

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

Application No. C-4280

PRE-FILED TESTIMONY OF TIMOTHY J GATES

ON BEHALF OF

CHARTER FIBERLINK-NEBRASKA, LLC

August 27, 2010

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Exhibits

- Exhibit TJG-1 -- *Curriculum Vitae* of Timothy J Gates
- Exhibit TJG-2 – Description of Qwest’s OSS Testing in Relation to 271 Authority
- Exhibit TJG-3 – Assurances Not Met
- Exhibit TJG-4 – CLEC Comments on Problems with Legacy Embarq OSS
- Exhibit TJG-5 – Integra Telecom’s May 19th Letter re: OSS problems
- Exhibit TJG-6 – Map of Recommended Conditions to Previously-Adopted
Conditions
- Exhibit TJG-7 -- Charleston Daily Mail Articles

1 **I. INTRODUCTION**

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

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

5 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
6 **WITH THE FIRM?**

7
8 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in regulatory and
9 litigation support, economic and financial modeling, and business plan modeling
10 and development. QSI provides consulting services for regulated utilities,
11 competitive providers, government agencies (including public utility
12 commissions, attorneys general and consumer councils) and industry
13 organizations. I currently serve as Senior Vice President.

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
15 **WORK EXPERIENCE.**

16
17 A. I received a Bachelor of Science degree from Oregon State University and a
18 Master of Management degree, with an emphasis in Finance and Quantitative
19 Methods, from Willamette University's Atkinson Graduate School of
20 Management. Since I received my Masters, I have taken additional graduate-level
21 courses in statistics and econometrics. I have also attended numerous courses and
22 seminars specific to the telecommunications industry, including both the National
23 Association of Regulatory Utility Commissions (“NARUC”) Annual and NARUC
24 Advanced Regulatory Studies Programs.

1 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom,
2 Inc. (“MWC.COM”). I was employed by MCI and/or MWC.COM for 15 years in
3 various public policy positions. While at MWC.COM I managed various functions,
4 including tariffing, economic and financial analysis, competitive analysis, witness
5 training and MWC.COM’s use of external consultants. Prior to joining MWC.COM, I
6 was employed as a Telephone Rate Analyst in the Engineering Division at the
7 Texas Public Utility Commission and earlier as an Economic Analyst at the
8 Oregon Public Utility Commission. Exhibit TJG-1 contains a complete summary
9 of my work experience and education.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NEBRASKA**
11 **PUBLIC SERVICE COMMISSION (“NEBRASKA PSC” OR**
12 **“COMMISSION”)?**

13
14 A. Yes. I testified in Application No. C-627 and Application No. C-749. In
15 addition, I have testified more than 200 times in 45 states and Puerto Rico, and
16 filed comments with the Federal Communications Commission (“FCC”) on
17 various public policy issues including costing, pricing, local entry, competition,
18 universal service, strategic planning, mergers and network issues. *See*, Exhibit
19 TJG-1.

20 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS**
21 **PROCEEDING?**

22
23 A. Yes. While at MCI I was involved in several mergers. I have also observed the
24 consolidation in the telecommunications industry over the last ten years or so.
25 Over the course of my career, I have investigated and/or testified on virtually

1 every issue that defines the wholesale relationship between a Bell Operating
2 Company (“BOC”) or incumbent local exchange carrier (“ILEC”) and their
3 competitive local exchange carrier (“CLEC”) customers/competitors. Further, I
4 have experience assisting CLECs in their wholesale relationships with both
5 companies involved in the proposed transaction. For instance, I have participated
6 in dozens of arbitrations since the 1996 amendments to the Communications Act
7 of 1934 (“Act”)¹ were enacted, including arbitrations and other proceedings
8 involving Qwest and CenturyLink (and/or their predecessors).

9 I am knowledgeable about the interconnection and business practice issues
10 addressed in this testimony as well as the potential impacts the proposed
11 transaction may have on the market, competitors and consumers. I have reviewed
12 both the Petition filed by Qwest and CenturyLink in this proceeding² and the
13 Commission Staff’s List of Issues.

14 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

15 A. My testimony is being filed on behalf of Charter Fiberlink-Nebraska, LLC
16 (“Charter”).

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) (“Telecom Act” or “Act”).

² See, Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corp, dated June 4, 2010 (“Nebraska Application” or “Application”). For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

1 **II. PURPOSE AND ORGANIZATION OF TESTIMONY**

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

3 A. The purpose of my testimony is to demonstrate that the proposed transaction
4 should be rejected, or in the alternative, approved only subject to robust,
5 enforceable commitments or conditions necessary to protect the public interest.
6 The information (or lack thereof) provided by Qwest and CenturyLink (hereafter
7 collectively referred to as “Joint Applicants”) to date is woefully insufficient to
8 demonstrate that the proposed transaction is in the public interest, and in fact, that
9 sparse information shows that there is substantial harm that could befall
10 competition and competitors, their end users and ultimately the public interest.

11 At this point, there is only one thing certain about the proposed transaction:
12 uncertainty. The Joint Applicants have put the parties on notice that material
13 changes are coming post-transaction, but in other states they have been unable or
14 unwilling to provide any detail about those material changes – i.e., what will and
15 will not change, when changes will occur, how the changes will or will not impact
16 consumers and/or competitors, or why those changes will be made. The
17 significant commercial and regulatory uncertainty surrounding the proposed
18 transaction, in and of itself, is harmful because it provides the Joint Applicants the
19 opportunity to operate to the detriment of competitors and the public. Such
20 uncertainty and the very real potential for harm to the public interest must be
21 addressed by either rejecting the transaction or putting in place enforceable
22 conditions/commitments to prevent or offset this harm. The alleged benefits

1 touted by the Joint Applicants amount to nothing more than unsupported, vague
2 statements made to secure transaction approval, and are not verifiable benefits on
3 which the Commission should rely. As a result, the future of telecommunications
4 markets, telecommunication competition upon which consumers rely, and
5 economic development in the State is in serious question due to the proposed
6 transaction.

7 Further, I place this proposed transaction in context by identifying significant
8 problems that have occurred following similar, recent mergers, including the
9 systems meltdown following the FairPoint acquisition of Verizon properties.
10 These examples provide the Commission and competitors an indication of the
11 problems that could be anticipated in Qwest's territory post-transaction, and
12 should give the Commission serious pause when evaluating the Joint Applicants'
13 unsupported claims – particularly in the absence of any true measureable
14 commitments from the Joint Applicants that benefits will result.

15 Finally, to the extent the Commission does not reject the transaction outright, my
16 testimony describes and recommends conditions that the Commission should
17 adopt or enforceable commitments the Commission should obtain from the Joint
18 Applicants as prerequisites to transaction approval to prevent or offset the harm
19 that would result if the transaction is approved as filed by the Joint Applicants.

20 **Q. HAVE YOU FILED TESTIMONY ON THE PROPOSED TRANSACTION**
21 **IN OTHER STATES?**

1 A. Yes. I have filed testimony on the proposed transaction along with my colleague
2 Dr. August Ankum, in Iowa, Minnesota and Oregon thus far. I also expect to file
3 testimony in similar proceedings in Arizona, Colorado, Montana, Utah and
4 Washington. The previously-filed testimony was much more extensive and
5 included many more conditions. This testimony, however, is more limited than
6 what was submitted elsewhere.

7 **Q. WHY IS YOUR TESTIMONY FOR NEBRASKA MORE LIMITED THAN**
8 **IN THE OTHER STATES?**

9 A. Based on information from counsel, I understand that this proceeding is limited in
10 scope. Therefore, I have limited my testimony accordingly. For instance, in the
11 other states I recommended 30 conditions that are necessary to ensure the
12 workability of the proposed transaction.³ Here, I am proposing four general areas
13 of conditions. My testimony in the other states, however, is available to the
14 Commission should it desire to review the more extensive records being
15 developed in those proceedings.

16 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

17 A. I have broken my testimony into sections to focus the discussions. Further, I have
18 added citations to testimony, petitions/applications, and discovery responses
19 provided by Qwest and/or CenturyLink in other states. There was no opportunity
20 to propound discovery in this proceeding, so I have provided references to these
21 other documents for the Commission, the parties and the Staff, should they desire

³ See, for instance, Exhibit TJG-8 to Gates Direct Testimony filed on August 19, 2010; Minnesota Public Utilities Commission Docket No. P-421, et al./PA-10-456.

1 to review that information which I rely upon for this testimony. I think it is
2 reasonable to assume that the Applicants would have provided similar responses
3 to discovery and testimony in Nebraska had the Commission decided to permit
4 discovery in this proceeding.

5 The sections in my testimony are organized as follows:

- 6 • Section III provides a brief summary of the four conditions proposed by
7 Charter.
- 8 • Section IV discusses the requirements and obligations related to
9 interconnection, as well as the significant efforts (and costs) expended by
10 CLECs to get ILECs to live up to these requirements and obligations so that
11 CLECs can secure interconnection on terms, rates and conditions that are just,
12 reasonable and nondiscriminatory.
- 13 • Section V discusses the harm to CLECs related to CenturyLink taking control
14 of Qwest's wholesale operations, including the challenges of integrating the
15 two companies as well as examples showing that the Merged Company⁴ is
16 attempting to increase transaction costs and undermine CLECs' ability to
17 protect themselves from merger-related harm.
- 18 • Section VI discusses the lessons learned from recent, similar transactions.
19 These examples show that the post-transaction integration process in recent
20 mergers caused significant harm to CLECs and retail customers, despite the
21 merging companies in those cases making the same types of unsupported
22 statements about merger benefits that the Joint Applicants have made in this
23 proceeding.
- 24 • Section VII discusses commitments/conditions that the Commission should
25 impose upon the Joint Applicants to protect the public interest and the
26 efficient operation of the telecommunications industry in Nebraska. These
27 commitments/conditions are critical to prevent or offset the harms the
28 proposed transaction will cause for the market, CLECs and consumers.

29 **III. OVERVIEW OF PROPOSED CONDITIONS**

30
31 **Q. PLEASE SUMMARIZE THE CONDITIONS PROPOSED BY CHARTER**
32 **IN THIS PROCEEDING.**

⁴ 'Merged Company' refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).

1
2 A. There are four primary areas that are important to Charter and other competitive
3 providers. Those four areas include the following: Operations Support Systems
4 (“OSS”) and other Back-Office Systems; Treatment of Interconnection
5 Agreements (“ICAs”); Wholesale Service Degradation; and, Prohibition on
6 Customer Acquisition Charges. More specifically, Charter proposes the
7 following conditions/commitments to ensure that competitors (who are also
8 wholesale customers) are not adversely affected by wholesale policies that may be
9 adopted by the post-merger entity:

- 10 1. The post-merger entity (“Merged Company”) should be required to use
11 the existing Qwest OSS, wholesale and intercarrier processes and systems
12 for at least three years;
- 13 2. ICAs should be made available on a reasonable and non-discriminatory
14 basis and competitive harm, such as re-opening and re-arbitrating
15 previously approved ICAs should be prohibited, except for changes in
16 applicable laws;
- 17 3. The Merged Company should not be permitted to degrade services to
18 competitors in Nebraska below what Qwest provides today in terms of
19 porting intervals and volume capacities, and ordering and provisioning
20 intervals and interfaces; and
- 21 4. The Merged Company should not be permitted to impose any charges on
22 customer acquisition that Qwest does not explicitly charge today.

1 I will provide background and support for each of these areas and the necessary
2 merger conditions in the testimony that follows.

3 **IV. CLEC EFFORTS FOR EFFICIENT INTERCONNECTION**

4 **A. *Interconnection Rights and Responsibilities Under the Act***

5 **Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS**
6 **UNDER THE TELECOM ACT.**

7
8 A. The FCC and state regulatory bodies have recognized that the various subsections
9 of Section 251 of the Act impose escalating interconnection obligations on
10 carriers depending upon their classifications (i.e., telecommunications carrier,
11 LEC, or ILEC). These classifications are based upon their market power,
12 economic position (e.g., monopoly) and attendant public obligations (e.g.,
13 common carrier obligations).

14 Section 251(a) of the Act identifies the general duties of telecommunications
15 carriers to “interconnect directly or indirectly with the facilities and equipment of
16 other telecommunications carriers.” Section 251(b) of the Act identifies the
17 general duties of all LECs which include number portability, dialing parity, and
18 reciprocal compensation. Section 251(c) imposes additional obligations and
19 specific interconnection duties on ILECs, including the duty to negotiate an
20 interconnection agreement (“ICA”) in good faith, provide interconnection on
21 more specific rates, terms and conditions, provide unbundled network elements
22 (“UNEs”), offer services for resale at wholesale rates, provide notice of network

1 changes and provide collocation when requested. The FCC's *Local Competition*
2 *Order*⁵ at paragraph 1241 describes these additional obligations as follows:

3 Section 251(c) imposes obligations on incumbent LECs in addition
4 to the obligations set forth in sections 251(a) and (b). It establishes
5 obligations of incumbent LECs regarding: (1) good faith
6 negotiation; (2) interconnection; (3) unbundling network elements;
7 (4) resale; (5) providing notice of network changes; and (6)
8 collocation.

9 These duties and obligations are all focused on affording CLECs equal, non-
10 discriminatory access to ILEC network facilities, systems and services.

11 **Q. ARE ALL ILECS SUBJECT TO THE SAME REQUIREMENTS UNDER**
12 **THE ACT?**

13
14 A. All ILECs are subject to the requirements of Section 251(c) of the Act. However,
15 some ILECs – such as Qwest – are both ILECs *and* Bell Operating Companies (or
16 BOCs) under the Act. The Act requires BOCs to comply not only with Section
17 251(c) of the Act, but also Section 271 of the Act. Section 271 requires BOCs to
18 demonstrate compliance with the 14-point competitive checklist before they are
19 allowed to provide in-region interLATA services. The FCC granted Qwest 271
20 authority throughout its 14-state BOC territory in the 2002-2003 timeframe. Non-
21 BOC ILECs, such as CenturyLink, are not required to comply with Section 271
22 requirements.

23 **Q. HOW DOES THE STATE GET INVOLVED IN IMPLEMENTING THE**
24 **FEDERAL TELECOMMUNICATIONS REGULATORY FRAMEWORK?**
25

⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, Released August 8, 1996 (“*Local Competition Order*”).

1 A. The state commissions have jurisdiction over approving ICAs and related disputes
2 (e.g., arbitrations) pursuant to Section 252 of the Act⁶ and numerous provisions of
3 state law. State commissions also establish the rates ILECs are permitted to
4 charge for UNEs, interconnection and collocation under Sections 251 and 252,
5 applying the FCC's total element long-run incremental cost methodology
6 ("TELRIC"). State commissions also determine whether certain ILEC central
7 offices meet the federal standards for "delisting" UNE loops or transport as a
8 Section 251 unbundled network element. In addition, states provided consultation
9 to the FCC in relation to the BOCs' applications for Section 271 approval. As
10 explained below, in this role, the state commissions conducted several years'
11 worth of fact-finding, hearings, and testing, and issued extensive
12 recommendations to the FCC regarding the BOCs' adherence to the 14-point
13 competitive checklist. Many states have continued their role in monitoring
14 Qwest's 271 compliance by monitoring the Change Management Process
15 ("CMP") and Qwest's wholesale performance indicators and associated
16 performance remedy plans. Furthermore, states have an important role in
17 determining whether a telecommunications company should be relieved of its
18 duties under Section 251 based upon the rural status of that company.

⁶ 47 U.S.C. §§ 252(b), (c) (empowering state regulators to arbitrate interconnection agreements between ILECs and competitors; establishing arbitration procedures; establishing substantive arbitration standards).

1 **B.***ILEC Impacts on Market Entry Methods*

2 **Q.****DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR**
3 **COMPETITION?**

4
5 A. No. Back in 1995, when Congress was establishing the final terms of the new
6 federal law (the Telecom Act was signed into law in early February 1996),
7 nobody was really sure how, exactly, competition would develop. In the FCC’s
8 *Local Competition Order* the FCC discussed the Act’s anticipated market entry
9 methods.

10 The Act contemplates three paths of entry into the local market --
11 the construction of new networks, the use of unbundled elements
12 of the incumbent's network, and resale. The 1996 Act requires us
13 to implement rules that eliminate statutory and regulatory barriers
14 and remove economic impediments to each. We anticipate that
15 some new entrants will follow multiple paths of entry as market
16 conditions and access to capital permit. Some may enter by
17 relying at first entirely on resale of the incumbent's services and
18 then gradually deploying their own facilities.⁷

19 Since passage of the Act, competitors have used all three paths of entry – (1)
20 resale, (2) UNEs, and (3) entirely separate network, and/or combinations of these
21 methods. The client I represent in this proceeding, Charter, falls primarily into
22 the third category – entirely separate network.

23 Cable-based CLECs like Charter, own the switch, transport and the “last mile”
24 facilities (i.e., hybrid fiber coaxial distribution plant) to provide services to its
25 customers. And, like other CLECs, Charter must still interconnect with the ILEC
26 in order to send and receive traffic to/from the public switched telephone network

⁷ *Local Competition Order* at ¶ 12.

1 (“PSTN”). In short, the road to local competition, even for cable-based CLECs,
2 still goes through the ILEC.

3 **Q. CAN RELYING ON THE ILEC FOR NETWORK ELEMENTS OR**
4 **INTERCONNECTION RESULT IN CHALLENGES FOR THE CLEC?**

5
6 A. Yes. Putting aside the normal competitive risks of any business, a CLEC faces
7 the “Catch 22” of obtaining essential elements of its productive resource – for
8 example, interconnection to enable the exchange of traffic with other carriers’ end
9 users – from its principal competitor. For this competitive model to work, the
10 business, technical and operational terms by which the bottleneck elements are
11 available and by which networks are interconnected must be efficient,
12 technology-neutral and stable, so that CLECs can plan their business and make
13 reasonable investment decisions. The problem with this model is that ILECs have
14 the incentive to hinder the CLECs’ efforts at every turn.

15 **Q. WHY DO YOU SAY THAT ILECS HAVE AN INCENTIVE TO HINDER**
16 **CLECS?**

17 A. We have observed ILECs act on these incentives repeatedly since the passage of
18 the Act. Further, as the FCC correctly noted in the *Local Competition Order*, “An
19 incumbent LEC also has the ability to act on its incentive to discourage entry and
20 robust competition by not interconnecting its network with the new entrant’s
21 network or by insisting on supracompetitive prices or other unreasonable
22 conditions for terminating calls from the entrant’s customers to the incumbent

1 LEC's subscribers."⁸ That is why one of the most critical components of this
2 regulatory scheme is the vigilant enforcement of the "stringent"
3 nondiscrimination standard that Congress imposed on ILECs in the Telecom Act.
4 Under the stringent standard of nondiscrimination, not only is the ILEC required
5 to treat other carriers equally, the ILEC is also required to treat competitors the
6 same as it treats itself (and its affiliates) in providing access to the bottleneck
7 elements of the local network.⁹ As the FCC noted, this more stringent
8 nondiscrimination requirement is essential to ensure that competitors have a
9 "meaningful opportunity to compete" against the ILEC.¹⁰

10 **Q. TELECOMMUNICATIONS COMPETITION SEEMS TO DIFFER FROM**
11 **THE STANDARD COMPETITIVE BUSINESS MODEL. WOULD YOU**
12 **AGREE?**

13
14 A. Yes. With most retail products or services, if customers want to switch suppliers,
15 they just switch. But in local telecommunications markets, the old provider
16 (which in a majority of cases is the ILEC) has to help move the retail customer to
17 the new provider. Likewise, with most retail products or services, if a customer
18 switches, the old supplier is simply out of the picture. But in local
19 telecommunications, the old provider (when it is the ILEC) remains constantly
20 involved, sending calls to, and receiving calls from, its own former customers (or
21 the old provider may continue a relationship with the customer by continuing to

⁸ *Local Competition Order* at ¶ 10.

