includes: "Storage or other 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."

Q. WHY WAS THIS CONDITION INCLUDED?

A. As noted in my previous testimony, the CenturyLink companies (Embarq, CenturyTel) have attempted to charge CLECs for customer acquisition activities, including local number portability, directory listings, directory assistance, etc. Qwest and other major providers have never charged for these activities. This condition, therefore, was to prevent CenturyLink from importing those anticompetitive practices into the Qwest region post-merger. The wording of the condition, however, has allowed Qwest to violate the spirit of the Stipulation even before the merger is approved.

Q. PLEASE EXPLAIN.

A. Since the prohibition against new directory listings charges in Integra Settlement Condition 4(b) is tied to the merger closing date, it apparently does not prevent Qwest from introducing new directory listings charges before the merger closing date. Unfortunately, that is precisely what Qwest is doing through the release of a recent non-CMP notice introducing a new wholesale directory listings charge for facilities-based CLECs.

Q. CAN YOU DESCRIBE QWEST'S RECENT ACTION TO INTRODUCE A NEW CHARGE FOR WHOLESALE DIRECTORY LISTINGS?

A. Yes. On November 30, 2010, Qwest issued a product notice to CLECs across its fourteen-state region that it intended to revise certain language in its wholesale product catalog ("PCAT") with respect to the application of charges for wholesale white pages directory listings.[50] The product notice is attached as Joint CLECs/24. The product notice announced that, effective January 1, 2011, Qwest would remove language from its PCAT that currently exempts the "Facility-Based Directory Listings" ("FBDL") product from non-recurring charges.[51] As a result of this change in PCAT language, facilities-based CLECs ordering FBDL will be subject to a new nonrecurring charge for such items as Additional Listings, Reference Listings, Informational Listings, etc.[52]

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50 See PROD.LIST.11.30.10.F.08550.WhitePagesDirListV53; Product Notification; Announcement Date: November 30, 2010; Effective Date: January 1, 2011.

51 Qwest describes FBDL as "a product for Facility-Based CLECs who want their end-user listings on the Qwest Directory Assistance database and available to other 3rd Party DA providers and directory publishers." See http://www.qwest.com/wholesale/pcat/whitepagedirlist.html (downloaded 12/10/10), at p. 2.

52 The new rate will be at the prevailing retail rate minus the wholesale discount specified in the CLEC's Interconnection Agreement with Qwest. For example, Qwest's current retail nonrecurring charge for a Business Service Additional Listing (USOC "CLT") is $10.00 (Qwest-Oregon Exchange and Network Services Price List,

Q. DID QWEST MAKE THIS NOTIFICATION THROUGH ITS CHANGE MANAGEMENT PROCESS ("CMP")?

A. No. Qwest considers PCAT revisions relating to rates and charges as outside the scope of the CMP, and therefore, provided notice of the new wholesale directory listings via a *non*-CMP notice. As a result, this new charge will not be considered within the CMP channels which at least provide CLECs an opportunity to object to these unexpected and arguably improper charges. Notably, the new charge will not be reviewed or approved by the state commission before its effective date (January 1, 2011).

Q. ARE YOU AWARE OF OTHER RECENT INSTANCES IN WHICH QWEST IS MAKING CHANGES THAT LESSENS THE EFFECTIVENESS OF THE COMMITMENTS MADE IN THE MERGER CONDITIONS?

A. Yes. On June 14, 2010, Qwest issued a product notice that announced a number of changes to the directory listings process.[53] One change was a revision to Qwest's treatment of CLEC directory listings that produced an error condition (e.g., due to an invalid subscriber address). Qwest's revision was to declare that, if a CLEC did not provide Qwest with a correcting order within five business days, Qwest had the option to:

> Update the listing by changing the listed name to the Provider name and changing it to Non-Published (NP). You will be billed normal NP listing

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Section 5.7.1.D.2, 1st Revised Sheet 129, Effective November 9,2009); assuming a CLEC had a wholesale discount of 20% (illustrative), Qwest would now charge that CLEC $8.00 for that Additional Listing.

[53] PROS.LIST.06.14.10.F.07951.DirListProvProcV45; Announcement Date: June 14, 2010; Proposed Effective Date: July 29, 2010.

monthly charges and nonrecurring charges (where applicable) for a premium/privacy listing.[54]

In other words, Qwest created a new charge applicable to directory listings that had not previously been assessed. A CLEC objected to Qwest applying the Non-Published rate to an erred listing. Nonetheless, on July 29, 2010, the Directory Listing Provisioning Process V45 was published to the Qwest website with the language about Non-Published rates included over the CLEC's objections.

Q. HOW DO THESE ACTIONS BY QWEST RELATE TO THE PROPOSED STIPULATION IN THIS CASE?

A. These examples – like the RCP example above – demonstrates that Qwest is taking steps to undermine the effectiveness of the merger conditions before the merger closing date. CenturyLink and Qwest are tying the conditions related to wholesale services availability and rate stability to the merger closing date, and then introducing changes before the closing date, such as eliminating wholesale services and raising wholesale rates, that will not be addressed by the merger conditions. These changes will not be reviewed or approved by state commissions before they become effective, and some of them will not be handled through Qwest's CMP process. Qwest could further reduce the effectiveness of the merger conditions it has already negotiated with Staff and CUB in this case (or may negotiate in the future with other parties) by introducing similar additional notices before the Oregon Commission rules on the proposed transaction (or even after the Commission rules but before CenturyLink and Qwest decide to close the merger). At the very least,

[54] *Id.*

these examples are indicative of CenturyLink's premeditated plans to import CenturyLink's anticompetitive charges into the Qwest ILEC region – a territory that dwarfs CenturyLink's ILEC territory in the states in which Qwest competes. Thus, what CLECs will find, if the Commission refuses to act, is that their costs of acquiring customers will increase dramatically since there are vastly more access lines in Qwest's ILEC territories than CenturyLink's. Therefore, it is critical that the Commission support merger conditions that close the existing loopholes and gaps in the Stipulation and Integra Settlement so that consumers and the continued development of competition are not harmed.

Q. PLEASE SUMMARIZE YOUR POSITION ON THE INADEQUACIES OF THE STIPULATION REGARDING NON-UNE COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS.

A. To avoid the unreasonable and discriminatory effects described above, the proposed merger requires additional conditions under which the Joint Applicants are required to extend current commercial and wholesale agreements and tariffs, at current prices for the time period proposed in the Joint CLECs' proposed conditions (and under no circumstance less than at least three years following merger closing). To keep Qwest from watering down these commitments while the merger is being reviewed, the commitments should also make clear that the extension should apply to the agreements in place as of the merger filing (or at least the agreements in effect at the end of the current year) and that they apply to all wholesale tariffs.

D. Joint Applicants have not made sufficient commitments to overcome concerns about merger-related harm to wholesale service quality.

Q. STIPULATION CONDITION 34 ADDRESSES WHOLESALE SERVICE QUALITY. DOES THIS CONDITION PROVIDE ADEQUATE INCENTIVES TO THE MERGED COMPANY TO MAINTAIN WHOLESALE SERVICE QUALITY POST-MERGER AND NOT ALLOW IT TO DEGRADE AS A RESULT OF INTEGRATION EFFORTS?

A. No. The most important shortcoming in this regard is that the proposed settlement fails to include the Joint CLECs' proposed Condition 4(a) under which an "Additional PAP" or "APAP" would apply if the Merged Company failed to provide wholesale service quality at levels Qwest provided prior to the merger. The APAP is a minimum five-year performance assurance plan applicable to the legacy Qwest ILEC territory which would compare the Merged Company's monthly performance with the Qwest performance that existed in the twelve months prior to the merger filing date. This comparison would be made using the current Oregon Performance Indicators ("PIDs"), products and disaggregation, as well as the same statistical methodology that exists in the Qwest Oregon Performance Assurance ("QPAP") to determine whether a statistically significant deterioration in performance exists. Whereas the current QPAP compares wholesale service quality to retail service quality to determine whether Qwest is providing nondiscriminatory access, the APAP compares pre-merger wholesale service quality to post-merger wholesale service quality to determine whether there has been merger-related deterioration in wholesale service quality. The APAP is intended to provide the proper incentives to the Merged Company not to pursue synergy savings at the expense of its wholesale customers.