⁹ *Id.* at 313-315. Equal treatment is subject to two limited exceptions - legitimate cost differences and technical infeasibility, the later which the FCC said would rarely occur. Also, the burden to prove legitimate cost differences or technical infeasibility rests with the ILEC.

¹⁰ *Id.* at ¶ 315.

1 provide long-distance service, for example, after the customer has switched local
2 providers). And all the while, the new provider must rely on the old provider for
3 critical inputs to the new provider's retail services such as interconnection, UNEs,
4 collocation and resale.

5 Because of this unusual but unavoidable continuing interaction among providers,
6 for local telecommunications competition to work, competing providers must
7 cooperate behind-the-scenes, even though they are rivals, and even though their
8 economic incentive (as profit-maximizing firms) is to undermine – not help – the
9 other provider's ability to compete for end user customers. As a result, no matter
10 how much retail competition there might be, regulation is needed to make sure
11 that the critical behind-the-scenes cooperation actually occurs. This is the essence
12 and purpose of Sections 251 and 271 of the Act. Because ILECs and BOCs enjoy
13 a significant advantage over CLECs in terms of determining whether the
14 wholesale relationship between them is successful, Sections 251 and 271 (and
15 continued enforcement and compliance with those sections) are absolutely critical
16 to ensuring that ILECs and BOCs continue to cooperate with CLECs.

17 **Q. BASED ON THE INFORMATION ABOVE, IT SEEMS THAT THE**
18 **CLECS ARE ALSO CUSTOMERS OF THE ILEC. IS THAT CORRECT?**

19
20 A. Yes. The CLECs are frequently customers of the ILECs, purchasing network
21 elements or services from the ILEC on a wholesale basis for use in providing
22 competitive retail services to end-user customers. Significantly, the ILEC will
23 continue to compete for that retail end-user customer's business, while at the

1 same time, acting as a wholesale provider of critical inputs to the competitor.
2 Thus, the ILEC is both a competitor of, and wholesale supplier to, the competitive
3 providers in that market.

4 **Q. HAS FACILITIES-BASED COMPETITION BEEN ABLE TO**
5 **OVERCOME THE MARKET POWER AND CONTROL THAT ILECS**
6 **AND BOCS POSSESS OVER THEIR LOCAL MARKETS?**

7 A. No. The latest FCC reports, even when adding in interconnected VoIP offerings,
8 still show the ILECs with more than 70 percent of the market.¹¹ Further, the FCC
9 has recognized Qwest's monopoly over wholesale inputs relied upon by CLECs.
10 In rejecting Qwest's recent petition for forbearance in the Minneapolis, Denver,
11 Seattle and Phoenix metropolitan statistical areas ("MSAs"), the FCC concluded
12 that "[t]he record does not reflect any significant alternative sources of wholesale
13 inputs for carriers in the four MSAs."¹² And specifically with respect to Qwest's
14 serving area in Phoenix, Arizona, in June 2010, the FCC concluded:

15 ...based on the data in the record, Qwest fails to demonstrate that
16 there is sufficient competition to ensure that, if we provide the
17 requested relief, Qwest will be unable to raise prices, discriminate
18 unreasonably, or harm customers. For example, the record reveals
19 that no carrier besides Qwest provides meaningful wholesale
20 services throughout the Phoenix marketplace, and that competitors
21 offering business services largely must rely on inputs purchased
22 from Qwest itself to provide service.¹³

¹¹ FCC "Local Telephone Competition: Status as of December 31, 2008" released June 2010 at Figure 2 showing ILEC residential and business market share of 73%.

¹² *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 07-97, FCC 08-174, Released July 25, 2008 ("*Qwest Forbearance Order*") at ¶ 37.

¹³ *In the Matter of Petition of Qwest Corp. 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 Arizona Forbearance Order*") at ¶ 2.

1 Importantly, the FCC pointed to the lack of options for wholesale customers as a
2 reason for denying Qwest's forbearance petition. This market power not only
3 extends to wholesale services such as UNEs, interconnection and collocation
4 required of ILECs pursuant to Section 251(c) of the Act, but also to other
5 wholesale services provided by the ILECs, such as special access, as evidenced by
6 the supracompetitive rates ILECs are currently charging for special access in
7 areas where they have received special access pricing flexibility. The fact is that
8 ILECs and BOCs continue to be entrenched incumbents in their local territories
9 and the competition in those spaces is fragile and depends largely on use of
10 incumbent facilities for its very existence.

11 ***C. Imposition of Costs on CLECs for Interconnection***

12 **Q. HAVE CLECS SPENT LARGE SUMS OF MONEY ESTABLISHING THE**
13 **RATES, TERMS AND CONDITIONS BY WHICH THEY**
14 **INTERCONNECT WITH THE ILECS?**

15 A. Absolutely. First, CLECs must be certificated to provide telecommunications in
16 the state. Then the CLECs and ILECs must negotiate the rates, terms and
17 conditions for the interconnection and exchange of traffic for a period of time
18 (although Section 252 of the Act provides for negotiations for at least 135 days, in
19 fact, negotiations often last much longer and sometimes continue for as long as 9
20 to 12 months). Then, for each issue on which the companies are unable to reach
21 agreement, they must arbitrate that issue before each state commission. It is not
22 uncommon for a CLEC and ILEC to disagree on dozens of issues, each of which
23

1 must be arbitrated. Once the final agreement is established, it must be submitted
2 to the state commission for approval. I have been involved in dozens of these
3 arbitration cases and can say, first hand, that they consume an enormous amount
4 of time and money for both the CLEC and the ILEC. Indeed, even after a final
5 order from the state commission, there may be appeals that consume substantial
6 additional time and money.

7 On a separate but related note, often cost-based rates that apply to UNEs,
8 interconnection and collocation in an ICA are established in separate generic cost
9 dockets in which CLECs participate to ensure that the resulting rates satisfy the
10 federal TELRIC¹⁴ pricing standards. My firm, QSI, recently participated in
11 generic cost dockets for Qwest in Minnesota and Colorado. The Minnesota cost
12 proceeding lasted for about three years, and it has been about one and one-half
13 years since Qwest filed its initial testimony in the ongoing Colorado proceeding.
14 During this time, CLECs have expended a significant amount of time and money
15 in an attempt to ensure that Qwest's rates for UNEs, interconnection and
16 collocation comply with the law. Furthermore, CLECs have spent an enormous
17 amount of time and money attempting to ensure that the BOCs comply (and
18 continue to comply) with the obligations set forth in approved ICAs and Sections
19 251 and 271 of the Act.

¹⁴ "TELRIC" stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC's *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services. The FCC rules which require the ILEC to price its network elements using TELRIC also require the ILEC to provide non-discriminatory access to those same elements as well as interconnection. *See*, 47 C.F.R. § 51 Subpart F (Pricing of Elements) and 47 C.F.R. §§ 51.305, 51.311 and 51.313.

1 **Q. PLEASE EXPLAIN WHY LITIGATION HAS BEEN REQUIRED TO**
2 **RESOLVE THESE ISSUES?**

3
4 A. There is much at stake for the ILECs and the CLECs; ILECs want to retain or
5 grow their market share and CLECs want to offer competitively-priced innovative
6 services to gain more customers, which results in reduced ILEC market share.
7 Since ILECs continue to have the largest percentage of local customers in the
8 local exchanges by far, that means that CLECs most often increase market share
9 by converting existing ILEC customers to CLEC services.

10 ILECs continue to have the ability and incentive to impede competition. One way
11 ILECs have attempted to impede competition is by making it very difficult and
12 costly for CLECs to secure rates, terms and conditions required by federal and
13 state law in the ICA negotiations and litigation.

14 **Q. CAN YOU PROVIDE SOME OTHER EXAMPLES OF DISPUTES THAT**
15 **MAY ARISE OVER AN ICA?**

16
17 A. Yes. There are frequently billing disputes over traffic types, jurisdiction of
18 traffic, bills for services rendered or not rendered, etc. There are also disputes
19 over network engineering responsibilities, response times for trouble reports, and
20 quality of service, not to mention issues with submitting orders. In addition, I
21 have recently been involved in a number of disputes surrounding the customer
22 acquisition and migration processes that are a component of interconnection
23 agreements between incumbents and competitors (I will discuss several examples
24 of these problems later in my testimony). Further, the legal teams sometimes
25 have disputes over orders and rulings that may or may not apply to services under

1 an ICA.¹⁵ Resolving these types of issues results in additional time and expense
2 for both CLECs and ILECs.

3 **Q. DOES YOUR DISCUSSION OF INCUMBENT INCENTIVES AND THE**
4 **COSTS ASSOCIATED WITH ICA NEGOTIATIONS SUPPORT**
5 **CHARTER'S CONDITION ON "TREATMENT OF ICAS"?**

6 A. Yes, it does. This is also discussed later in this testimony.

7 **V. HARM FROM CENTURYLINK'S CONTROL OF QWEST'S**
8 **WHOLESALE OPERATIONS**

9 A. *CenturyLink's Lack of Experience Provisioning Services on the Scale of*
10 *Qwest's Wholesale Operations*

11 **Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF**
12 **NO CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-**
13 **STOCK, HOLDING COMPANY LEVEL TRANSACTION.¹⁶ IS**
14 **CENTURYLINK CORRECT?**

15 A. No. Regardless of how the transaction is structured, the end result is that Qwest
16 will be controlled by CenturyLink if the transaction is approved and given the
17 dearth of information, it is likely that the transaction will not be in the public
18 interest. Indeed, CenturyLink acknowledges that the transaction will result in the
19 transfer of control of Qwest and its subsidiaries to CenturyLink.¹⁷ This means
20 that post-merger, CenturyLink will make the decisions about how Qwest interacts
21 with its wholesale customers, how much Qwest will attempt to charge for its
22

¹⁵ The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether. The legal teams frequently disagree on how a "change in law" would impact the existing ICA.

¹⁶ See, Application at 4.

¹⁷ *Id.* at 6.

1 wholesale services, the resources that will be dedicated to wholesale service
2 quality and provisioning, the amount Qwest invests in its network for advanced
3 services, etc.

4 Further, CenturyLink's claim that the merger will not affect competitors and
5 wholesale customers has been rejected in the past. The Embarq/CenturyTel
6 merger was a stock-for-stock parent level transaction, like the proposed
7 transaction, yet both the FCC and state commissions found it necessary to impose
8 numerous wholesale-related conditions on the Embarq/CenturyTel merger. That
9 CenturyLink would offer the previously rejected argument as the basis for
10 approval without conditions is an apparent attempt on the Joint Applicants' part to
11 avoid addressing head-on the legitimate concerns raised by wholesale customers.

12 **Q. DO YOU HAVE CONCERNS ABOUT TURNING OVER THE CONTROL**
13 **OF QWEST'S WHOLESALE OPERATIONS TO CENTURYLINK?**

14 A. Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories.
15
16 As such, CenturyLink has not been required to satisfy the critical market-opening
17 provisions found in the 14-point competitive checklist under Section 271 of the
18 Act.¹⁸ I will explain below why the lack of CenturyLink experience as a BOC is
19 of grave concern to Charter and should be of paramount concern to the
20 Commission.

¹⁸ 47 U.S.C. § 271(c)(2)(B).

1 Traditionally, CenturyLink has operated mostly in rural areas¹⁹ (CenturyLink has
2 rural exemptions that limit its Section 251 wholesale duties in some of its areas²⁰),
3 and only recently acquired a few more urban areas through its acquisition of
4 Embarq. Accordingly, CenturyLink has very little, if any, experience with the
5 types and quantities of wholesale obligations and relationships that are found in
6 Qwest's BOC territories. Moreover, CenturyLink has provided no commitments
7 that it will maintain or improve the wholesale services, rates and service quality
8 that CLECs experience with Qwest today.

9 **Q. WOULD YOU EXPECT CENTURYLINK TO HAVE THE SAME TYPE**
10 **OF EXPERIENCE AS QWEST WITH RESPECT TO WHOLESALE**
11 **OPERATIONS?**

12
13 A. No. Since CenturyLink has traditionally operated in rural areas exempt from full
14 competition, it has not been required to handle the same quantities of wholesale
15 customers and wholesale orders as Qwest has become accustomed to handling.

16 **Q. DOES THIS CONCERN ABOUT SYSTEMS AND VOLUME**
17 **CAPABILITIES SUPPORT, AT LEAST IN PART, CHARTER'S**
18 **PROPOSED CONDITION ON "WHOLESALE SERVICE**
19 **DEGRADATION"?**

20 A. Yes, it does. Changes in systems and the ability (or lack thereof) to handle
21 significant volumes of transactions could severely hamper Charter and its
22 customers in Nebraska. This point is also discussed later in this testimony.

¹⁹ See, e.g., Direct Testimony of John Stanoch, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 ("Stanoch Minnesota Direct") at p. 13 ("CenturyLink serves many smaller communities and rural areas throughout the state.")

²⁰ Section 251(f) of the Act exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

1 **B. *Integration Challenges and the Complete Lack of Information Regarding***
2 ***the Integration Plan***

3 **Q. THE JOINT APPLICANTS HAVE ASSERTED IN OTHER STATES**
4 **THAT THE PROPOSED TRANSACTION WILL NOT NEGATIVELY**
5 **AFFECT WHOLESALE OPERATIONS POST-MERGER.²¹ WHY DOES**
6 **THAT NOT PROVIDE YOU COMFORT ABOUT POST-MERGER**
7 **WHOLESALE OPERATIONS?**

8
9 A. My primary concern relates to the integration effort that will take place after the
10 proposed transaction. CenturyLink has estimated \$625 million in synergy savings
11 resulting from the transaction; therefore, the Merged Company will be under
12 intense pressure to meet those savings estimates, post-merger. At the same time
13 the Merged Company is attempting to find synergies, it will be under pressure to
14 produce meaningful dividends, pay down debt and invest in advanced services. In
15 other words, achieving the estimated synergy savings is paramount to meeting
16 shareholder expectations, satisfying retail customers, and keeping the Merged
17 Company solvent. Given these priorities, maintaining wholesale service quality
18 may be low on the Merged Company's priority list, or worse yet, wholesale
19 service quality may be targeted for cutbacks in the pursuit of synergy savings and
20 competitive advantage.

21 **Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT**
22 **TO ACHIEVE SYNERGIES.**

23
24 A. The Merged Company has indicated that it will seek synergy savings by reducing
25 operating costs (i.e., eliminating duplicative functions and systems related to
26 corporate overhead, network and operational, IT, advertising/marketing, increased

²¹ Minnesota Petition at p. 18. See also, Stanoch Minnesota Direct at p. 3, lines 17-19.

1 purchasing power) and capital expenditures.²² All told, the company expects
2 \$575 million in operating cost synergies and \$50 million in capital expense
3 synergies, for a total of \$625 million over a three-to-five year period. The
4 elimination of duplicative functions (or headcount) and systems will impact
5 wholesale (and retail) operations.

6 **Q. HAS CENTURLINK PUT CLECS ON NOTICE THAT THEY SHOULD**
7 **EXPECT CHANGES POST-MERGER?**
8

9 A. Yes. CenturyLink has stated that CLECs can expect changes to occur post-
10 merger.²³ However, CenturyLink has been either unable or unwilling to provide
11 any details about what changes will be made, what CenturyLink will or will not
12 integrate, or what “best practices” will guide the Merged Company going
13 forward.²⁴ As a result, the Joint Applicants are asking the Commission to trust
14 that their pursuit of synergies will not result in decisions that degrade the quality

²² See, e.g., Direct Testimony of G. Clay Bailey on behalf of CenturyLink, Inc., Oregon PUC Docket No. UM1484, filed May 21, 2010, CTL/300, Exhibit CTL/301 at p. 13. A part of the same exhibit was attached to the Direct Testimony of Mark Gast, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 (“Gast Minnesota Direct”) as Exhibit MAG-1; however, page 13 was not included in Mr. Gast’s Exhibit MAG-1 in Minnesota.

²³ CenturyLink’s S-4A, filed July 16, 2010, identifying, among others, the following as transaction-related risks: (1) “substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of CenturyLink”. See also, Jones Minnesota Direct at 13 (“There will be no immediate changes to Qwest’s or CenturyLink’s Operational Support Systems. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, however, so changes likely will eventually occur.”)

²⁴ “Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.” CenturyLink Response to Integra Minnesota Data Request #52(g), dated July 8, 2010. See also, CenturyLink Response to Integra Data Request #52(g) in Arizona (dated 7/20/10), Colorado (dated 7/19/10), Utah (dated 7/20/10), Washington (dated 7/16/10), and PAETEC Iowa Data Request #52(g) (dated 7/23/10). Mark Gast (CenturyLink) is the respondent for all of these discovery responses.

1 of the current wholesale systems and processes CLECs rely upon and currently
2 experience with Qwest. Such trust must be backed by quantifiable wholesale
3 conditions, however, with meaningful consequences for failing to meet those
4 conditions.

5 **Q. ARE YOU SAYING THAT CENTURYLINK LACKS THE INCENTIVE**
6 **TO INTEGRATE THE COMPANIES TO THE BENEFIT OF CLECS AND**
7 **COMPETITION?**

8 A. Yes. The lack of incentive to open up local markets to competition and to keep
9 those markets open is precisely why the 271 competitive checklist is so important
10 – it created a “carrot” (i.e., in-region interLATA authority) for the BOCs so that
11 they would open their local areas to competition instead of following their natural
12 incentive as a profit-maximizing firm to keep local competitors out. Since
13 CenturyLink has no experience dealing with 271 obligations, there is no
14 knowledge base from which to discern if and how CenturyLink would abide by
15 271 obligations post-merger, or if the systems or processes CenturyLink will
16 ultimately utilize will remain 271 compliant in Qwest’s territory.