Q. IS THE PURPOSE OF THE APAP TO INCREASE SERVICE QUALITY POST MERGER?

A. No. The purpose of the APAP is to simply maintain the service quality that existed prior to the merger. In other words, the APAP exists only to provide the proper incentives for the Merged Company to not degrade service post merger – a function that the current QPAP does not provide. The fact that CenturyLink and Qwest are so adamantly opposed to the APAP signals their apparent belief that wholesale service quality will be degraded post merger. The Commission should create proper incentives regardless of CenturyLink's and Qwest's opposition to this reasonable approach.

Q. THE STIPULATION WOULD PREVENT THE MERGED COMPANY FROM ELIMINATING OR WITHDRAWING THE QPAP FOR AT LEAST THREE YEARS AFTER THE MERGER CLOSING DATE.[55] WHY IS THIS INADEQUATE?

A. The QPAP does not (and would not) identify or rectify merger-related harm to wholesale service quality. The QPAP was designed to capture discriminatory treatment, not merger-related service quality deterioration, and as such, the QPAP compares *wholesale* service quality to *retail* service quality. This comparison would not capture or address deterioration in wholesale service quality related to the merger, particularly if both retail

[55] Stipulation Condition 34(a). The language allows the Merged Company to seek to "reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP)" after 18 months.

and wholesale service quality deteriorated post-merger. To properly capture merger-related deterioration in wholesale service quality, pre-merger wholesale service quality must be compared to post-merger wholesale service quality, as the APAP does. Moreover, the APAP provides financial incentives in the form of APAP remedy payments for merger-related wholesale service quality deterioration. These remedies would provide the necessary incentives to the Merged Company to not pursue merger savings at the expense of wholesale service quality or pay current QPAP remedies as a cost of doing business.[56] These remedies would also provide incentives to the Merged Company to move quickly to resolve wholesale service quality problems if/when they occur during integration so as to limit the resulting harmful effects on CLECs and end user customers.

Q. DOES THE STIPULATION CONTAIN SUFFICIENT PROVISIONS FOR IDENTIFYING MERGER-RELATED WHOLESALE SERVICE QUALITY DETERIORATION?

A. No. Stipulation Condition 34(a)(i) contains a provision that would track the Merged Company's post-merger wholesale service quality to CLECs. However, unlike Joint CLEC Condition 4(b) that requires the Merged Company to maintain the average wholesale service quality provided by Qwest to CLEC for 12 months prior to the merger filing date, the Stipulation establishes the benchmark on a rolling average tied to the merger closing date. Due to the rolling average relied upon by the Stipulation, over time the Merged Company will no longer be comparing pre-merger wholesale service quality to post-merger

[56] Qwest has testified that its total QPAP remedy payment for Oregon in 2009 was about $74,000. Qwest/5, Williams/12-13. This amounts to 0.012% of the $625 million in annual synergy savings anticipated by CenturyLink.

PUBLIC DOCUMENT
Confidential Data
Has Been Redacted

wholesale service quality (which is the relevant comparison for identifying merger-related harm to wholesale service quality). For example, after the first three months following the merger closing date, each successive month of Qwest's *post-merger* performance will be added to the average performance, and beginning one year after the closing date Qwest's performance will be measured by a rolling twelve month average of Qwest's *post-merger* performance. Therefore, the only time period during which Stipulation Condition 34(a)(i) would truly compare Qwest's pre-merger wholesale service quality to Qwest's post-merger wholesale service quality is the first three months following the closing date.