17 **1. CenturyLink’s Attempts to Integrate OSS, or Other Systems or**
18 **Processes, Will Cause Harm**

19 **Q. WHAT IS OSS?**

20 A. The FCC defines Operations Support Systems (“OSS”) to include five functions:
21 (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and

1 (5) billing.²⁵ OSS includes all of the computer systems, databases and personnel
2 that an ILEC uses to perform internal functions necessary for these five functions.
3 The FCC also requires an adequate CMP to handle changes to the OSS systems.²⁶

4 **Q. ARE OSS IMPORTANT FOR CLECs?**

5 A. Yes. This is one of the most important issues for Charter, and why the first
6 condition proposed by Charter relates to OSS and other back-office systems. That
7 condition is “The post-merger entity (“Merged Company”) should be required to
8 use the existing Qwest OSS, wholesale and intercarrier processes and systems for
9 at least three years.”

10 The ability of a CLEC to be able to access the ILEC systems and databases to
11 review customer information and submit and review orders is absolutely vital.
12 The systems must be efficient, reliable and accurate. Inefficient systems that
13 require extensive manual intervention, for instance, would make doing business
14 with the ILEC difficult, more costly, and more prone to error because of the
15 increased manual nature of the work.

16 **Q. HAS THE FCC FOUND THAT OSS IS CRITICAL FOR CLECS AS**
17 **WELL?**
18

²⁵ *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 December 23, 2002 (“*Qwest 9 State 271 Order*”) at ¶ 33.

²⁶ *Qwest 9 State 271 Order* at ¶ 33. See also, 47 C.F.R. §51.319(g).

1 A. Yes. Not surprisingly, OSS was one of the first issues that the FCC had to
2 address in Section 271 proceedings. Specifically, the FCC concluded that it:

3 generally must determine whether the access to OSS functions
4 provided by the RBOC to competing carriers sufficiently supports
5 each of the three modes of competitive entry strategies established
6 by the Act: interconnection, unbundled network elements, and
7 services offered for resale.²⁷

8 The FCC has found that CLECs would be “severely disadvantaged, if not
9 precluded altogether, from fairly competing,” if they did not have
10 nondiscriminatory access to OSS.²⁸ Qwest itself has described its existing OSS as
11 playing “a crucial role in the transactions between Qwest and all CLECs”²⁹ and
12 “the lifeblood of...Qwest’s wholesale operation...”³⁰

13 **Q. IS THIS DUTY TO PROVIDE OSS FUNCTIONS CONTAINED IN THE**
14 **TELECOM ACT?**
15

16 A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC’s
17 duties under Section 251(c)(3) to provide UNEs on terms and conditions that are
18 nondiscriminatory, just and reasonable, in accordance with the pricing standards
19 of Section 252, and under Section 251(c)(4) to offer services for resale without

²⁷ *Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan*, CC Docket 79-137, Memorandum Op. and Order, Released August 19, 1997 (“*Ameritech Michigan 271 Order*”) at ¶ 133.

²⁸ *Local Competition Order* at ¶518.

²⁹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

³⁰ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

1 imposing any limitations or conditions that are discriminatory or unreasonable.³¹

2 Nondiscriminatory access to OSS is also one of the checklist items on the 14-
3 point competitive checklist applicable to BOCs under Section 271 of the Act.

4 **Q. IS OSS AN EXAMPLE OF HOW CENTURYLINK COULD INTEGRATE**
5 **THE TWO COMPANIES IN SUCH A WAY AS TO HARM CLECS?**

6
7 A. Yes. The post-merger integration of OSS is a prime example. OSS impacts all
8 wholesale customers that do business with Qwest and CenturyLink, regardless of
9 whether the CLEC is resale-based, UNE-based, or completely facilities-based.
10 The statements from the FCC above, and Qwest's statement that OSS is the
11 "lifeblood" of its wholesale operations, shows that the importance of OSS to
12 competition cannot be exaggerated. Out of the many ways that the Merged
13 Company could integrate the two companies to the detriment of competition,
14 degrading the quality or access to OSS would be the most effective, and could be,
15 if not done through a transparent CMP process, one of the most difficult to detect
16 and remedy.

17 **Q. HAVE THE CLECS AND STATE COMMISSION STAFFS ATTEMPTED**
18 **TO DETERMINE WHETHER CENTURYLINK PLANS TO INTEGRATE**
19 **DIFFERENT OSS INTO QWEST'S LEGACY TERRITORY POST-**
20 **MERGER?**
21

³¹ *Ameritech Michigan 271 Order* at ¶ 130; *see also, Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Op. and Order*, Released December 24, 1997, at ¶ 83.

1 A. Yes. When asked by Oregon Commission Staff whether CenturyLink
2 intends to transition Qwest's OSS to CenturyLink's legacy OSS within the
3 next three to five years, CenturyLink responded:

4 At this time, system integration plans for the proposed transaction
5 with Qwest have not been fully developed. In fact, complete
6 integration plans cannot be developed until the merger is
7 concluded. However, because the transaction results in the entirety
8 of Qwest, including operations and systems, merging into and
9 operating as a subsidiary of CenturyLink, it will allow a
10 disciplined approach to systems and practices integration decisions
11 to proceed in a disciplined manner.³²

12 When the Oregon Staff probed further to determine potential changes to the
13 Qwest OSS post-merger, CenturyLink, again, responded with a "patented" answer
14 that CenturyLink has given on many questions related to post-merger integration
15 plans:

16 Integration planning is in the early stages and decisions on wholesale
17 OSS systems have not been made at this time. Upon merger closing,
18 there will be no immediate changes to Qwest's or CenturyLink's
19 OSS. Any changes will occur only after a thorough and methodical
20 review of both companies' systems and processes to determine the
21 best system to be used on a go-forward basis. Decisions will be made
22 from both a combined company and a wholesale customer perspective
23 and consistent with the continued provision of quality service to our
24 wholesale customers.³³

25 In sum, CenturyLink's claims that it cannot respond until the merger is complete,
26 provides the Commission an insufficient basis to evaluate a critical aspect of the
27 merger: OSS integration.

³² CenturyLink Response to Oregon PUC Staff Data Request #32.

³³ CenturyLink Response to Oregon PUC Staff Data Request #60. See also, Jones Minnesota Direct at pp. 13-14.

1 While CenturyLink has made vague statements publicly about operations in
2 Qwest territories being unaffected by the proposed transaction, it would seem that
3 issues like the OSS issue would be very easy for the Joint Applicants to put to rest
4 with a straightforward commitment to leave existing Qwest wholesale processes
5 and OSS in place for a significant timeframe, as well as a commitment to follow
6 similar objective, third-party testing if and when changes are made to the system.
7 However, in sworn testimony or discovery responses, the Joint Applicants have
8 been unwilling or unable to make that simple commitment or give a straight
9 answer – often refusing to provide a meaningful answer at all. That certainly
10 gives me strong concerns about the Joint Applicants’ intent, and it should concern
11 the Commission as well.

12 **Q. YOU MENTION ABOVE THAT QWEST’S OSS WAS THIRD-PARTY**
13 **TESTED DURING THE 271 APPROVAL PROCESS. PLEASE**
14 **ELABORATE.**

15 A. Qwest’s existing OSS, CMP and supporting processes and data, were thoroughly
16 tested during the Qwest 271 approval process to ensure that they provided the
17 nondiscriminatory access required by Section 271. According to Qwest, the
18 collaborative OSS test “was the most comprehensive and collaborative of all of
19 the OSS tests conducted to date.”³⁴ And referring to the final report of the third-
20 party tester, Qwest said: “This *Final Report* marked the culmination of more than
21 three years of exhaustive and comprehensive effort, *unlike any seen before*, to
22 determine whether Qwest’s OSS meet the standards set forth under Section 271 of

³⁴ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

1 the Telecommunications Act of 1996, as those standards have been amplified and
2 applied by the FCC.”³⁵ Qwest’s opinion was shared by the state commissions that
3 participated and oversaw the third-party testing, such as the Arizona Corporation
4 Commission which stated:

5 The ACC believes that during the last four years, Qwest systems,
6 processes, and performance measurements have undergone one of
7 the most comprehensive reviews to-date...result[ing] in an
8 extremely rigorous test, resolution of many disputed issues through
9 compromise, and meaningful and effective changes to Qwest’s
10 systems and processes.³⁶

11 The FCC said “...the OSS testing conducted under the auspices of the ROC
12 [Regional Oversight Committee] was broad-based and comprehensive.”³⁷
13 Attached to my testimony as Exhibit TJG-2 is a detailed description of the
14 extensive, three-year process that was undertaken by state regulators, the FCC,
15 Qwest, CLECs and third-party testers to ensure that Qwest’s existing OSS,
16 performance metrics, and CMP met the requirements of Section 271. This exhibit
17 also explains that hundreds of issues of concern were identified during third-party
18 testing and resolved through improvements to Qwest’s OSS.

19 **Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE**
20 **TESTING OF QWEST’S OSS UNDERSCORE CHARTER’S CONCERNS**
21 **ABOUT OSS INTEGRATION AND SERVICE DEGRADATION?**
22

³⁵ Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: “years of rigorous fact finding and analysis...” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

³⁶ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 (“ACC Evaluation”), at p. 5. The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

³⁷ *Qwest 9 State 271 Order* at ¶ 12.

1 A. Yes. Post-merger, CenturyLink may attempt to replace OSS that has been tested
2 under a process “unlike any seen before” with OSS that has not been
3 independently tested at all. Once such changes are made, much if not all of the
4 work by the ROC and FCC during the 271 approval process will have been
5 squandered and Qwest can no longer show that it is providing nondiscriminatory
6 access to OSS under 271 of the Act – that is, unless and until the Merged
7 Company demonstrates, using the same stringent testing process that took place
8 during the Qwest 271 approval process, that its new wholesale system or process
9 meets the 271 requirements.

10 **Q. CENTURLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS**
11 **AND OPERATIONS, IF INTEGRATED IN QWEST’S LEGACY**
12 **TERRITORY, WOULD COMPLY WITH 271 REQUIREMENTS.³⁸**
13 **SHOULD THE COMMISSION SHARE THIS CONFIDENCE?**
14

15 A. No. There is absolutely no basis for CenturyLink’s claim. Ironically, Qwest
16 made a similar claim back in 1999 that its OSS and CMP at that time satisfied the
17 Section 271 requirements. However, three years of third-party testing under ROC
18 supervision, dozens of “meaningful and effective changes to Qwest’s systems and
19 processes[,]”³⁹ and millions of dollars later, it was proven that Qwest’s confident
20 assurances about its OSS and CMP being 271 compliant were baseless. I have
21 provided as Exhibit TJG-3 the “Assurances Not Met” exhibit which compares the
22 assurances Qwest made in 1999 about its then-flawed OSS and CMP to the
23 assurances CenturyLink is now making. As this exhibit shows, it would be

³⁸ Hunsucker Oregon Direct at pp. 12-13.

³⁹ ACC Evaluation at p. 5.

1 unwise for the Commission to accept CenturyLink’s promises in this regard at
2 face value.

3 **Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE**
4 **DIFFERENT OSS. PLEASE ELABORATE ON THE DIFFERENCES**
5 **BETWEEN THE TWO COMPANIES’ OSS.**

6
7 A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and
8 maintenance/repair for example. For pre-ordering, ordering and provisioning of
9 UNEs/resale Local Service Requests (“LSRs”), Qwest uses Interconnect
10 Mediated Access Graphical User Interface (“IMA GUI”) and Interconnect
11 Mediated Access Extensible Markup Language (“IMA XML”) as its CLEC-
12 facing systems. IMA GUI is a web-based electronic interface and IMA XML is a
13 business-to-business electronic interface allowing bilateral information exchange
14 between Qwest and CLEC systems.⁴⁰ These IMA systems interface with Qwest
15 back-office systems and databases in support of queries and transactions.⁴¹ For
16 access services and UDITs, Qwest uses Qwest Online Request Application
17 Graphical User Interface (“QORA GUI”), a web-based interface, and QORA
18 Gateway, a company-to-company interface, for CLEC-facing systems.⁴² Though
19 QORA does not provide all of the functionality that IMA provides, like the IMA
20 systems for LSRs, QORA provides for electronic submission of Access Service

⁴⁰ Qwest Response to Integra Minnesota Data Request #19. According to Qwest: “The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files.” IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

⁴¹ Qwest Response to Integra Minnesota Data Request #19.

⁴² Qwest Response to Integra Minnesota Data Request #19.

1 Requests (“ASRs”). For maintenance and repair, Qwest uses Customer Electronic
2 Maintenance and Repair (“CEMR”) and Repair Call Expert (“RCE”) as its web-
3 based CLEC-facing systems, and Mediated Access Electronic Bonding Trouble
4 Administration (“MEDIACC-EBTA”) as its business-to-business gateway CLEC-
5 facing system.⁴³

6 By comparison, CenturyLink uses a system called EASE for pre-ordering and
7 ordering for both LSRs and ASRs.⁴⁴ EASE includes both a GUI (web-based) and
8 EDI (business-to-business) version. For trouble reporting, CenturyLink uses
9 “Access Care,” wherein a wholesale customer calls into Special Service
10 Operations (“SSO”) and CenturyLink records the information on a trouble
11 ticket.⁴⁵ In the legacy Embarq territories, CenturyLink also provides the option to
12 use WebRRS, a web-based repair ticket system that allows CLECs to report and
13 track trouble tickets.⁴⁶

14 **Q. IF CENTURYLINK WERE TO ATTEMPT TO INTEGRATE OSS POST-**
15 **MERGER, WOULD IT BE A MATTER OF SIMPLY SWAPPING OUT**
16 **THE IMA INTERFACE WITH THE EASE INTERFACE?**

17
18 A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing
19 interfaces. Behind those interfaces are a number of back-office systems,

⁴³ Qwest Response to Integra Minnesota Data Request #19. Qwest states: “CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests).”

⁴⁴ See, Jones Minnesota Direct at p. 13. See also, CenturyLink Response to Integra Minnesota Data Request #16.

⁴⁵ CenturyLink Response to Integra Minnesota Data Request #16.

⁴⁶ CenturyLink Response to Washington UTC Staff Data Request #86.

1 underlying data sets, business processes, product catalogs,⁴⁷ billing systems,
2 business rules, performance metrics, etc., that are all directly fed information
3 received from the interfaces without manual intervention. All of these various
4 pieces work together to provide the five functions of OSS (pre-ordering, ordering,
5 provisioning, maintenance and repair, and billing). This requires systems to be
6 compatible with other systems, recognize certain computer code, and be properly
7 linked to upstream and downstream systems, databases and workgroups.
8 Obviously, it is not possible to simply unplug IMA and plug in EASE (like, for
9 example, swapping out Netscape® Navigator with Internet Explorer as the
10 browser on a personal computer). Changing out CLEC-facing interfaces would
11 create a complete breakdown in the linkages with underlying systems, databases
12 and processes. Given the complexity of Qwest's OSS, such an integration attempt
13 would be an enormous effort just to make sure everything worked, let alone to
14 ensure that the replacement system provides the type of nondiscriminatory access
15 to the full features and functions of the OSS to which CLECs are entitled.

16 **Q. WOULD SUCH A CHANGE RESULT IN SIGNIFICANT COST TO THE**
17 **CLEC?**

18
19 A. Yes. Not only would CLECs have to expend significant time and money testing
20 the CenturyLink replacement systems, but they would also have to materially
21 modify their own systems. For instance, the CLECs have built their own
22 interfaces to electronically bond directly to the existing Qwest systems. These

⁴⁷ Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs."

1 CLEC systems would need to be modified, at significant expense, by the CLEC to
2 work with the new replacement system. For instance, Qwest's IMA XML
3 exchanges information between the CLEC and Qwest's OSS in data files based on
4 Qwest's standard XML Web Service Definition Languages or "WSDLs." As
5 Qwest explains: "There must be a mechanism to translate data from the
6 proprietary format as it exists in the CLEC system to a format that the receiving
7 organization can understand. This is done using XML translation software."⁴⁸
8 All of these systems, software, and proprietary formats would need to be changed
9 in both Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's
10 OSS post-merger. The CLEC would then need to test all of these new systems
11 before going "live" to ensure that they work properly (which is the purpose of
12 Qwest's Stand Alone Test Environment or "SATE"), and would also need to test
13 them in a production environment (which is why Qwest offers controlled
14 production testing). CenturyLink has not indicated whether it would provide any
15 of these capabilities if it decides to integrate OSS.

16 Also, like Qwest, some CLECs have integrated their electronic interfaces into
17 their own back end systems. For example, some CLEC systems take Qwest line
18 loss data received through the XML interface, and feed that information directly
19 into the CLEC's billing system, which results in the termination of billing for end
20 users for whom the line loss data has been received via the interface without
21 manual intervention. The interconnectivity of systems has effectively eliminated

⁴⁸ IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

1 the “billing after downgrade” issues that plagued CLECs and end users that
2 existed for a number of years (assuming the line loss data provided by Qwest is
3 accurate). A similar linkage is made by some CLECs between Qwest’s OSS
4 interfaces and the CLECs’ own systems for directory listings to ensure accurate
5 directory listings for the CLECs’ customers. These CLEC back end systems
6 would be subject to change if the Merged Company changed Qwest’s legacy OSS
7 post-transaction, and could potentially require CLECs to revert to significantly
8 less efficient manual processes if the modified OSS offered by the Merged
9 Company does not afford CLECs access to the same degree of the Merged
10 Company’s back end systems and data via the electronic interface.

11 During the third-party test of Qwest’s OSS, a “pseudo-CLEC” (Hewlett Packard
12 or “HP”) was hired to act as a CLEC (or “to live the CLEC experience”⁴⁹). HP
13 was charged with establishing electronic bonding with Qwest, ensuring that
14 Qwest provided the necessary information and tools to electronically interface
15 with Qwest’s OSS, and determine whether Qwest’s systems were operationally
16 ready to handle the volumes and types of orders CLECs would submit through the
17 business-to-business electronic interfaces. Likewise, KPMG Consulting tested
18 Qwest’s testing environments. If CenturyLink attempted to modify the CLEC-
19 facing OSS interfaces in Qwest’s territory, all of the work done by the third-party
20 testers during the third-party test, and the work done by CLECs to establish these
21 business-to-business interfaces would be undermined. This work would need to

⁴⁹ Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 (“KPMG 4/26/02 OSS Report”) at p. 10.

1 be performed all over again to ensure that the replacement system provides the
2 same functionality and at the same quality as Qwest's system.

3 **Q. COULD THIS TYPE OF INTEGRATION BE DONE IN ONE YEAR?**

4 A. No, not even close. CenturyLink has indicated to the FCC that it intends to
5 operate both companies' OSS for at least one year following transaction approval.
6 One year is insufficient time for such an enormous effort. It took Qwest three
7 years to satisfy third-party testing of its existing OSS, and that was during a time
8 when Qwest had 271 approval as a "carrot" to encourage the company to work
9 with CLECs and regulators to improve its OSS. By contrast, even if CenturyLink
10 abides by its claim to leave Qwest's OSS in place for one year, it will have no
11 incentive to work with CLECs and regulators during the integration to ensure that
12 the access or quality to Qwest's existing OSS are not degraded, because the
13 proposed transaction will already have been approved (i.e., there will be no
14 "carrot").

15 Moreover, the idea that a CenturyLink-Qwest integration can be quick and
16 smooth, or not hinder CLECs, is belied by the petition CenturyLink filed with the
17 FCC, shortly after filing its application for merger, seeking relief from the
18 deadline to implement one-day number porting.⁵⁰ In its request for a waiver of
19 the deadline, CenturyLink argued that it was still in the process of integrating the
20 CenturyTel and Embarq systems. Now, before that integration process is

⁵⁰ CenturyLink Petition for Waiver of Deadline, *In re Local Number Portability Interval and Validation Requirements*, WC Dkt. No. 07-244, at 5 (filed June 7, 2010).

1 completed and while it is still causing delays in functions like number porting that
2 are critical to competitors, CenturyLink wants to begin yet another more extensive
3 integration effort, thereby adding another completely different system to the mix.
4 The Commission should be very concerned about the timing of this proposed
5 transaction given the Embarq merger is, in an operational sense, not finished yet
6 and the end result remains unknown.

7 **Q. DO YOU HAVE OTHER CONCERNS ABOUT TRYING TO INTEGRATE**
8 **LEGACY CENTURYLINK OSS INTO QWEST'S TERRITORY?**

9
10 A. Yes. Based on information provided in discovery⁵¹ CenturyLink's EASE system
11 uses the Virtual Front Office ("VFO"), a platform originally developed by Wisor
12 Telecom Corp, a subsidiary of Synchronoss. This same Synchronoss/Wisor VFO
13 platform was used by FairPoint Communications in its OSS cutover in Northern
14 New England and Frontier Communications in its recent OSS cutover in West
15 Virginia. A competitor in West Virginia that makes extensive use of the Frontier
16 OSS, FiberNet, recently asked the West Virginia Public Service Commission to
17 review problems arising with that platform. FiberNet explained that:

18 Since the cutover to Frontier's Synchronoss VFO [Virtual Front
19 Office] OSS on July 1, 2010, however, FiberNet has experienced
20 significant and ongoing problems with the proper functionality of
21 Frontier's OSS and have unfortunately been compelled to conclude
22 that Frontier's OSS as presently constituted is substantially less
23 sophisticated and far less automated than the former Verizon OSS
24 it was intended to replace.⁵²

⁵¹ See, e.g., CenturyLink Response to Integra Minnesota Data Request #17.

⁵² FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

1 Based on this recent experience, there is a real concern that the same problems
2 experienced by CLECs in Northern New England and now being experienced by
3 CLECs in West Virginia may also occur in Qwest's region post-merger.

4 **Q. ARE YOU SAYING THAT QWEST'S WHOLESALE SYSTEMS AND**
5 **PROCESSES ARE WITHOUT FLAW?**

6
7 A. No. As explained above, it has taken many years, an enormous amount of
8 industry effort led by the ROC, and many millions of dollars to get Qwest's
9 wholesale OSS, CMP, processes, procedures and practices to where they are
10 today. Qwest's systems and processes are not perfect, but they are much better
11 than they were prior to the 271 process and CLECs have experience with dealing
12 with those systems. By contrast, CenturyLink's OSS has not been through
13 independent third-party testing, and has not been tested for commercial volumes
14 or shown to be operationally ready for Qwest's territory. And, given its relatively
15 recent deployment, CenturyLink's OSS is much less familiar to CLECs.⁵³ There
16 is a grave concern – grounded in CenturyLink's lack of experience, the lack of
17 information from Joint Applicants, and recent system integration failures – that
18 OSS performance will get worse after the proposed transaction absent binding
19 conditions/commitments that ensure continued availability of Qwest's OSS and
20 the continuation of PIDs and PAPs to measure the ongoing performance.

⁵³ Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory.

1 **2. CenturyLink’s Integration Effort May Result in Additional Charges**
2 **for CLECs**

3 **Q. DOES THIS SECTION OF YOUR TESTIMONY SUPPORT, IN PART,**
4 **CHARTER’S FOURTH CONDITION REGARDING CHARGES FOR**
5 **CUSTOMER ACQUISITION ACTIVITIES?**
6

7 A. Yes. That condition reads as follows, “The Merged Company should not be
8 permitted to impose any charges on customer acquisition that Qwest does not
9 explicitly charge today.”

10 **Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE**
11 **PRACTICES THAT UNREASONABLY INCREASE COMPETITORS’**
12 **COSTS?**
13

14 A. Yes. Comcast was forced to arbitrate a single issue in numerous states over
15 Embarq’s attempt to impose a monthly recurring per subscriber charge for storing
16 and maintaining Comcast’s customer directory listing (“DL”) information in
17 Embarq’s DL databases.⁵⁴ Embarq sought to impose this recurring Directory
18 Listing Storage and Maintenance Charge (“DLSM”) charge *in addition* to the
19 high per listing, non-recurring charge for loading Comcast’s listings into the DL
20 database in the first place.

21 As I noted in my testimony in those arbitrations on behalf of Comcast, the charge
22 violated Embarq’s statutory obligation to provide nondiscriminatory access to
23 directory listing functions.⁵⁵ Embarq sought to impose the recurring DLSM
24 charge only on facilities-based competitors that utilize their own-last mile

⁵⁴ See United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10.

⁵⁵ 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).

1 facilities as opposed to the unbundled loops and services of Embarq. The
2 Washington Commission, for example, which ultimately ruled in Comcast's
3 favor, stated in pertinent part:

4 The record is clear that Embarq does not impose a recurring
5 DLSM charge on its own retail customers or on other CLECs that
6 purchase resale services or UNE loops from Embarq. Embarq
7 wishes to impose the recurring DLSM charge only on facilities-
8 based CLECs such as Comcast that do not rely on Embarq's "last-
9 mile" facilities or services to compete within Embarq's service
10 area. Given the expansive language of Section 251(b)(3) and the
11 FCC's definition of "nondiscriminatory access", we find it
12 unreasonable and contrary to federal law for Embarq to single out
13 a particular type of competitor, in this case a facilities-based
14 CLEC, to impose a charge related to directory listing only when a
15 carrier does not purchase another service such as resold service or
16 UNE loops.⁵⁶

17 This type of litigation, where the ILEC attempts to impose anti-competitive
18 charges that recover additional revenue for services for which it has already been
19 compensated, shows the tendencies of CenturyLink and its attitude towards
20 CLECs in general.

21 **Q. ARE THERE OTHER ANTI-COMPETITIVE CHARGES THAT**
22 **CENTURYLINK ASSESSES IN ITS LEGACY TERRITORY OF WHICH**
23 **YOU ARE AWARE?**

24 **A.** Yes. Over the past few years Charter's telephone affiliates arbitrated numerous
25 issues with CenturyLink in establishing new ICAs. One issue that was
26 particularly objectionable is CenturyLink's continued attempts to charge Charter
27 for access to the customer side of the network interface device ("NID") enclosure.
28

⁵⁶ See, Arbitrator's Report and Decision, Docket No. U-083025, January 13, 2009, at pp. 11-12.

1 **Q. WHAT IS A NID?**

2 A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC
3 stated, “Specifically, we define the NID to include any means of interconnection
4 of customer premises wiring to the incumbent LEC’s distribution plant, such as a
5 *cross-connect device used for that purpose.*”⁵⁷ That “means of interconnection”
6 (again, usually a cross-connect device) is then enclosed in a small gray box, about
7 the size of a shoe box, placed on the side of single family dwellings. The NID
8 and its enclosure will be referred to here, in my testimony, simply as the “NID
9 enclosure.”

10 **Q. WHAT WAS THE ISSUE REGARDING THE NID ENCLOSURE?**

11 A. Recall that Charter, like other cable companies who also provide telephone
12 service, is a facilities-based provider with its own loop facilities, and which does
13 not need or purchase UNEs. When Charter wins a customer, it must disconnect
14 the other carrier’s loop (in this case CenturyLink) prior to connecting its own loop
15 facilities to the customer’s inside wiring. To disconnect the CenturyLink loop,
16 Charter opens the customer side of the NID enclosure and disconnects the jumper.
17 CenturyLink wanted to charge Charter for accessing and “using” the NID
18 enclosure as if it were a UNE.

⁵⁷ See, e.g., *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“UNE Remand Order”) at ¶233.

1 **Q. WHAT DID STATE COMMISSIONS IN MISSOURI AND WISCONSIN**
2 **DECIDE IN THESE CASES?**⁵⁸

3
4 A. These state commissions ruled that Charter should not be required to compensate
5 CenturyLink for accessing the customer side of the NID enclosure. This was
6 especially true since CenturyLink admitted that its alleged costs were already
7 recovered by other charges. CenturyLink incurs no costs or technical obligations
8 when Charter unplugs the short cross connect between network side and the
9 customer side of the NID enclosure. In fact, once the end user has been
10 transferred to Charter, CenturyLink no longer has any engineering and service
11 obligations to that customer. In addition, Charter's limited use of the customer
12 side of the NID enclosure to connect its network to the customer's inside wire
13 generally only arises when CenturyLink has installed an enclosure on the
14 customer's premises in a way that blocks any reasonable access to the customer's
15 inside wire.

16 **Q. DOES CENTURYLINK ALSO ATTEMPT TO IMPOSE ANTI-**
17 **COMPETITIVE CHARGES FOR LOCAL NUMBER PORTABILITY?**

18
19 A. Yes. CenturyLink attempts to assess separate charges on CLECs for local number
20 portability activities that are specifically prohibited under the Act and under the
21 FCC's rules. In arbitration, CenturyLink proposed to charge Charter a service

⁵⁸ See, e.g., *Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin*, Order Determining Disputed Issues Regarding Arbitration Award, Dockets 5-MA-148, 5-MA-149, 2010 Wis. PUC LEXIS 131 (Wis. PSC Mar. 2010); and *Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates, Terms, Conditions, And Related Arrangements with the CenturyTel of Missouri, LLC Pursuant to 47 U.S.C. § 252(b)*, Order Adopting Final Arbitrator's Report, Case No. TO-2009-0037, 2009 Mo. PSC LEXIS 559 (Mo. PSC 2010).

1 order charge for porting customers. Charter countered that costs for LNP
2 activities, except in very unique circumstances that do not apply to Charter,⁵⁹ are
3 to be recovered from an ILEC's end users. Specifically, the FCC's rule states that
4 ILECs may recover their carrier-specific costs directly related to providing long-
5 term number portability by establishing in tariffs filed with the FCC, certain
6 charges over a five (5) year term assessed against end users.⁶⁰ In other words, to
7 recover their costs associated with number porting, ILECs may assess separate
8 charges on their end users – not competitors. Qwest does not assess similar,
9 separate number porting charges, so there is a genuine risk that the Merged
10 Company may try to import these anti-competitive charges to Qwest's legacy
11 territory as a result of integration efforts because CenturyLink is the acquiring,
12 and controlling, entity and because of the pressures on the Merged Company to
13 show a financial benefit from the transaction. Such an outcome would reflect the
14 integration of worst (not best) practices, would raise competitors' barriers in
15 Qwest's legacy territory and result in harm to the public interest directly related to
16 the proposed transaction.

⁵⁹ Specifically, FCC rules permit ILECs to assess LNP charges upon other carriers only when other carriers purchase: (a) the ILEC's switching ports as unbundled network elements, (b) Feature Group A access lines; or, when the carrier resells the ILEC's local service. *See* 47 C.F.R. § 52.33(a)(1)(ii). Also, ILECs may assess a LNP "query service" charge when that function is provided to other carriers. *Id.* at § 52.33(a)(3).

⁶⁰ *See* 47 C.F.R. § 52.33(a)(1)(i) and (a)(3).

1 **3. CenturyLink’s Attempts to Increase Transaction Costs for CLECs**

2 **Q. DO YOU HAVE ANOTHER EXAMPLE THAT SUGGESTS THAT**
3 **INTEGRATION COULD HARM CLECS?**

4 A. Yes. CenturyLink has demonstrated in these very merger cases either a disregard
5 for CLECs or a desire to drive up the CLECs’ transaction costs. A number of
6 CLECs are intervening in multiple state proceedings where the Joint Applicants
7 are seeking approval of the proposed transaction. Since the issues and questions
8 are going to be very similar, if not the same, across all states, the CLECs at the
9 outset asked CenturyLink and Qwest to allow a streamlined discovery process
10 where the CLECs could issue one set of discovery on the Joint Applicants and the
11 public responses to those questions could be used in all states where the CLECs
12 are parties (except for state specific differences).

13 **Q. WHAT WAS CENTURYLINK’S OR QWEST’S REPLY?**

14 A. They refused to accept the CLECs’ request. despite Joint Applicants’ claims that
15 such a streamlined discovery process would “result in an impractical and
16 burdensome process for the Applicants, as well as the potential that the approval
17 proceedings may be unnecessarily delayed” and that there is a “lack of
18 commonality between all the states,” the CLECs’ follow-up letter explained that
19 just the opposite is true. The CLECs asked the Joint Applicants to reconsider
20 their refusal, but the Joint Applicants ignored that request. And because the Joint
21 Applicants are requesting expedited treatment of the proposed transaction,
22 deadlines were approaching fast, so the CLECs were forced to create and serve
23 substantially the same discovery questions for each individual state. This requires

1 the CLECs to track and log responses separately for each state, review those
2 individual responses line-by-line to check for any subtle differences, etc.
3 Furthermore, the reasons provided by Joint Applicants for refusing the CLECs'
4 request were undermined by CenturyLink's subsequent actions.

5 **Q. HAS THE LACK OF A STREAMLINED DISCOVERY PROCESS**
6 **HAMPERED THE ANALYSIS OF THE PROPOSED TRANSACTION IN**
7 **OTHER WAYS?**

8
9 A. Yes. Charter has had to wait for responses to be issued in each individual state
10 before being able to use the discovered data, which creates unnecessary delays
11 and imposes additional costs.

12 **Q. HAS QWEST PREVIOUSLY AGREED TO A STREAMLINED**
13 **DISCOVERY PROCESS LIKE THAT PROPOSED BY THE CLECS IN**
14 **THESE CASES?**

15
16 A. Yes. My firm, QSI, recently represented PAETEC (McLeodUSA) in a number of
17 complaints against Qwest regarding collocation power charges before a handful of
18 state commissions. Since the issues in those cases were similar across states,
19 McLeodUSA and Qwest were able to agree that discovery responses issued in one
20 state could be used in another state so as to avoid duplicative requests and
21 responses and save time and money. Indeed, I understand that this arrangement
22 was originally suggested by Qwest's counsel. So, while the companies disagreed
23 on substantive issues in the proceeding, at least Qwest agreed to a logistical
24 process that made the process more efficient and less costly for all involved.

25 **Q. HOW SHOULD THE COMMISSION INTERPRET THE JOINT**
26 **APPLICANTS' ACTIONS IN THE EXAMPLES YOU JUST PROVIDED?**

1
2 A. If the recent conduct of the Joint Applicants is how the Merged Company will
3 conduct itself post-merger, I expect the Merged Company to be more difficult for
4 competitors to work with than Qwest. I see this as a significant step backwards.
5 If this litigious, “compartmentalizing” attitude of CenturyLink drives the process
6 of integrating “best practices” post-merger, I expect CLEC transaction costs to
7 significantly increase post-merger – particularly given the patchwork organization
8 of rural and non-rural companies CenturyLink intends to maintain post-merger.
9 Indeed, this approach and attitude should be considered when evaluating
10 CenturyLink’s assurances of integration success.

11 **C. *Assurances of Integration Success are Exaggerated and Ignore the***
12 ***Serious Challenges Facing CenturyLink Post-merger***

13 **Q. CENTURYLINK STATES THAT IT IS AN EXPERIENCED**
14 **INTEGRATOR BASED ON ITS PREVIOUS ACQUISITIONS.⁶¹ SHOULD**
15 **THAT PROVIDE CLECS AND THE COMMISSION COMFORT ABOUT**
16 **CENTURYLINK’S ABILITY TO INTEGRATE QWEST?**

17
18 A. No. CenturyLink has acknowledged to the SEC that there is a risk of
19 CenturyLink being unable to successfully integrate the two companies, and more
20 specifically, that “performance shortfalls” at one or both of the companies may
21 result from the “diversion of management’s attention caused by completing the
22 merger and integrating the companies’ operations.”⁶² In addition, there are

⁶¹ Application at pp. 21-22.

⁶² CenturyLink Form S-4A, filed July 16, 2010, at p. 17.

1 several key differences between past acquisitions and the proposed acquisition of
2 Qwest. Some of those differences are listed below:

- 3 • The magnitude of this acquisition dwarfs all other prior transactions, so
4 CenturyLink could very well be “biting off more than it can chew.” As the
5 investment research company Morningstar stated: “CenturyTel is taking an
6 unnecessary risk with the Qwest merger” and “the timing and scope of the
7 Qwest deal will present far greater challenges” than the Embarq acquisition.⁶³
- 8 • The Merged Company is taking on much more debt by acquiring Qwest than
9 it has in past acquisitions. As Integra and others explained to the FCC: “At
10 the conclusion of the transaction, legacy CenturyTel will have *more than*
11 *quadrupled* its debt load in approximately three years.”⁶⁴
- 12 • No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-
13 related obligations) like the proposed transaction does.
- 14 • CenturyLink is still in the process of integrating the recent acquisition of
15 Embarq, which raises concerns about the Merged Company spreading its
16 resources too thin in attempting to complete multiple integrations at the same
17 time. Just to put the Merged Company’s integration efforts in perspective,
18 CenturyTel before its acquisition of Embarq in 2009 served “roughly two
19 million telephone access lines.”⁶⁵ In 2009, it acquired “nearly 5.9 million
20 telephone access lines”⁶⁶ when it acquired Embarq – which approximately
21 tripled the size of the company in terms of access lines. With the proposed
22 transaction of Qwest, CenturyLink will acquire another 10.3 million access
23 lines.⁶⁷ So, if the transaction is approved, CenturyLink will have grown by
24 nine times its size in just two short years. No matter how experienced the
25 management team at the Merged Company is, an integration effort of this
26 magnitude will be extremely challenging to say the least.⁶⁸

⁶³ Morningstar Report, “CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View,” May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

⁶⁴ Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest*, Forbes, April 26, 2010. Forbes article available at: <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/>

⁶⁵ FCC Embarq/CenturyTel Merger Order at ¶ 4.

⁶⁶ FCC Embarq/CenturyTel Merger Order at ¶ 3.

⁶⁷ Minnesota Petition at 9.