Q. DOES THE STIPULATION CONTAIN SUFFICIENT INCENTIVES FOR THE MERGED COMPANY TO QUICKLY AND EFFICIENTLY RESOLVE WHOLESALE SERVICE QUALITY DETERIORATION IF/WHEN IT OCCURS POST-MERGER?

A. No. Stipulation settlement Condition 34(b) contains a provision that would require the Merged Company to perform a root cause analysis of post-merger wholesale service quality deterioration and propose a plan for resolving each deficiency within thirty days. This condition also allows CLECs to invoke the root cause procedures and to seek resolution at the state commission if the problem is not resolved (subject to a potential opposition from the Merged Company). This is insufficient. Because deteriorating wholesale service quality post-merger will negatively impact CLECs and their end user customers, it is imperative that proper incentives be in place for the Merged Company not to allow this deterioration *before* the proposed transaction is approved so that the Merged Company is aware of its obligations as it begins to integrate the two companies and eliminate duplicative functions and systems. In addition, the incentives should be self-effectuating so that if/when post-merger wholesale service quality deterioration occurs, the Merged Company's incentives to resolve these problems are triggered immediately and without the need for additional litigation and disputes. The root cause provision that requires the Merged Company to determine why service quality problems are occurring and to develop a plan to rectify them is of little benefit to CLECs and their end users who will be experiencing service-affecting problems and disruptions. And because the provision would give the Merged Company thirty days to develop a root cause analysis and would allow the Merged Company to oppose a CLEC request to resolve wholesale service quality problems before the state commission, it will likely lead to future disputes between the Merged Company and CLECs, as well as extend the duration of wholesale service quality problems.

It is not in the public interest to approve the merger based on a commitment from CenturyLink and Qwest to simply look into merger-related wholesale service quality problems as they occur and propose a plan to fix them; rather, the proposed transaction should not be approved unless there are sufficient assurances that wholesale service quality deterioration does not occur in the first place. The commitments in the Stipulation are inadequate, and should be bolstered by adopting the APAP.

E. Joint Applicants' have not made sufficient commitments regarding non-impairment and forbearance filings.

Q. IN STIPULATION CONDITION 39, CENTURYLINK/QWEST AGREE NOT TO SEEK TO RECLASSIFY AS "NON-IMPAIRED" ANY QWEST OREGON WIRE CENTERS AND NOT TO FILE NEW PETITIONS FOR FORBEARANCE FROM ANY SECTION 251 OR 271 OBLIGATIONS IN ANY QWEST OREGON WIRE CENTERS BEFORE JUNE 1, 2012. IS THE TIME PERIOD OF THIS COMMITMENT ADEQUATE?

A. No. While the Joint CLECs agree with moratoriums on non-impairment filings and petitions for forbearance to address merger-related harm, the time period of proposed settlement Condition 39 is too short and arbitrary. If the proposed transaction is ultimately approved in the first quarter of 2011, as CenturyLink and Qwest are hoping, the June 1, 2012 expiration date results in an effective moratorium of about 15 months. This falls far short of the three-to-five year time period during which the Merged Company will be integrating the two companies and pursuing merger-related synergy savings.[57] Also, to my knowledge, neither Staff nor Joint Applicants have explained any logical basis for the June 1, 2012, expiration date.

Joint CLECs have proposed in Condition 14 that such moratoriums should remain in effect for the Defined Time Period, which corresponds to the synergy timeframe. Under no circumstances should the timeframe of this commitment be less than three years. The

[57] This also falls far short of the 42 month moratorium adopted by the FCC for the AT&T/BellSouth merger. Joint CLECs/17, Gates/6, footnote 31.

timeframe proposed by Joint CLECs is sufficient in length because it covers the synergy timeframe, and is objective because it is based on CenturyLink's own projections.

F. The Commission should adopt a Most Favored State condition.

Q. ONE OF THE TWO REMAINING DISPUTED ISSUES BETWEEN THE SETTLING PARTIES RELATES TO WHETHER THE COMMISSION SHOULD ADOPT A MOST FAVORED STATE CONDITION. WHAT IS YOUR POSITION ON THIS ISSUE?