⁶⁸ Standard & Poor’s has observed that “integration efforts will be difficult given the size of the combined company and CenturyTel’s integration of previously acquired Embarq will likely not be complete until the end of 2011.” Direct Testimony of Jeff Glover, on behalf of CenturyLink, Arizona Corporation Commission Docket No. T-01051B-10-0194, et al., May 24, 2010 (“Glover Arizona Direct”), Exhibit

1 **Q. DO THE CONCERNS ABOUT INTEGRATION PROBLEMS ALSO**
2 **SUPPORT CHARTER'S THIRD CONDITION REGARDING**
3 **DEGRADATION OF SERVICE?**

4 A. Yes. Charter's third condition is not limited to degradation of service, but also
5 addresses porting intervals, ordering and provisioning intervals and related
6 interfaces. Specifically, Charter's third condition is as follows, "The Merged
7 Company should not be permitted to degrade services to competitors in Nebraska
8 below what Qwest provides today in terms of porting intervals and volume
9 capacities, and ordering and provisioning intervals and interfaces."

10 **Q. IS THERE INFORMATION THAT SUGGESTS THAT THE EMBARQ**
11 **INTEGRATION IS HINDERING CENTURYLINK'S ABILITY TO ABIDE**
12 **BY ITS REGULATORY OBLIGATIONS?**

13 A. Yes. Despite CenturyLink's glowing reports of the Embarq integration in its
14 testimony, other information suggests that the integration effort is monopolizing
15 much of the Merged Company's time and efforts. For example, CenturyLink
16 recently requested a waiver of the FCC's one business-day porting interval
17 requirement on the basis that such compliance would disrupt "ongoing system
18 changes related to the [CenturyTel/Embarq] merger" to the point where the
19 integration effort would have to be "suspended, which would create large
20 numbers of problems with retail and carrier customer processes, and lead to
21 service disruptions, delays and errors that would likely cause incalculable
22

JG-4. See also, Glover Arizona Direct, Exhibit JG-3, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in 2009) while confronting the challenges of a secular decline in the wireline industry."

1 additional costs.”⁶⁹ CenturyLink explained that strict adherence to the FCC’s
2 requirement could require CenturyLink to “divert resources and implementation
3 activity away from the wholesale systems” and would jeopardize timely
4 completion of its integration of legacy Embarq’s wholesale OSS required by the
5 FCC merger conditions.⁷⁰ This waiver request not only calls into question the
6 purported seamlessness of the Embarq integration efforts, but also casts serious
7 doubt on the Merged Company’s ability to integrate both Embarq and Qwest
8 simultaneously, let alone in an efficient manner.⁷¹ That is, if CenturyLink’s
9 efforts to integrate Embarq jeopardize its ability to meet its regulatory obligations,
10 then surely integration of Qwest (which will more than double CenturyLink’s
11 size) will similarly jeopardize CenturyLink’s ability to abide by regulatory
12 requirements and obligations. CenturyLink has already noted that the
13 simultaneous integration of Qwest and Embarq poses risks:

14 [CenturyLink/Qwest] integration initiatives are expected to be
15 initiated before CenturyLink has completed a similar integration of
16 it business with the business of Embarq, acquired in 2009, which
17 could cause both of these integration initiatives to be delayed or
18 rendered more costly or disruptive than would otherwise be the
19 case.⁷²

⁶⁹ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

⁷⁰ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 7.

⁷¹ CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16. See also, Exhibit DR-2 to Ring Minnesota Direct, showing overlap between the integration of Embarq and Qwest during 2011 and 2012.

⁷² CenturyLink Form S-4 at p. 16.

1 **Q. HAVE CLECS REPORTED PROBLEMS WITH EMBARQ OR**
2 **CENTURYTEL SINCE THAT MERGER WAS APPROVED?**
3

4 A. Yes. Recent experience of CLECs indicates that CenturyLink's integration track
5 record is not as perfect as its testimony seems to suggest. As discussed in the
6 CLEC comments to the FCC, tw telecom and Socket Telecom explained problems
7 they experienced during CenturyLink's transition of wholesale customers in the
8 legacy Embarq territory from one ordering system to another in 2009. I have
9 attached the relevant portion of those comments as Exhibit TJG-4. As described
10 therein, the CLECs have experienced system outages (during which time LSRs
11 could not be submitted), could not complete pre-ordering, and experienced slow
12 response times.

13 **Q. HAVE CENTURYLINK'S SYSTEM INTEGRATION EFFORTS ALWAYS**
14 **BEEN ON-TIME AND ON-BUDGET?**
15

16 A. No. Prior attempts by CenturyLink to integrate systems were neither on-time nor
17 on-budget. CenturyTel stated that this billing system integration effort required
18 "substantially more time and money to develop than originally anticipated" and
19 estimated a cost overrun of between \$50 million and \$60 million.⁷³ Furthermore,
20 CenturyTel stated:

21 there is no assurance that the system will be completed in
22 accordance with this schedule or budget, or that the system will
23 function as anticipated. If the system does not function as
24 anticipated, the company may have to write-off part or all of its

⁷³ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

1 remaining costs and further explore its other billing and customer
2 care system alternatives.⁷⁴

3 CenturyTel stated in its 2001 10-K that “The Company is in the process of
4 developing an integrated billing and customer care system” and completion ... is
5 expected to occur in early 2003.” However, two years later CenturyTel stated in
6 its 2003 10K that “the system remains in the development stage and has required
7 substantially more time and money to develop than originally anticipated. The
8 Company currently expects to complete all phases of the new system no later than
9 mid-2005. In addition, the Company expects to incur additional costs related to
10 completion of the project, including (i) approximately \$15 million of customer
11 service related and data conversion costs.” Therefore CenturyTel’s integrated
12 billing and customer care system implementation was delivered over two years
13 later than planned and additional operational costs were incurred as a result. The
14 same risks are inherent in any system integration CenturyLink may attempt in
15 Qwest’s region post-merger – “there is no assurance” that the integration will be
16 on time, on budget, or function properly. Indeed, it is these types of customer-
17 impacting problems with systems integration that have caused the serious
18 problems associated with recent mergers.

19 **VI. LESSONS FROM RECENT ILEC MERGERS AND ACQUISITIONS**

20 **Q. WHAT LESSONS CAN WE LEARN FROM OTHER RECENT TELECOM**
21 **MERGERS AND/OR ACQUISITIONS?**
22

⁷⁴ *Id.*

1 A. Significant problems have been experienced after recent mergers – problems that
2 could occur after the proposed transaction if it is approved as filed. These
3 examples are further evidence that the Joint Applicants’ unsupported assertions
4 about the proposed transaction cannot be taken at face value; failures do occur no
5 matter how well-intentioned the company is and the stakes associated with failure
6 are simply too high.

7 **Q. ARE YOU GENERALLY FAMILIAR WITH THE RECENT MERGERS**
8 **IN THE TELECOMMUNICATIONS INDUSTRY?**

9
10 A. Yes, I am.

11 **Q. IS THERE ANYTHING TO BE LEARNED BY CONSIDERING THE**
12 **OUTCOMES OF OTHER RECENT MERGERS AND ACQUISITIONS**
13 **INVOLVING ILEC OPERATIONS?**

14
15 A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian
16 Telecom, as well as ongoing problems with Frontier’s cutover of former Verizon
17 lines, demonstrate the challenges and risks associated with transactions similar to
18 this one, particularly with respect to a smaller LEC’s ability to integrate the OSS
19 and other back-office systems of a materially larger organization.

20 These are examples wherein the merging companies’ high expectations and
21 promised public benefits regarding the merger failed to be realized, in large part
22 because of problems with integrating the two companies’ operations and OSS. In
23 particular, I am referring to:

- 24 • The Carlyle Group’s acquisition of Verizon Hawaii (renamed
25 Hawaiian Telcom), which led to Hawaiian Telcom’s filing for Chapter
26 11 bankruptcy protection in 2008;

- 1 • FairPoint’s acquisition of Verizon’s operations in northern New
2 England (Maine, New Hampshire, and Vermont), which led to
3 FairPoint’s Chapter 11 bankruptcy filing in October 2009; and
- 4 • The on-going integration difficulties experienced by Frontier as it
5 attempts to absorb former Verizon exchanges acquired in fourteen
6 states.

7 **Q. BEFORE YOU TURN TO THE SPECIFICS OF THESE CASES, CAN**
8 **YOU SUMMARIZE THE LESSONS THAT YOU DRAW FROM THEM?**

9
10 A. Yes. The primary lessons that I draw from these experiences are as follows:

- 11 (1) Mergers and acquisitions involving the transfer and integration of
12 ILEC local telephone operations carry a high degree of risk of failure,
13 even when implemented by purportedly highly-experienced
14 management teams and well-financed companies;
- 15
16 (2) The integration and/or change-out of ILEC back-office systems and
17 OSS can pose a tremendous challenge, and integration failures can be
18 so costly as to not only eliminate the forecasted transaction cost
19 savings and other synergies, but to place the post-merger company
20 under severe financial pressure; and
- 21
22 (3) From a public interest standpoint, the outcome of such failed
23 transactions can indeed be an “unmitigated disaster,” including
24 financial instability, service quality deteriorations and dissatisfied
25 customers, curtailed network investment and broadband deployment,
26 and the disruption of wholesale services provisioning and ordering that
27 are crucial to a smoothly-functioning competitive marketplace.

28 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN**
29 **TELCOM’S BANKRUPTCY FILING AFTER ITS ACQUISITION BY**
30 **THE CARLYLE GROUP.**

31
32 A. In May 2005, the private investment firm The Carlyle Group (“Carlyle”) closed
33 on its purchase of Verizon Hawaii, the franchised ILEC serving most of the state
34 of Hawaii. At the time of that acquisition, Carlyle proclaimed that it “has a track
35 record of successful telecommunications investments, deep knowledge of the

1 local telephony business, and deep understanding of the complex regulatory
2 issues affecting the industry.”⁷⁵ Carlyle assembled a highly-experienced
3 management team for the acquired firm (renamed Hawaiian Telcom) that
4 included a former Chairman of the FCC, a former Executive Vice President of
5 Verizon and GTE, and Carlyle’s founder, who is also a former CFO of MCI and
6 Chairman of Nextel Communications.⁷⁶ Carlyle also committed \$1.65 Billion to
7 purchase the company, and proclaimed that it “...plans to invest significant
8 capital to transition the company to an independent local company in a manner
9 that maintains service quality and is seamless to customers.”⁷⁷ Just prior to the
10 acquisition, Carlyle promised that: “In short order we will offer new services to
11 our customers, including expanded broadband, and we expect to add many new
12 jobs after the acquisition.”⁷⁸ The FCC approved the transaction in August 2004,
13 under its streamlined procedures for domestic Section 214 transfers of control.⁷⁹
14 The Hawaii PUC conducted its own review and approved the transaction, subject
15 to certain conditions, on March 16, 2005.⁸⁰

16 **Q. DID HAWAIIAN TELCOM EXPERIENCE TROUBLES RELATED TO**

⁷⁵ Carlyle Group press release, “The Carlyle Group to Buy Verizon Hawaii for \$1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company,” May 24, 2004, at page 2.

⁷⁶ *Id.* at p. 2.

⁷⁷ *Id.*

⁷⁸ *Id.* at p. 1.

⁷⁹ FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, Released August 17, 2004.

⁸⁰ *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

1 **OSS?**

2
3 A. Yes. One aspect of the transaction was that the transferred company would
4 develop its own back-office and OSS systems and processes to replace those of
5 Verizon. Hawaiian Telcom hired the management and technology consulting
6 company BearingPoint, Inc. to take on the task of designing and implementing
7 those systems by the end of March 2006. The Hawaii PUC required testing of the
8 new systems as a condition to its approval of the transaction,⁸¹ but the scope and
9 rigor of that testing was nowhere near that required of Qwest's systems under the
10 Section 271 regime.⁸² In 2007 Hawaiian Telcom made a filing with the FCC
11 seeking a waiver from certain ARMIS reporting requirements. In that filing
12 Hawaiian Telcom described the troubles it was experiencing:

13 The transition from Verizon's systems to the new BearingPoint-
14 designed systems at the end of March, 2006 did not go smoothly.
15 As has been widely reported in the press, see Attachment 1
16 (representative press clippings), critical BearingPoint-designed
17 systems related to customer care, order management, billing and
18 data collection necessary for various reporting obligations lacked
19 significant functionality, leading to problems with ordering,
20 provisioning, billing and collection.

21 ...

22 These shortcomings therefore affected not only Hawaiian Telcom's
23 ability to collect ARMIS related data, but also its basic ability to
24 bill its customers, collect revenue for services provided, and
25 process payments.⁸³

26 In February 2007, Hawaiian Telcom reached an settlement with Bearing Point:

⁸¹ *Id.* at Ordering Paragraph 1.

⁸² Exhibit TJG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

⁸³ Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j), CC Docket No. 86-182, filed February 21, 2007 ("Hawaiian Telcom ARMIS Petition"), at p. 2.

1 “According to Hawaiian Telcom, BearingPoint agreed to pay \$52 million in cash
2 on March 27 and to waive outstanding invoices, bringing the total value of the
3 settlement to \$90 million.”⁸⁴ Although Hawaiian Telcom received a cash
4 settlement, it was still left with poorly functioning systems. To try to correct the
5 situation, in February 2007, Hawaiian Telcom entered into a seventeen-month,
6 \$46-million contract with the management consulting and technology services
7 company Accenture. That contract required Accenture to develop and remediate
8 the company’s business support and customer service systems, including the OSS
9 used to interact with CLECs and other wholesale customers.⁸⁵ In the interim,
10 Hawaiian Telcom was forced to use costly manual work-arounds, third-party
11 temporary call centers, and other inefficient and expensive processes to undertake
12 basic provisioning and ordering activities.⁸⁶ Numerous retail customers received
13 erroneous bills, including double-billing due to delayed bill processing.⁸⁷
14 Wholesale customers, such as tw telecom, also endured systems failures by
15 Hawaiian Telcom, including (1) missed deadlines for special access circuit orders,
16 (2) delays in porting end user customers' telephone numbers, and (3) lack of a
17 functioning electronic interface (GUI) for wholesale customers to submit and
18 monitor the status of trouble tickets for the services they received from the

⁸⁴ Pacific Business News, BearingPoint Pays Hawaiian Telcom \$52M, March 29, 2007 Available at: <http://www.bizjournals.com/pacific/stories/2007/03/26/daily36.html>

⁸⁵ *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), “Hawaiian Telcom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities,” February 8, 2007, at p. 1.

⁸⁶ *See, e.g.*, Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

⁸⁷ *See* “Billing woes overwhelm Hawaiian Telcom systems,” Honolulu Star-Bulletin, June 21, 2006; provided in Attachment 1 to the Hawaiian Telcom ARMIS Petition.

1 company.⁸⁸

2 In five years the Company's reported annual rate of return plummeted from the
3 essentially breakeven level it had at the time of the transaction's close, -0.8%,
4 down to -29.3%.⁸⁹ In December 2008, Hawaiian Telcom filed for Chapter 11
5 bankruptcy protection, "listing \$1.4 billion in assets and \$1.3 billion in debts."⁹⁰

6 **Q. WAS HAWAIIAN TELCOM THE ONLY ILEC TO FILE FOR**
7 **BANKRUPTCY AFTER AN ACQUISITION OR MERGER?**

8
9 A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition
10 of Verizon's ILEC operations in northern New England (Maine, New Hampshire,
11 and Vermont) in March 2008, with approval from regulators in all three states.
12 Barely a year and a half later, in October 2009, the company filed for Chapter 11
13 bankruptcy protection. As NASUCA has pointed out in its initial Comments in
14 the FCC's Qwest-CenturyLink merger proceeding, "...the track record is that the
15 FairPoint transaction has turned out to be a virtually unmitigated disaster."⁹¹ In
16 its recent decision rejecting FairPoint's Chapter 11 reorganization plan, the
17 Vermont Public Service Board made the following observations concerning
18 FairPoint's pre-acquisition expectations and commitments, and the ensuing

⁸⁸ *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc.'s Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

⁸⁹ See Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009, Released November 2009, at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

⁹⁰ The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under," December 2, 2008, at p. 1.

⁹¹ FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

1 reality:

2 On March 31, 2008, FairPoint consummated its merger and
3 acquisition of Spinco (Verizon's NNE operations) resulting in
4 FairPoint as the surviving entity. Previously, on December 21,
5 2007, we issued our first order in Docket No. 7270 initially
6 denying FairPoint's request to acquire Spinco. During the course of
7 our proceedings leading up to that decision, FairPoint submitted a
8 substantial amount of testimony and information in support of its
9 argument that it was financially ready to step into Verizon's shoes.
10 In general, FairPoint made the following key assertions:

11
12 (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3%
13 per year.

14
15 (b) Line-loss increases will be sufficiently offset by the build-out
16 and sale of DSL service.

17
18 (c) Cutover to FairPoint's new systems will be achievable within
19 five months of closing.

20
21 (d) Transition expenses under the Transfer of Service Agreement
22 ("TSA") with Verizon will not exceed \$100 million and will not
23 extend beyond 2008.

24
25 (e) Synergies resulting from new systems integration and
26 replacement of Verizon's higher cost functions will result in
27 additional cost savings of \$65-75 million in 2008.

28
29 (f) Average year-to-year increases in operating expenses not to
30 exceed 1%.

31
32 (g) Annual reductions in employee count of 4% to 4.5% resulting
33 in additional cost savings for salary and wage expense.

34
35 (h) Unforeseen increases in operating or capital expenditures will
36 be sufficiently offset by a reduction or elimination of shareholder
37 dividends.

38
39 (i) Free cash flow will be relatively stable at approximately \$200 to
40 \$220 million annually over the first five years after closing.

41
42 (j) An annual free cash flow cushion after dividends of \$70 million
43 will be available for unforeseen financial difficulties.

1
2 Based upon the substantial historical record contained in Docket
3 No. 7270, a record which spans FairPoint's progression through the
4 merger transaction, subsequent cutover, and eventual bankruptcy,
5 **it is abundantly clear that FairPoint failed to realize any of the**
6 **above forecasts.** Even with the enhancements to FairPoint's
7 financial metrics provided by the revised merger transaction,
8 which we approved on February 15, 2008, those enhancements
9 (reduced purchase price and reduced leverage) were not sufficient
10 to allow FairPoint to achieve its projections. For example, we now
11 know that: (i) line losses were substantially greater than projected
12 for 2008 and 2009; (ii) systems functionality issues delayed
13 cutover for an additional five months resulting in substantial
14 increased operating costs; (iii) FairPoint's suspension of its
15 dividend in March 2009 was not sufficient to assist FairPoint in
16 meeting its debt-servicing requirements; (iv) customer service
17 issues caused FairPoint to staff-up in 2009 as opposed to staffing
18 down; and (v) ongoing systems issues in 2009 resulted in a \$28.8
19 million increase in operating expenses. **We note that then, like**
20 **now, FairPoint maintained that its projections were**
21 **reasonable, conservative, and provided for a sufficient margin**
22 **of error.**⁹²

23 The Vermont Board went on to observe that "FairPoint's actual performance
24 throughout 2008 and 2009 turned out to be worse than the Board's most
25 pessimistic assumptions."⁹³

26 **Q. DID THE VERMONT PUBLIC SERVICE BOARD REACH ANY**
27 **CONCLUSIONS AS TO WHY FAIRPOINT FAILED TO LIVE UP TO ITS**
28 **PRE-TRANSACTION FORECASTS AND ASSURANCES?**

29
30 A. Yes. The Board concluded that FairPoint's financial crisis was caused in large
31 part by its inability to successfully integrate the legacy Verizon exchanges into its
32 OSS and other back-office systems. As the Board explained in its Order:

⁹² Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

⁹³ *Id.* at p. 58.