A. I agree with Staff[58] and CUB[59] that the Commission should adopt a Most Favored State ("MFS") condition. I described the need for and benefits of a MFS condition in my direct testimony.[60] While I prefer the simpler MFS condition proposed by Joint CLECs as Condition 29,[61] the Commission should at a minimum adopt Staff's proposed MFS condition.[62] Imposing a MFS condition would be consistent with the Commission's practice in prior telecommunications merger proceedings, including the recent Frontier-Verizon transaction and the Embarq-CenturyLink transaction.[63]

Q. WHY IS A MFS CONDITION NECESSARY FOR THE PROPOSED TRANSACTION TO MEET THE PUBLIC INTEREST STANDARD?

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58 Staff/700, Dougherty/3-6.
59 CUB/200, Feighner/2-4.
60 Joint CLECs/8, Gates/193-194.
61 Joint CLECs/16, Gates/11.
62 Staff/700, Dougherty/3-4.
63 *See* Order No. 10-067 in Docket UM 1431; *see also* Order No. 09-169 in Docket UM 1416.

A. This condition would ensure that the public interest benefits obtained as a result of conditions agreed to by CenturyLink/Qwest in other jurisdictions, or at the FCC, can also be applied in Oregon. CenturyLink and Qwest requested expedited review and approval of the proposed transaction, and the Commission and other parties have worked diligently to analyze the proposed transaction on expedited timeframes to oblige the request. However, if a condition is adopted in another jurisdiction to address a merger-related harm that would arise in Oregon but was not identified in this proceeding, consumers in Oregon should not be penalized by foregoing the public interest benefits of that condition just because CenturyLink and Qwest wanted to expedite the proceedings.

Qwest claims that it sought expedited approval so that it could "bring the benefits…to consumer, business and wholesale customers sooner."[64] That being the case, there is no reason that any benefits that accrue to consumer, business and wholesale customers in a state that is not progressing as quickly in its review of the proposed transaction should not also accrue to consumer, business and wholesale customers in Oregon. A MFS condition provides a proper balance between the interest of CenturyLink and Qwest to secure regulatory approval of the merger on a shortened timeframe and the interest of the Commission to ensure that approval of the merger is in the public interest. It is also consistent with well accepted non-discrimination principles that are embodied in the Telecommunications Act of 1996 and many of this Commission's orders promoting competition in the local exchange market.

[64] Qwest/1, Peppler/5, lines 16-18.

Q. CENTURYLINK WITNESS JONES STATES THAT "A CONDITION OR COMMITMENT IN ONE JURISDICTION MAY NOT BE A NECESSARY OR EVEN APPROPRIATE CONDITION FOR ADOPTION IN OREGON."[65] DOES THIS JUSTIFY REJECTING THE PROPOSED MFS CONDITIONS?

A. No, because Mr. Jones' concerns are already accounted for in the MFS conditions. The MFS conditions proposed by both Joint CLECs and Staff allow the Oregon Commission to decide whether to expand or modify conditions adopted in this proceeding based on conditions adopted in other jurisdictions after the order is issued in Oregon. Importantly, neither MFS condition *requires* that all conditions adopted in other jurisdictions be imported to Oregon. Therefore, these MFS conditions would allow the Oregon Commission to consider whether conditions from other jurisdictions are necessary and/or appropriate for Oregon before adopting it – i.e., there is not automatic or universal applicability as CenturyLink suggests.

Q. MR. JONES CLAIMS THAT A MFS CONDITION "SERVES AS A DISINCENTIVE TO NEGOTIATING A SETTLEMENT BECAUSE THE COMPANY CAN NEVER BE CERTAIN OF WHAT ADDITIONAL CONDITIONS MIGHT BE ADOPTED FROM OTHER JURISDICTIONS."[66] DO YOU AGREE?

A. No. Mr. Jones' claim presupposes that it is appropriate for customers in some states to receive public interest benefits but not others. I contend, however, that wholesale and retail

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[65] CTL/1100, Jones/5-6.

[66] CTL/1100, Jones/6.

customers in Oregon should have the opportunity to receive the same public interest benefits and protection from harms to the public interest as customers in other states.

In addition, Mr. Jones' claim that a MFS condition would provide a disincentive to negotiating a settlement does not square with the facts. The Joint CLECs proposed a MFS condition in their direct testimony filed August 24, 2010,[67] and Staff proposed a MFS condition in its direct testimony filed September 3, 2010.[68] Therefore, CenturyLink has been on notice since September 3rd that numerous other parties supported a MFS condition and that the Oregon Commission could potentially adopt a MFS condition in conjunction with transaction approval. Since that time, however, CenturyLink and Qwest have negotiated numerous settlements with parties in Oregon and other states. The potential of the Oregon Commission adopting the Joint CLECs' or Staff's proposed MFS conditions did not discourage CenturyLink or Qwest from negotiating these prior settlements. Indeed, the Louisiana Commission adopted a Most Favored State condition in conjunction with its approval of the proposed transaction in that state[69] in mid-September, and that MFS condition apparently did not discourage CenturyLink/Qwest from negotiating all the settlements that have been filed since then.

Q. IS THERE AN ALTERNATIVE TO ADOPTING A MFS CONDITION?

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[67] Joint CLECs/8, Gates/193-194.

[68] Staff/100, Dougherty/44.

[69] Louisiana Public Service Commission Docket No. U-31379, Order No. U-31379, September 17, 2010 ("The Applicants shall provide notice to the LPSC of any condition imposed upon the merger, or agreed to in other jurisdictions, for the Commission's review and possible adoption if deemed in the public interest.")

A. Yes. The Oregon Commission could simply wait until all other jurisdictions have ruled on the proposed transaction before rendering its decision. Absent a MFS condition, this is the only way for the Commission to ensure that Oregon consumers receive the benefits and protections afforded to consumers elsewhere.

III. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The wholesale conditions in the Stipulation are inadequate to address the merger-related harm posed by the proposed transaction to Joint CLECs, the competitive marketplace and the public interest. To address these harms, I recommend that the proposed transaction be denied unless approval is conditioned on each of the Joint CLECs' proposed conditions set forth in Joint CLECs/16 to my direct testimony.[70] However, if the Commission is not inclined to require each and every condition proposed by Joint CLECs, it should, at the very least, require CenturyLink/Qwest to supplement the conditions in the Stipulation to resolve its primary shortcomings. Specifically, and at a minimum, the proposed merger should not be approved unless such approval is subject to the following additions to the

[70] My testimony does not address each and every difference between the Joint CLECs proposed conditions list (Joint CLECs/16) and the Stipulation's settlement conditions; rather, this testimony focuses on some of the differences most critical to Joint CLECs and competition as a whole. Although I do not address every important difference, that should not be construed as my agreement with the differing terms of the Stipulation. For example, the Stipulation's settlement conditions do not address Joint CLECs' proposed Condition 30 that would allow either party to seek resolution of a dispute regarding the merger conditions at the state commission by filing a petition. In addition, Billy Pruitt on behalf of Charter addresses some other important differences between the Stipulation settlement conditions and the Joint CLECs' proposed conditions. I continue to recommend that if the Commission is inclined to approve the proposed transaction, it should make that approval conditional upon each of the Joint CLECs' proposed conditions. If the Commission is not inclined to adopt all of the Joint CLECs' proposed conditions in light of the Stipulation's settlement conditions, it should at the very least supplement the Stipulation as described in my testimony and the testimony of Mr. Pruitt.