1 FairPoint has not demonstrated that it can achieve its projected
2 reductions in operating costs or realize additional cost savings
3 from systems improvements and new networks that have yet to be
4 completed. As we have found above, **a major source of these**
5 **costs have been FairPoint's ongoing systems issues which have**
6 **persisted since cutover and contributed greatly to FairPoint's**
7 **eventual financial downfall.** FairPoint has undertaken a
8 considerable effort, most recently its CDIP initiatives, involving
9 the deployment of significant financial resources and personnel to
10 address these issues. ... **While we accept FairPoint's assertion**
11 **that it has made strides in resolving many of these problems,**
12 **system defects remain and manual workarounds continue to**
13 **serve as temporary solutions until automated processes can be**
14 **designed and implemented. Moreover, we are aware that there**
15 **have been instances where FairPoint assumed a problem to be**
16 **fixed only to have that problem reappear at a later time. ...**
17 ...we have received no evidence, or guarantees from FairPoint,
18 that would lead us to conclude that these remediation efforts will
19 not need to be continued beyond 2010 or even 2011.⁹⁴

20 **Q. AT THE TIME THAT THE VERMONT BOARD APPROVED THE**
21 **FAIRPOINT-VERIZON TRANSACTION, DID IT ADOPT A CONDITION**
22 **THAT FAIRPOINT'S OSS SYSTEMS WOULD BE SUBJECTED TO**
23 **TESTING IN ADVANCE OF THE CUTOVER OF VERIZON'S**
24 **OPERATIONS?**

25 A. Yes. The Board later stated that it did so specifically because “we were mindful
26 that after Verizon's sale of its Hawaii properties, the last major
27 telecommunications acquisition that required transition to new systems, major
28 problems for wholesale and retail customers occurred that have taken years to
29 correct.”⁹⁵ Unfortunately, the condition that it adopted – which required a third-
30 party consultant (Liberty Consulting) to monitor the cutover progress and “to
31

⁹⁴ *Id.* at p. 61-62 (footnotes omitted, emphasis added).

⁹⁵ Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

1 evaluate FairPoint's cutover readiness criteria"⁹⁶ – did not include independent
2 third-party testing itself.⁹⁷ This is dramatically different than the comprehensive
3 third-party testing that Qwest and other BOCs had to undergo to demonstrate that
4 their OSS satisfied the obligations of Section 271.⁹⁸ As a consequence, the
5 Board's condition, though well-intentioned, was insufficient to prevent
6 FairPoint's subsequent systems failures.

7 **Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT'S SYSTEMS**
8 **INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE**
9 **QUALITY OF ITS SERVICES?**

10
11 A. Yes. The Vermont Board also made specific findings concerning the negative
12 impacts that FairPoint's systems failure had on its service quality for retail
13 customers and CLECs. Among the Board's findings:

- 14 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the
15 RSQP [Retail Service Quality Plan]. This performance triggered 1470
16 service quality compensation points and resulted in an obligation to
17 provide service quality compensation of \$10,515,650.⁹⁹
18
- 19 • Other areas of FairPoint's service remain problematic and either do not
20 show signs of significant improvement or early improvements have
21 leveled. These include late orders for retail and wholesale, late
22 disconnects, billing errors and adjustments, and customer complaint
23 escalations.¹⁰⁰
24
- 25 • Automated flow-through for orders designed to flow-through to
26 provisioning and billing without manual intervention has not improved to
27 acceptable levels and exacerbates other problem areas. Order fall-out

⁹⁶<http://www.puc.nh.gov/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2012-07-07.pdf>

⁹⁷ *Id.* at pp. 4-5.

⁹⁸ Exhibit TJG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

⁹⁹ *Id.* at p. 67 (Finding No. 153).

¹⁰⁰ *Id.* at p. 68 (Finding No. 156).

1 requires unplanned manual effort, which reduces the ability of staff to
2 address other issues. It also increases the chance that an order will be
3 late.¹⁰¹
4

- 5 • The level of known FairPoint billing errors and billing adjustments are
6 resulting in billing-related customer complaints 400% to 500% higher than
7 during Verizon's operations.¹⁰²
8
- 9 • Some number of the known billing errors and adjustments are likely the
10 result of problems in upstream systems and processes, including faulty
11 service-order data entry, late disconnections, and inconsistent or
12 unsynchronized data as examples.¹⁰³

13 While the Vermont Board recognized that recently FairPoint had made significant
14 progress on its systems issues, it ultimately rejected FairPoint's reorganization
15 plan on the grounds that it had not demonstrated that the plan would restore its
16 financial soundness.¹⁰⁴ Recently, it has been reported that FairPoint may ask the
17 federal court that is overseeing its bankruptcy and reorganization to overrule the
18 Vermont Board's rejection of its plan.¹⁰⁵

19 **Q. ARE THERE SOME PARALLELS HERE BETWEEN THE PROGRESS**
20 **OF FAIRPOINT'S ORIGINAL ACQUISITION PROPOSAL AND ITS**
21 **REORGANIZATION PLAN?**
22

23 A. Yes, I think there are. In a nutshell, the Vermont Board's experience with
24 FairPoint can be recapped as follows:

- 25 (1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont.
26 Throughout the proceedings, the Board is told they are a hold out and

¹⁰¹ *Id.* at p. 68 (Finding No. 158).

¹⁰² *Id.* at p. 69 (Finding No. 172).

¹⁰³ *Id.* at p. 69 (Finding No. 171).

¹⁰⁴ *Id.* at p. 95.

¹⁰⁵ Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators,"
August 2, 2010. See http://www.vpr.net/news_detail/88585/

1 everyone else has approved.¹⁰⁶

2 (2) In 2008, the Vermont Board approves the transaction with limited
3 conditions;

4 (3) By 2009, the cutover is disastrous and greatly affects the financial
5 performance of FairPoint;

6 (4) In October 2009, FairPoint declares bankruptcy;

7 (5) In February 2010, FairPoint management submits a reorganization plan
8 that the Vermont Board judges to be overly optimistic;

9 (6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;

10 (7) In August 2010, once again, the Vermont Board is told they are a hold out
11 and now FairPoint is considering asking the Bankruptcy Court to
12 supersede the PSB's authority.

13 Like the Vermont Board, other state regulators should not be hesitant to exercise
14 their authority when major public interest ramifications are at stake. One
15 important way to do that is to establish meaningful conditions on these types of
16 transactions, as I shall explain later in my testimony.

17 **Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY**
18 **COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION**
19 **AND ITS OUTCOMES?**

20 A. The New Hampshire PUC ultimately approved FairPoint's Chapter 11
21 reorganization plan, but offered a very critical assessment of the consequences of
22 FairPoint's acquisition of Verizon's operations in northern New England. In its
23

¹⁰⁶ See, e.g., Transcript in West Virginia Docket 09-0871-T-PC at p. 34. On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal...If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel..."

1 Conclusion to the reorganization approval Order dated July 7, 2010, the New
2 Hampshire Commission found that:

3 FairPoint has failed to meet the obligations it made in 2008 to the
4 states of New Hampshire, Maine and Vermont and their citizens.
5 Among other things, FairPoint made promises about service
6 quality, relations with wholesale competitors and broadband build-
7 out, and committed itself to performance superior to Verizon,
8 whose performance had become an issue of increasing concern in
9 the three states. Due to FairPoint's widespread operational
10 shortcomings arising from its systems cutover, however,
11 residential and business customers, as well as wholesale customers
12 and competitors who rely on FairPoint services, endured even
13 poorer service quality than was the case under Verizon.¹⁰⁷

14 The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a
15 two-to-one vote, but the text of the majority decision does not contain any overall
16 characterization of the FairPoint experience as contained in the New Hampshire
17 PUC order.¹⁰⁸ Maine Commissioner Vafiades, however, offered this assessment
18 in his written dissent appended to that decision:

19 In February of 2008, I voted with my colleagues to approve the
20 sale of Verizon wireline assets to FairPoint Communications. My
21 approval was based on FairPoint's representations that the
22 Company would improve customer service by updating and
23 streamlining its back office systems, replacing and upgrading its
24 deteriorating infrastructure, and operating a competent wholesale
25 customer service operation. Additionally, for at least five years,
26 customers of FairPoint's DSL broadband service would receive the
27 benefit of statewide price averaging for that service and customers
28 of FairPoint's telephone services would either receive service
29 quality that satisfies the existing SQI measurements or they would
30 receive rate rebates should FairPoint fail to meet its SQI targets.
31 Finally, FairPoint agreed to system improvements benefiting all

¹⁰⁷ New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

¹⁰⁸ Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

1 customers and made a commitment to expand broadband to meet
2 90% addressability by 2013.

3
4 Despite FairPoint's early struggles to take control of the wireline
5 assets, provide adequate customer service and modernize the back
6 office systems, the Commission stayed the course and following a
7 number of approvals for cutover extensions authorized cutover
8 from Verizon to FairPoint operating systems in January of 2009.
9 Unfortunately, FairPoint was not competent in managing the
10 extensive back office rebuild, could not get its wholesale business
11 running smoothly despite cooperation from the CLECs, failed to
12 provide basic services to residential and business customers and
13 suffered from competitive business pressure and a faltering
14 economy. FairPoint's financial position became precarious.¹⁰⁹

15 **Q. MR. GATES, WHAT LESSONS DO YOU THINK SHOULD BE DRAWN**
16 **FROM THE HAWAIIAN TELCOM AND FAIRPOINT EXPERIENCES?**

17
18 A. As stated, the primary lessons that I draw from these two disappointing
19 experiences are the following:

- 20 (1) Mergers and acquisitions involving the transfer and integration of
21 ILEC local telephone operations carry a high degree of risk of failure,
22 even when implemented by purportedly highly-experienced
23 management teams and well-financed companies;
24
25 (2) The integration of two companies' disparate operations and OSS can
26 pose a tremendous challenge, and integration failures can be so costly
27 as to not only eliminate the forecasted transaction cost savings and
28 other synergies, but to place the post-merger company under severe
29 financial pressure; and
30
31 (3) From a public interest standpoint, the outcome of such failed
32 transactions can indeed be an "unmitigated disaster," including
33 financial instability, service quality deteriorations and dissatisfied
34 customers, and the disruption of wholesale services provisioning and
35 ordering that are crucial to a smoothly-functioning competitive
36 marketplace.

37 **Q. HOW DOES FRONTIER'S RECENT ACQUISITION OF VERIZON**

¹⁰⁹ *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

1 **EXCHANGES IN FOURTEEN STATES FIT INTO THIS PICTURE?**
2

3 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions
4 are (presumably) winding down, the problems besetting Frontier’s acquisition of
5 certain Verizon exchanges in fourteen states¹¹⁰ are occurring right now, as
6 systems cutovers and transitions have been occurring this spring and summer,
7 with an “official” cutover date of July 1, 2010. For thirteen states, Verizon
8 created replicas of its existing wholesale OSS systems that were being operated
9 on an interim basis by Spinco, the temporary corporate entity created to effect the
10 Frontier transaction. These “replicated systems” were then transferred to Frontier
11 on the cutover date, and thereafter serve as Frontier’s wholesale OSS, to fulfill
12 orders for UNEs and other wholesale services. In the fourteenth state, West
13 Virginia, Verizon’s systems were not replicated, and instead these functions were
14 transferred to Frontier’s own OSS system, Synchronoss VFO. As I shall explain,
15 to date both transfers have been beset by systems problems, which are having
16 adverse impacts upon CLECs and their customers. It remains to be seen how
17 serious and long-lasting these problems may ultimately prove to be, and whether
18 they will rise to the nightmarish levels experienced in the Hawaiian Telcom and
19 FairPoint cases.

¹¹⁰ As set forth in Verizon’s Amended Application, “transaction involves the transfer to Frontier of all of Verizon’s local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon’s exchanges in California, including those bordering Arizona, Nevada and Oregon.” See WC 09-95, Verizon and Frontier’s amended and revised “Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority,” July 30, 2009, at p. 2, footnote 3.

1 **Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING**
2 **FRONTIER’S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?**
3

4 A. In recent comments and *ex parte* filings with the FCC, Integra and PAETEC have
5 provided detailed descriptions of how problems with the transition to the Verizon
6 replicated systems in the thirteen states (excluding West Virginia) have been
7 adversely affecting their operations and the retail customers that they serve.

8 In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even
9 before the Verizon replicated systems were transferred to Frontier, it “is already
10 encountering serious service deterioration due to lack of adequate (much less
11 adequately trained) personnel at SpinCo [the corporate vehicle for the Frontier
12 transaction]. All of these problems exist even though SpinCo is still under the
13 Verizon umbrella.”¹¹¹ PAETEC describes a range of problems that it has
14 encountered, including:

- 15 • Increased response times for Access Service Requests (“ASRs”), i.e.,
16 PAETEC’s electronic orders for access services from Frontier –
17 causing missed due dates or orders that need to be escalated/expedited
18 in order to meet end user customer expectations;
- 19 • Increased Access Ordering system errors, causing delays in
20 submission of ASRs;
- 21 • Hold times of 30 minutes or more when calling Access Order centers
22 to reach an Access Ordering representative; and
- 23 • Apparent reduction of Access Ordering staff – Verizon North Central
24 Access Ordering staff have told PAETEC that they were a staff of 50
25
- 26
- 27

¹¹¹ Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95, filed May 17, 2010, Attachment A, at p. 6.

1 that was cut to 12 and now they only have 6 individuals working
2 ASRs.¹¹²

3 **Q. HAS INTEGRA ALSO EXPERIENCED PROBLEMS IN ITS USE OF THE**
4 **VERIZON REPLICATED SYSTEMS?**

5
6 A. Yes. As documented in its May 13, 2010, *ex parte* letter to the FCC, Integra also
7 has been experiencing the same sorts of problems when using the Verizon
8 replicated systems in Oregon and Washington.¹¹³ Integra’s follow-up *ex parte*
9 letter of May 19, 2010, documented that the performance of the replicated
10 systems was failing to meet the wholesale service quality benchmarks previously
11 applied to Verizon in areas including Order Confirmation Timeliness for ASRs
12 and Completion Notice Interval.¹¹⁴ In its May 19th letter, Integra explains that
13 these problems are in fact worse than they seem, and that end users are being
14 adversely impacted:

15 Verizon’s actual performance in the area of timely order
16 completion is obscured in part by the fact that Verizon has been
17 increasingly sending Service Activation Reports (“SARs”) without
18 actually completing the work requested on an order. This was true
19 for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-
20 BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-
21 2566473- CHG. This practice negatively impacts Integra’s ability
22 to serve its end-user customers. For example, if Verizon sends
23 Integra a completion notice but has not performed the requested
24 installation, Integra is forced to conduct multiple technician
25 dispatches for a single end-user customer, and delivery of service
26 to that customer is delayed. In addition, if Integra receives an SAR
27 from Verizon, Verizon begins billing Integra, and Integra may

¹¹² *Id.* at p. 6-7.

¹¹³ Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 13, 2010, at pp. 1-2.

¹¹⁴ Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 19, 2010, at p. 2.

1 mistakenly begin billing its end-user customer before service is
2 actually delivered to the customer.¹¹⁵

3 Significantly, Integra personnel found that some of the Verizon representatives
4 answering calls in Verizon call centers were inexperienced or had been
5 inadequately trained.¹¹⁶ Integra employees “sometimes found themselves
6 educating Verizon’s representatives on Verizon’s internal processes and the
7 requirements of Verizon’s CLEC-facing systems.¹¹⁷ In some cases, the Verizon
8 employees operating the systems themselves told their Integra counterparts that
9 “...they d[id] not know the appropriate workarounds to resolve specific types of
10 problems.”¹¹⁸ The full text of Integra’s May 19th letter, which is provided in my
11 Exhibit TJG-5, also describes additional ordering problems attributable to failures
12 in the Verizon replicated systems.

13 **Q. HAS THE CUTOVER OF FRONTIER’S ACQUIRED VERIZON**
14 **EXCHANGES IN WEST VIRGINIA GONE ANY MORE SMOOTHLY**
15 **THAN IN THE OTHER THIRTEEN STATES?**

16
17 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is
18 adversely impacting some retail customers as well as CLECs. In West Virginia,
19 the former Verizon exchanges, which encompass approximately 617,000 access
20 lines in 47 counties, were officially cutover to Frontier on July 1, 2010.¹¹⁹

21 Charleston’s major newspaper, the *Charleston Daily Mail*, has been monitoring

¹¹⁵ *Id.* at pp. 2-3 (footnotes omitted).

¹¹⁶ *Id.* at p. 4.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Charleston Daily Mail*, “Phone transition not going smoothly for a few customers,” July 1, 2010, at p. 2.
This article is reproduced in Exhibit TJG-7.

1 the progress of the cutover since that time, and has reported on the problems
2 confronted by retail customers, including a local pharmacy chain that endured a
3 Frontier service outage that lasted more than 39 hours in their 25 stores, cutting
4 off their on-line systems needed to fulfill prescriptions and rendering them
5 “incapacitated.”¹²⁰ These types of problems appear to be continuing. On July 28,
6 the *Charleston Daily Mail* reported that Frontier has declared an “emergency and
7 long-term service difficulty,” which under its labor contract with CWA, allows
8 Frontier to require unionized employees to work overtime up to 70 hours a week
9 to attempt to resolve its service problems.¹²¹

10 **Q. WHAT IMPACTS HAS FRONTIER’S WEST VIRGINIA CUTOVER HAD**
11 **ON CLECS OPERATING IN THE STATE?**

12
13 A. CLECs are also experiencing significant wholesale ordering problems relating to
14 the West Virginia cutover. One CLEC operating in that service territory,
15 FiberNet, has petitioned the West Virginia PSC to reopen its proceeding to review
16 the Verizon-FairPoint transaction, claiming that FairPoint has failed to live up to
17 its commitment that its wholesale OSS would be functionally at par with those of
18 Verizon.¹²² As expressed by FiberNet in its Petition:

19 Since the cutover to Frontier’s Synchronoss VFO OSS on July 1,
20 2010, however, FiberNet has experienced significant and ongoing
21 problems with the proper functionality of Frontier’s OSS and have

¹²⁰ *Charleston Daily Mail*, “Local Business Having Major Problems Since Frontier Switch,” July 21, 2010. This article is reproduced in Exhibit TJG-7.

¹²¹ *Charleston Daily Mail*, “Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week,” July 28, 2010. This article is reproduced in Exhibit TJG-7.

¹²² FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

1 unfortunately been compelled to conclude that Frontier’s OSS as
2 presently constituted is substantially less sophisticated and far less
3 automated than the former Verizon OSS it was intended to replace.

4 FiberNet’s Petition identifies fifteen separate types of problems it is experiencing
5 with Frontier’s wholesale OSS systems that span the entire range of pre-ordering,
6 ordering, and installation functions that the systems are intended to provide.¹²³
7 Some of these issues impede FiberNet’s ability to offer its services to West
8 Virginia customers, *e.g.*, the inability to input orders related to the digitally
9 qualified loops necessary for the provision of DSL service, or high-capacity DS-
10 1s.¹²⁴ Other issues are having a direct impact on the customers themselves, *e.g.*,
11 “several new FiberNet customers have been put out of service because Frontier
12 prematurely processed disconnection orders in its OSS for these migrating
13 customers without simultaneously processing the corresponding order necessary
14 to successfully complete the migration of the customer’s loop and telephone
15 number to FiberNet.”¹²⁵ FiberNet also notes that “Customers with pending orders
16 for new service or additional services have lost patience with the length of time
17 necessary to get their requested service installed, which has resulted in several
18 customers simply cancelling their pending orders with FiberNet.”¹²⁶

19 **Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING**
20 **EXPERIENCED BY INTEGRA, PAETEC, AND FIBERNET IMPACT**
21 **COMPETITORS’ ABILITY TO OFFER COMPETITIVE SERVICES AND**
22 **MAINTAIN THEIR CUSTOMER RELATIONSHIPS?**

¹²³ *Id.* at Exhibit A.

¹²⁴ *Id.* at p. 5.

¹²⁵ *Id.*

¹²⁶ *Id.* at pp. 6-7.

1 A. As a general matter, when CLECs confront the sorts of delays, errors, and
2 backlogs in wholesale ordering transactions that Integra, PAETEC, and FiberNet
3 have experienced with Frontier, it not only increases their costs of doing business,
4 but it also damages CLECs' relationships with their end user customers.

5 **Q. DO END USERS UNDERSTAND THAT SUCH PROBLEMS ARE**
6 **CAUSED BY THE ILEC AND NOT THE CLEC?**

7
8 A. Generally no. End users do not recognize (or care) that the service delays they
9 endure are the fault of the provider of wholesale services (*i.e.*, the ILEC) rather
10 than the CLEC. Of course, this circumstance benefits the ILEC as it can serve
11 those retail customers leaving the CLEC with the ILEC's own retail offerings.

12 **VII. THE PROPOSED TRANSACTION SHOULD BE REJECTED; OR IN THE**
13 **ALTERNATIVE, APPROVED ONLY SUBJECT TO CHARTER'S**
14 **PROPOSED CONDITIONS**

15 **Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED**
16 **TRANSACTION BE DENIED BY THE COMMISSION?**

17
18 A. Yes, if the Commission has authority to do so. The Joint Applicants have failed
19 to demonstrate that the public interest will not be harmed and have failed to
20 substantiate any benefits resulting from the proposed transaction. As it relates to
21 CLECs, the Joint Applicants have not identified (let alone substantiated) any
22 benefits resulting from the proposed transaction; instead, the CLECs are faced
23 with complete uncertainty and potential severe disruption and harm in every
24 aspect of their wholesale relationship with Qwest. If the Commission disagrees
25 with my primary recommendation, however, and is inclined to approve the

1 proposed transaction, it should do so only if the transaction is subject to robust,
2 enforceable conditions.

3 **Q. WHAT IS THE GOAL OF THESE CONDITIONS?**

4 A. The overall objective of the conditions is to ensure that the proposed transaction
5 does not harm the industry and ultimately serves the public interest. More
6 specifically, however, these conditions are intended to mitigate the harm that is
7 likely to happen (and has occurred elsewhere) if the proposed transaction is
8 approved as filed,¹²⁷ primarily by providing the much-needed certainty that
9 Charter and other CLECs need to continue to operate their business and make
10 prudent decisions. These conditions also attempt to ensure that the Merged
11 Company is not further entrenched as a result of the merger as an overwhelmingly
12 dominant wholesale provider/competitor, to the detriment of competition and the
13 public interest.

14 **Q. IS THERE PRECEDENT FOR APPROVING A PROPOSED**
15 **TRANSACTION SUBJECT TO CONDITIONS?**

16 A. Yes. For example, both the FCC and state commissions imposed conditions on
17 the Embarq/CenturyTel merger. Further, Qwest itself proposed conditions for the
18 Iowa Telecom/Windstream merger, which further validates the notion that it is
19

¹²⁷ The FCC has stated: “it will impose conditions to remedy harms that arise from the transaction...” FCC Embarq/CenturyTel Merger Order at ¶ 12.

1 generally accepted that conditions must be imposed on a proposed acquisition to
2 prevent or offset harm.¹²⁸

3 **Q. WHAT CONDITIONS IS CHARTER PROPOSING?**

4 A. Charter is proposing four conditions or commitments from the Joint Applicants.

5 Those conditions are as follows:

- 6 1. The post-merger entity (“Merged Company”) should be required to use
7 the existing Qwest OSS, wholesale and intercarrier processes and systems
8 for at least three years;
- 9 2. ICAs should be made available on a reasonable and non-discriminatory
10 basis and competitive harm, such as re-opening and re-arbitrating
11 previously approved ICAs should be prohibited, except for changes in
12 applicable laws;
- 13 3. The Merged Company should not be permitted to degrade services to
14 competitors in Nebraska below what Qwest provides today in terms of
15 porting intervals and volume capacities, and ordering and provisioning
16 intervals and interfaces; and

¹²⁸ Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” and “require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information.” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

1 4. The Merged Company should not be permitted to impose any charges on
2 customer acquisition that Qwest does not explicitly charge today.

3 **Q. SHOULD CENTURYLINK HAVE A PROBLEM ADOPTING THESE**
4 **CONDITIONS AS PREREQUISITES TO APPROVAL OF THIS**
5 **TRANSACTION?**

6
7 A. No. CenturyLink has represented that there will be no “immediate” changes post-
8 merger and “no harm” to existing wholesale processes, systems and service
9 quality post-merger. CenturyLink has also claimed that it is “willing and able to
10 abide by” its 251 and 271 obligations post-merger and it is “truly committed to
11 providing quality service to our CLEC customers today and in the future.”¹²⁹
12 Given these representations, CenturyLink should have no problem agreeing to
13 conditions that provide protections to prevent or offset harm and ensure that
14 Qwest does not backslide in its obligations as an ILEC and a BOC. In addition,
15 CenturyLink should not be permitted to keep all of the benefits of increased
16 economies and efficiencies for itself;¹³⁰ rather, the FCC’s *Local Competition*
17 *Order* requires those to be shared with new entrants.¹³¹

18 **Q. HAVE THE SAME OR SIMILAR CONDITIONS BEEN ADOPTED BY**
19 **STATE COMMISSIONS OR THE FCC IN RECENT MERGER CASES?**
20

¹²⁹ Hunsucker Oregon Direct at pp. 13-14.

¹³⁰ See, e.g., Stanoch Minnesota Direct at pp. 14-15 (“Q. Will the post-merger company be able to take advantage of increased economies of scope and scale? A. Yes. The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.”)

¹³¹ See, e.g., *Local Competition Order* at ¶ 11: “...the local competition provisions of the Act require that these economies be shared with entrants.”

1 A. Yes. I've attached Exhibit TJG-6 to my testimony, which is the list of conditions
2 that Charter is proposing matched up with some previous FCC or state
3 commission order(s) that adopted a similar condition.

4 A. *OSS and Other Back-Office Systems*

5 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR SUPPORT FOR**
6 **EACH OF THE FOUR CONDITIONS.**

7
8 A. The first condition relates to OSS and other back-office systems. The condition
9 states, "The post-merger entity ("Merged Company") should be required to use
10 the existing Qwest OSS, wholesale and intercarrier processes and systems for at
11 least three years." Maintaining the existing Qwest OSS is critical and the three
12 year time period is a minimum time period that may need to be extended
13 depending on the Merged Company's ability to integrate. Further, the time frame
14 should match the Merged Company's expectations with respect to achievement of
15 synergies.

16 **Q. PLEASE EXPLAIN.**

17 A. The Joint Applicants have said that the transaction is expected to create annual
18 operating synergies of \$575 million and annual capital expenditure synergies of
19 \$50 million, and that those synergies will be "fully recognized over a three-to-five
20 year period following closing."¹³² Successful integration does not always occur

¹³² Gast Minnesota Direct at p. 9.

1 on-time and/or on-budget, as CenturyLink is aware from prior system projects.¹³³

2 That is particularly true here, when CenturyLink will be attempting to integrate
3 both the Embarq acquisition and Qwest acquisition at the same time. Therefore,
4 the time period during which merger-related activities intended to result in
5 synergies will occur may be longer than the three-to-five year period anticipated
6 by the Joint Applicants.

7 **Q. PLEASE ELABORATE ON WHY THE TIME HORIZONS ASSOCIATED**
8 **WITH THE CONDITION ARE APPROPRIATE FOR THE PROPOSED**
9 **TRANSACTION WHEN OTHER (SHORTER) TIME HORIZONS HAVE**
10 **BEEN ADOPTED IN THE PAST.**

11 **A.** This “at least three year” duration is appropriate, given the Joint Applicants’ own
12 representation of a minimum three to five-year synergy period. During the time
13 period when the Merged Company is making merger-related changes to achieve
14 synergies, customers and competition should be protected from harm resulting
15 from those changes. In considering the Frontier-Verizon merger, the Oregon
16 PUC required Frontier to honor Verizon wholesale price lists and tariffs and to
17

¹³³ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments*, *Billing and OSS World*, October 1, 2003. available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx> (“Another example of a vendor-driven project that fell short involves CenturyTel, a Louisiana-based service provider, which in 2000 selected Amdocs for convergent billing. This project has experienced delays due to the project going over budget. According to a 10-Q that CenturyTel recently filed with the Securities and Exchange Commission, this project remains in the development stage and has required ‘substantially more time and money to develop than originally anticipated.’ The 10-Q filing states that CenturyTel expects to complete all phases of the new system no later than mid-2005 at a cost in excess of the previously disclosed estimate of \$180 million. CenturyTel currently believes completion of the project may require it to revise its previously disclosed cost estimate by between \$50 and \$60 million. The company also states that ‘there is no assurance that the system will be completed in accordance with this schedule or budget, or that the system will function as anticipated. If the system does not function as anticipated, the company may have to write-off part or all of its remaining costs and further explore its other billing and customer care system alternatives.’”)

1 avoid increases for at least two years after closing.¹³⁴ In that proceeding, unlike
2 here, Frontier did not state that the anticipated synergies would occur over a three-
3 to-five year period. The Joint Applicants' representation regarding the anticipated
4 time period for realizing synergies is specific to this proposed merger and should
5 be considered when establishing needed time periods for this proposed merger.

6 **Q. WHAT TIME PERIOD WAS PROPOSED FOR THE AT&T/BELLSOUTH**
7 **MERGER?**

8 A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last
9 3.5 years (42 months) from the merger closing date unless specified otherwise.¹³⁵

10 The AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13
11 states acquiring an existing BOC (BellSouth) covering 9 states, and the acquiring
12 BOC in that transaction (AT&T) already had experience not only operating as a
13 BOC but also integrating BOC operations during the merger of AT&T and SBC,
14 and before that, the merger of Ameritech and SBC. Further, when seeking
15 approval of the AT&T/BellSouth Merger, AT&T stated that the synergy savings
16 resulting from the AT&T/SBC merger were greater than and achieved more
17 quickly than AT&T's original forecast.¹³⁶ Despite AT&T's past experience in
18 this regard, the FCC conditioned approval of the AT&T/BellSouth merger subject

¹³⁴ *Frontier-Verizon Order*, p. 15.

¹³⁵ *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*"), Appendix F, Conditions at p. 147.

¹³⁶ AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

1 to enforceable conditions that applied for 42 months (3.5 years). By contrast, the
2 proposed transaction which is the subject of this proceeding, involves a non-BOC
3 ILEC which has traditionally operated as primarily a rural LEC facing little
4 competition acquiring a BOC covering 14 states. Though CenturyTel has
5 acquired numerous telecommunications companies in the past, none of them were
6 BOCs and none of them were even close to the size of Qwest. Further, though
7 CenturyTel touts its management's ability as successful integrators¹³⁷ and claims
8 that the ongoing Embarq integration is running smoothly,¹³⁸ similar
9 representations were made by AT&T during the AT&T/BellSouth and the FCC
10 still put in place enforceable conditions for a period of 42 months (3.5 years).
11 The point being: acquisition of a BOC raises serious concerns than are not present
12 in non-BOC acquisitions, and those concerns necessitate more protection. These
13 concerns are even greater when the BOC is being acquired by a company that is
14 not currently a BOC and has no experience with all of the obligations that come
15 along with being a BOC.

16 **Q. WHY IS THIS CONDITION ON OSS NECESSARY?**

17 A. As noted in the testimony of Mr. Pruitt on behalf of Charter, Charter utilizes the
18 OSS of CenturyLink and Qwest primarily to facilitate the migration of customers
19 to and from CenturyLink or Qwest and to order interconnection facilities. For
20 instance, to ensure that the migration is seamless and accurate as possible for the

¹³⁷ Ring Minnesota Direct at p. 4.

¹³⁸ Ring Minnesota Direct at p. 5.

1 customer, Charter must have access to preordering functions, such as timely
2 access to accurate Customer Service Records (“CSRs”). In addition, Charter must
3 have access to the efficient ordering functions necessary to port the telephone
4 numbers of customers, and to ensure accurate directory listings and E-911
5 services are provided to its customers. In short, these OSS are necessary for the
6 transparent movement of customers between and among providers and to
7 establish interconnection facilities for the exchange of traffic between Charter,
8 CenturyLink and the PSTN.

9 **Q. WILL THE “AT LEAST THREE YEAR” TIME PERIOD ACHIEVE**
10 **THAT GOAL?**

11
12 A. Let’s hope so. The ultimate question is what time period is necessary to protect
13 the public interest.¹³⁹ Here, the need for protection is even greater than in the
14 AT&T/BellSouth merger. The latter merger involved two BOCs, both of which
15 have been subject to 271 proceedings and interconnection agreement arbitrations
16 through which they have had to learn and accept wholesale obligations that they
17 may otherwise have had incentives to ignore. Unlike a merger between two
18 BOCs, both well-acquainted with wholesale obligations and Section 271
19 requirements, here the Joint Applicants propose the purchase of a BOC by a non-
20 BOC ILEC that has been acting in many cases as primarily a rural carrier
21 claiming exemption from ILEC, much less BOC, obligations. Because the BOC
22 has greater wholesale obligations than an ILEC, and certainly more obligations

¹³⁹ *Embarq-CenturyTel Order*, p. 6 (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.”)

1 than an exempt (or, self-proclaimed exempt) rural ILEC, such non-BOC ILECs
2 lack the long history of fulfilling such commitments that Qwest has. Wholesale
3 customers therefore need protective conditions firmly in place throughout the time
4 that merger-related changes are occurring and the time during which the results of
5 those changes continue to affect customers and competition.

6 **Q. IS THE CHARTER CONDITION ON OSS NECESSARY TO ALLOW**
7 **FAIR COMPETITION IN NEBRASKA?**

8 A. Yes. The FCC has found that CLECs would be “severely disadvantaged, if not
9 precluded altogether, from fairly competing,” if they do not have
10 nondiscriminatory access to OSS.¹⁴⁰ Likewise, Qwest has described its existing
11 OSS as playing “a crucial role in the transactions between Qwest and all
12 CLECs”¹⁴¹ and characterized its OSS as “the lifeblood of...Qwest’s wholesale
13 operation...”¹⁴² I would agree with these statements. So, by all accounts,
14 nondiscriminatory access to OSS is absolutely essential to competition.
15 Unfortunately, the future of Qwest’s OSS is in serious question due to the
16 proposed transaction. All we know at this point in time is that a CenturyLink
17 person (Mr. Bill Cheek) will be in charge of wholesale for the combined company
18 and that no decisions have been made as to systems, staffing or locations of the
19 staff. Given this lack of information, these conditions will provide the much-
20 needed certainty in this area so that wholesale customers can plan their business

¹⁴⁰ *Local Competition Order* at ¶518.

¹⁴¹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

¹⁴² Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03,
August 10, 2007, at p. 39.

1 for the foreseeable future, and will help ensure that CLECs have
2 nondiscriminatory access to OSS across the Merged Company's footprint.

3 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE**
4 **OF QWEST'S OSS IS IN SERIOUS QUESTION.**

5
6 A. CenturyLink has provided very little information about its post-merger plans for
7 OSS, other than that CLECs should expect change. When asked whether
8 CenturyLink anticipates modifying, integrating or otherwise changing OSS in
9 legacy Qwest service territories, CenturyLink responded:

10 Upon merger closing, CenturyLink does not anticipate any
11 immediate changes to the Qwest CLEC OSS systems. Integration
12 planning is in the early stages and decisions have not been made at
13 this time. However, because the transaction results in the entirety
14 of Qwest, including operations and systems, merging into and
15 operating as a subsidiary of CenturyLink, it will allow a
16 disciplined approach to reviewing systems and practices and will
17 allow integration decisions to proceed in an orderly disciplined
18 manner. To the extent any changes are made, CenturyLink will
19 comply with all applicable state and federal laws and rules, as
20 well as the provisions of any applicable interconnection
21 agreements or tariffs, in the same manner as they would apply
22 notwithstanding the merger. Wholesale customers will be provided
23 advance notification of any systems changes that occur post
24 close.¹⁴³

25 Similarly, when asked whether CenturyLink anticipates importing CenturyLink's
26 EASE system into Qwest's legacy territory, the company replied (in part):

27 The merger is intended to bring about improved efficiencies and
28 practices in all parts of the combined company, so changes could
29 be expected over time...any changes will occur only after a
30 thorough and methodical review of both companies' systems and
31 processes to determine the best system to be used on a go-forward

¹⁴³ CenturyLink Response to Integra Minnesota Data Request #23.

1 basis from both a combined company and a wholesale customer
2 perspective.¹⁴⁴

3 So, in a nutshell, CenturyLink has told wholesale customers that they can expect
4 changes to the “lifeblood” of Qwest’s wholesale operations, but has provided no
5 detail about what changes will be made or when those changes will be made.
6 This simply does not provide wholesale customers with the certainty they need to
7 plan their business going forward.