Stipulation's settlement conditions as well as the conditions discussed by Charter Fiberlink witness Mr. Pruitt:

1. The Merged Company will use and offer to wholesale customers the legacy Qwest OSS for at least three years.
2. Robust, transparent third party testing will be conducted for any replacement OSS that replaces a Qwest system that was subject to third party testing; and the replacement OSS should be required to perform at current performance levels (which will be benchmarked to measure future performance).
3. The Applicable Time Periods for non-UNE commercial and wholesale agreements and tariffs should be the Defined Time Period initially proposed by Joint CLECs, or at a minimum, three years.
4. The extension of non-UNE commercial and wholesale agreements and tariffs, including term and volume discount plans, should apply to wholesale agreements in place as of the merger filing date. As noted in (3) above, the minimum time period for these agreements should be three years.
5. Conditions applicable to non-UNE wholesale tariffs should not be limited to intrastate tariffs, but should also include interstate tariffs.
6. The Additional PAP should apply in addition to the QPAP.
7. The moratorium on Qwest requests to reclassify wire centers as "non-impaired" and requests for forbearance should apply for the Defined Time Period initially proposed by Joint CLECs.
8. A Most Favored State condition should be adopted.

The Commission should also supplement the merger conditions to address the concerns raised in the testimony of Billy Pruitt on behalf of Charter. These remaining issues raised by Joint CLECs are merger-related, have not been sufficiently addressed in the Stipulation (or the Integra Settlement), and are not currently pending in separate litigation either in the courts or before the Commission. The need for these additional commitments is supported by the record and critical to the public interest.

Q. DOES THIS CONCLUDE YOUR TESTIMONY REGARDING THE STIPULATION?

A. Yes, it does.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1484

In the Matter of

CENTURYLINK, INC.

Application for Approval of Merger
between CenturyTel, Inc. and
Qwest Communications International, Inc.

Joint CLECs/24 (Gates)

November 30, 2010

[redacted]
Charter Communications Holding Company LLC
Charter Fiberlink - Nebraska LLC
Charter Fiberlink CCO LLC
Charter Fiberlink Oregon -CCVII LLC
Charter Fiberlink Washington -CCVII LLC
12405 Powerscourt Dr.
St. Louis, MO 63131
[redacted]@chartercom.com

TO: [redacted]

Announcement Date:	**November 30, 2010**
Effective Date:	**January 1, 2011**
Document Number:	**PROD.LIST.11.30.10.F.08550.WhitePagesDirListV53**
Notification Category:	**Product Notification**
Target Audience:	**CLECs, Resellers, ILECs**
Subject:	**White Pages Directory Listings – V53.0**

Summary of Change:
On November 30, 2010, Qwest is providing notification of planned updates to the Wholesale Product Catalog that includes new/revised documentation for White Pages Directory Listings – V53.0. This material becomes effective on January 1, 2011.

Qwest is updating the Pricing section under Rate Structure of this document. References to FBDL are being changed in regards to recurring and non recurring monthly charges.

Current operational documentation is found on the Qwest Wholesale Web site at http://www.qwest.com/wholesale/pcat/whitepagedirlist.html.

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager, Amy Giberson on (303) 896-2292 or at Amy.Giberson@qwest.com. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

To view your Qwest Wholesale notifications online, please log into our ANR (Accessible

Notices Repository) at : http://notices.qwestapps.com.

If you would like to subscribe, unsubscribe or change your current profile to Qwest Wholesale mailouts please go to the 'Subscribe/Unsubscribe' web site and follow the subscription instructions. The site is located at:

http://www.qwest.com/wholesale/notices/cnla/maillist.html

cc: Amy Giberson
Larry Forsyth

Qwest Communications, 120 Lenora St, 11th Floor, Seattle WA 98121

CERTIFICATE OF SERVICE
UM 1484

I hereby certify that the **Replacement Redacted Version of Testimony Regarding Stipulation of Timothy J. Gates on Behalf of tw telecom of oregon, llc, Covad Communications Company, Level 3 Communications, LLC, and Charter Fiberlink OR-CCVII, LLC** was served on the following persons on December 16 2010, by email to all parties and by U.S. Mail to parties who have not waived paper service:

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Dated: December 16, 2010

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