8 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ABOUT HOW**
9 **LONG IT PLANS ON MAINTAINING THE EXISTING OSS IN LEGACY**
10 **QWEST TERRITORY?**

11 A. My clients have asked, in every state where they have intervened, about
12 CenturyLink’s post-merger plans for OSS, and in every state, CenturyLink has
13 submitted the same answer about anticipating no “immediate changes” but that
14 “changes could be expected over time.” On July 27, 2010, CenturyLink filed its
15 Reply Comments and supporting declarations in the FCC’s review of the
16 proposed transaction (WC Docket No. 10-110). In that filing, the Joint
17 Applicants represented that “[i]t is expected that CenturyLink will operate both
18 CenturyLink (in CenturyLink areas) and Qwest OSS (in Qwest areas) until it
19 completes its evaluation of the best options for all stakeholders. It is expected
20 that CenturyLink will operate both systems for 12 months at the very least.”¹⁴⁵

21 While this recent statement is different than what has been submitted in the state
22 proceedings to date, it still provides none of the certainty that wholesale
23

¹⁴⁴ CenturyLink Response to Integra Minnesota Data Request #35(h).

¹⁴⁵ Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

1 customers need. As an initial matter, 12 months is not a sufficient period of time
2 to provide certainty. Second, continuing to operate the systems does not mean
3 that they will continue to meet 271 standards.

4 **Q. SHOULD CENTURYLINK BE ABLE TO UNILATERALLY MAKE**
5 **CHANGES TO QWEST'S OSS POST-MERGER IN THE PURSUIT OF**
6 **SYNERGY SAVINGS?**

7 A. No. Regardless of whether CenturyLink performs a “methodical review” or if it
8 takes into account the “wholesale customer perspective” or not¹⁴⁶ – CenturyLink
9 should not be allowed to make changes to Qwest’s OSS post-merger without
10 extensive analysis like that conducted during the Qwest 271 approval process. As
11 explained in Exhibit TJG-2, an extensive third-party test of Qwest’s OSS was
12 conducted over a three-year period for the express purpose of determining
13 whether Qwest’s OSS satisfied the nondiscriminatory access requirement under
14 Section 271 of Act. Despite Qwest claiming at the outset that its OSS and CMP
15 were compliant with Section 271, the third party testing revealed hundreds of
16 problems areas that were resolved through OSS improvements and re-testing.
17 Countless hours and millions of dollars went into this process, and Qwest
18 ultimately received 271 authority to provide in-region interLATA services based,
19 in significant part, on this extensive test of its existing OSS. If CenturyLink

¹⁴⁶ See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 21 (“Whether post-transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.”) Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest’s OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink’s claim that it should be left up to the Merged Company as to whether Qwest’s OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest’s legacy territory if the proposed transaction is approved.

1 changes Qwest's existing OSS post-merger (without the same level of testing that
2 was previously conducted), it will have single-handedly undermined all of the
3 work that was conducted by 14 state commissions, the FCC, third-party testers,
4 Qwest and industry participants.

5 CenturyLink has admitted that its OSS has not been third-party tested,¹⁴⁷ and the
6 FCC has stated that a "third-party test provides an objective means by which to
7 evaluate a BOC's OSS readiness."¹⁴⁸ Accordingly, replacing Qwest's legacy OSS
8 with CenturyLink's legacy (or new) OSS would cause Qwest to backslide on its
9 271 obligations because Qwest would no longer be providing the
10 nondiscriminatory access to OSS that was a quid pro quo for 271 approval.

11 **Q. THE COMPANY HAS STATED THAT THE INTEGRATION "WILL**
12 **LARGELY INVOLVE THE USE OF EXISTING SYSTEMS RATHER**
13 **THAN CREATING NEW ONES."¹⁴⁹ DOES THIS ALLAY YOUR**
14 **CONCERNS?**

15
16 A. No. If CenturyLink tries to import legacy CenturyLink OSS into Qwest's legacy
17 territory post-merger, those OSS would be "new" to Qwest's region, and the same
18 types of problems that have been experienced with other mergers could be
19 experienced in Qwest's region when the Merged Company attempts to
20 incorporate those new OSS. As just one example, CenturyLink's legacy OSS has
21 not been tested to handle commercial volumes that would be experienced in

¹⁴⁷ CenturyLink Response to Integra Minnesota Data Request #18.

¹⁴⁸ *Qwest 9 State 271 Order* at ¶ 49.

¹⁴⁹ Joint Applicants' Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

1 Qwest's legacy territory, and could fail under the strain of attempting to process
2 that higher number of orders.

3 **Q. DOES THE CHARTER CONDITION LOCK-IN CENTURYLINK TO**
4 **USING QWEST'S LEGACY OSS FOREVER?**

5
6 A. No. After the minimum three-year period, the Merged Company has the
7 opportunity to make changes so long as the Merged Company (a) files a detailed
8 plan with regulators; (b) conducts third-party testing (for Qwest systems that were
9 third-party tested) to ensure that the replacement system provides the needed
10 functionality and can handle commercial volumes in Qwest's legacy territory; and
11 (c) allows for coordinated testing with CLECs. These three requirements are
12 eminently reasonable and were undertaken to ensure that Qwest's existing OSS
13 met the requirements of Section 271.

14 **B. Treatment of ICAs**

15 **Q. PLEASE EXPLAIN WHY CHARTER'S CONDITION ON TREATMENT**
16 **OF ICAS IS CRITICAL SHOULD THE PROPOSED TRANSACTION BE**
17 **APPROVED?**

18
19 A. As discussed previously in this testimony, CLECs spend extensive time and
20 resources in reviewing, negotiating and litigating ICAs. Those ICAs define the
21 business environment for the CLECs and are critical to ensuring a stable and
22 unambiguous relationship with the ILECs. Charter's condition on ICAs is
23 necessary to ensure that stability and certainty. The condition reads as follows,
24 "ICAs should be made available on a reasonable and non-discriminatory basis and

1 competitive harm, such as re-opening and re-arbitrating previously approved
2 ICAs should be prohibited, except for changes in applicable laws.”

3 **Q. WHAT TYPES OF “COMPETITIVE HARM” DOES THIS CONDITION**
4 **ADDRESS?**

5 A. As noted in Section IV(c) above, CLECs expend tremendous resources to get an
6 ICA in place. As the Commission is aware, ICA negotiations and litigation are
7 very time consuming and expensive. Further, even after the ICAs are in place,
8 there are sometimes disputes over the implementation and application of the
9 hundreds or thousands of rates, terms and conditions.

10 The Merged Company should be required (or it should commit) to maintain
11 current ICAs for an indefinite period, unless there is a change in law that would
12 require changes in the ICA. This would provide stability and certainly for the
13 CLECs while the integration efforts are being made.

14 **Q. HOW WOULD THE PROPOSED CHARTER CONDITION IMPACT**
15 **ICAs THAT ARE ABOUT TO EXPIRE?**

16 A. The Merged Company would allow CLECs to extend existing ICAs, whether or
17 not the initial or current term of the ICA has expired or is in “evergreen” status. I
18 recommend that the ICA extensions be in place for at least three years so as to
19 minimize activities during the Merged Company’s integration efforts.

20 **Q. ARE YOU SUGGESTING THAT THE INTEGRATION EFFORTS OF**
21 **THE MERGED COMPANY MAY IMPACT CHARTER?**

1 A. Yes. CenturyLink has informed the parties that changes will take place during the
2 integration process that will impact the operations of the Merged Company and
3 that will impact the CLECs as well. I described numerous problems that have
4 occurred post-merger in Section VI (“Lessons Learned”) of this testimony.
5 Charter and other carriers will have to deal with those changes, whatever they
6 may be, and to have to also renegotiate ICAs during that process would be
7 difficult at best.

8 **Q. WOULD YOU EXPECT THE MERGED COMPANY TO ATTEMPT TO**
9 **CHANGE OR RENEGOTIATE ICAS POST-MERGER?**

10 A. Yes. Earlier in this testimony I discussed the incentives of the ILECs in dealing
11 with competitors. The Act, FCC and state regulators have recognized those ILEC
12 incentives and have instituted rules and regulations to limit their ability to act on
13 those incentives to the detriment of the public interest. By limiting the ability of
14 the Merged Company to seek renegotiation during the integration process, the
15 Commission would allow all the parties to focus on that important work and to
16 avoid unnecessary litigation over the ICAs.

17 **Q. WOULD THIS CONDITION PROHIBIT A CLEC FROM SEEKING TO**
18 **RENEGOTIATE AN ICA ONCE IT HAS EXPIRED?**

19 A. No. This condition is focused on preventing the Merged Company from
20 simultaneously making changes to its operations during integration and forcing
21 negotiations on CLECs with which it is interconnected.

22 **Q. WOULD THIS CONDITION BENEFIT THE INDUSTRY AND**
23 **CONSUMERS?**

1 A. Yes. The industry would benefit by focusing on the integration efforts to make
2 sure that the PSTN continues to operate efficiently. Consumers would benefit
3 from this condition because it prohibits the incumbent from forcing competitors
4 into unnecessary and expensive litigation, the resources for which would be better
5 used for serving customers and expanding services.

6 **C. Wholesale Service Degradation**

7 **Q. PLEASE ADDRESS CHARTER'S THIRD CONDITION RELATING TO**
8 **SERVICES PROVIDED TO CLECS.**

9 A. Charter's third condition relates to wholesale services and capabilities that Qwest
10 is providing to CLECs today in Nebraska. Specifically, this condition relates to
11 the current capacities for porting telephone numbers, porting intervals, and
12 ordering and provisioning intervals and interfaces. The condition reads as
13 follows, "The Merged Company should not be permitted to degrade services to
14 competitors in Nebraska below what Qwest provides today in terms of porting
15 intervals and volume capacities, and ordering and provisioning intervals and
16 interfaces." Perhaps a better summary, or title, of this condition would be
17 "Wholesale Service Preservation."

18 **Q. WHY IS THIS CONDITION NECESSARY SHOULD THE MERGER BE**
19 **APPROVED?**

20
21 A. This condition is necessary to prevent Qwest from back-sliding on wholesale
22 services and service quality generally and on Section 271 obligations specifically.
23 This condition dovetails with the OSS condition discussed above. It is needed to
24 ensure that the transition to the Merged Company runs smoothly for wholesale

1 customers – and by extension their end user customers – and that the Merged
2 Company does not diminish the level of wholesale support currently provided in
3 Qwest’s BOC territory when it integrates the two companies and pursues synergy
4 savings.

5 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY “BACK-SLIDING”?**

6 A. In a general sense, this condition ensures that Qwest will not degrade its service
7 or “back-slide” on its wholesale service as currently provided. It also refers
8 specifically to Qwest’s obligations under Section 271 of the Act. The OSS
9 provided by Qwest to CLECs goes beyond just the CLEC-facing system
10 interfaces, and includes the back-office systems, databases, personnel,¹⁵⁰ as well
11 as associated business processes and up-to-date data maintained in those
12 systems.¹⁵¹ The third-party test conducted on Qwest’s OSS during the 271
13 approval process tested the availability and functionality of the system interfaces
14 as well as business practices and procedures, data integrity and Qwest’s CMP.¹⁵²

¹⁵⁰ See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 (“*Triennial Review Order*”) at footnote 822 (“OSS are composed of various ‘back office’ systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to...purchasers of unbundled network elements.”)

¹⁵¹ *Local Competition Order* at ¶¶ 517-18.

¹⁵² See, e.g., Colorado PUC Evaluation (“Qwest’s change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC’s change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance.”); see also *id.* at 45 (“Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest’s change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest’s CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest’s contention that ‘it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.’”).

1 The test involved these components because they are directly related to whether
2 Qwest provides nondiscriminatory access to its OSS under the Act. In other
3 words, the current level of data, current business practices and procedures, and
4 current CMP in Qwest's region are essential components of Qwest complying
5 with the market-opening provisions of 271 of the Act, and these components
6 would be undermined – and the Merged Company would backslide on its 271
7 obligations – if the Merged Company withdrew or replaced such information,
8 practices and procedures, or CMP, post-merger.

9 **Q. DOES CENTURYLINK SEEM TO UNDERSTAND THE IMPORTANCE**
10 **OF THE QWEST 271 OBLIGATIONS?**

11
12 A. No. CenturyLink appears to be taking a cavalier attitude towards these
13 obligations in its discovery responses, creating additional uncertainty. For
14 example, in response to a question about whether CenturyLink anticipates seeking
15 modification to Qwest's existing CMP and asking CenturyLink to describe any
16 anticipated changes, CenturyLink responded as follows:

17 The merger is intended to bring about improved efficiencies and
18 practices in all parts of the combined company, so changes [to
19 Qwest's existing CMP and/or CMP Document] could be expected
20 over time. However, any changes will occur only after a thorough
21 and methodical review of both companies' processes to determine
22 the best process to be used on a go-forward basis from both a
23 combined company and a wholesale customer perspective.¹⁵³

¹⁵³ CenturyLink Response to Integra Minnesota Data Request #118. See also, CenturyLink response to Integra Minnesota Data Request #91. After explaining that changes may be made in the future, CenturyLink states: "Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today." This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

1 Based on this response, CLECs should expect changes, but nothing is known
2 about those changes or how the Merged Company will determine whether to
3 make changes or what changes to make. CenturyLink's vague reference to a
4 "methodical review" falls woefully short of providing any certainty.¹⁵⁴ Moreover,
5 the Merged Company should not be allowed to cast away all the work that was
6 conducted to ensure Qwest's OSS provided nondiscriminatory access to OSS; nor
7 should the Merged Company be allowed to unilaterally¹⁵⁵ implement new OSS or
8 modify CMP because it unilaterally determined it was more efficient (in the
9 "combined company['s] perspective"). In fact, that is precisely the type of
10 conduct that the 271 approval process was intended to identify and root out. Yet,
11 that is what could happen if the proposed transaction is approved without
12 conditions.

13 **Q. THIS CONDITION ALSO MENTIONS THE PORTING INTERVALS AND**
14 **VOLUME CAPACITIES. CAN YOU BRIEFLY IDENTIFY THOSE**
15 **CONCERNS?**
16

¹⁵⁴ CenturyLink was asked about what it meant by "methodical review" and responded that it had not determined whether this "methodical" review would include third-party testing. CenturyLink Response to Integra Minnesota Data Request #49. In addition, when asked what it meant by "from both a combined company and a wholesale customer perspective", CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as "operational efficiencies for" the Merged Company. The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

¹⁵⁵ CenturyLink's statement that it will take into account the "wholesale customer perspective" is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the "combined company...perspective." In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

1 A. Yes. As discussed in Section V(B) above, CenturyLink has never experienced the
2 volume of transactions that Qwest has experienced. As such, it is not known
3 whether CenturyLink's systems can meet the standards established during the
4 Section 271 testing of Qwest's OSS. In fact, I think it is very unlikely that
5 CenturyLink could handle the volume of transactions at the same level of quality
6 as Qwest is doing today.

7 With respect to porting intervals, CenturyLink has filed for an exception with the
8 FCC regarding the one-day porting interval. This is discussed in Section V(B)(1)
9 above. Qwest has not indicated that it will not meet the FCC's requirement for a
10 one-day porting interval. The Merged Company should meet or exceed the
11 porting intervals and the porting capacities (the number of ports per day or per
12 office) of Qwest prior to the merger.

13 ***D. Prohibition on Customer Acquisition Charges***

14 **Q. PLEASE DESCRIBE CHARTER'S PROPOSED CONDITION ON**
15 **CUSTOMER ACQUISITION CHARGES.**

16
17 A. This condition is necessary to prevent the Merged Company from charges
18 associated with customer acquisition that Qwest and other carriers do not charge
19 today. The language of the condition is as follows, "The Merged Company
20 should not be permitted to impose any charges on customer acquisition that Qwest
21 does not explicitly charge today."

22 **Q. PLEASE BE MORE SPECIFIC ABOUT THE HARM THIS CONDITION**
23 **IS INTENDED TO PREVENT.**
24

1 A. I provide several examples of these unlawful and anticompetitive charges in
2 Section V(B)(2) above. To prevent such occurrence post-merger, the Merged
3 Company shall not assess any fees, charges, surcharges or other assessments upon
4 CLECs for activities that arise during the subscriber acquisition and migration
5 process other than any fees, charges, surcharges or other assessments that were
6 approved by the applicable commission and charged by Qwest in the legacy
7 Qwest ILEC territory before the Closing Date. This condition prohibits the
8 Merged Company from charging fees, charges, surcharges or other assessments,
9 including: Service order charges assessed upon CLECs submitting LSRs for
10 number porting; Access or “use” fees or charges assessed upon CLECs that
11 connect a competitor’s own self-provisioned loop, or last mile facility, to the
12 customer side of the Merged Company’s NID enclosure or box; and “Storage” or
13 other related fees, rents or service order charges assessed upon a CLECs’
14 subscriber directory listings information submitted to the Merged Company for
15 publication in a directory listing or inclusion in a directory assistance database.

16 **Q. WHY IS THIS CONDITION NECESSARY?**

17 A. This condition is necessary to ensure that the Merged Company does not extend
18 CenturyLink’s anticompetitive practice of imposing unsupported surcharges and
19 fees upon facilities-based competitors at the point of subscriber acquisition and
20 migration. In contrast, Qwest does not impose these separate surcharges upon
21 competitors when no underlying wholesale service is being provided to the
22 competitor. For example, although Qwest may assess a service order charge upon

1 a competitor that orders a UNE loop in conjunction with the acquisition of a new
2 subscriber, it does not assess a separate surcharge when the competitor simply
3 requests that the subscriber's number be ported away in conjunction with the
4 subscriber change process. Because Qwest does not impose the same separate
5 fees upon competitors, any attempt to impose these separate charges in Qwest's
6 legacy territory post-merger would result in the implementation of worst (not
7 best) practices, and, in turn, merger-related harm to competition.

8 **Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND**
9 **SURCHARGES THAT CENTURYLINK ASSESSES UPON**
10 **COMPETITORS ADDRESSED IN CONDITION NUMBER 4.**

11
12 A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each
13 time that a facilities-based competitor, like Charter, "wins" a new customer from
14 CenturyLink. First, CenturyLink imposes a separate number porting service order
15 charge each time that CenturyLink is asked to port a telephone number to a
16 competitor. Second, CenturyLink assesses "use" or access fees upon competitors
17 each time the competitor attempts to connect its own network facilities to a
18 customer's inside wire through the customer side of a CenturyLink NID
19 enclosure. Third, CenturyLink's affiliate, Embarq, imposes "storage" charges
20 upon competitors that submit directory listing information for inclusion in
21 directory listing databases. These charges increase wholesale customers' (i.e.,
22 competitors') costs of obtaining new subscribers and generating new revenue
23 sources to offset subscriber losses. It is, therefore, more costly (and operationally
24 challenging) for competitors to compete in CenturyLink markets.

1 **Q. PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.**

2 A. In an earlier portion of my testimony, Section V, I provided some background on
3 the second and third type of improper surcharges assessed upon competitors
4 concerning the NID enclosure, and directory storage fees at issue. Let me explain
5 the circumstances surrounding the imposition of the number porting surcharges.
6 Each time that a competitor obtains a new customer that is a former CenturyLink
7 subscriber, and that subscriber wishes to port their telephone number away from
8 CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate
9 the number port. This surcharge, which ranges from \$13 to over \$20 (depending
10 upon the state) is imposed upon every competitor that obtains wholesale services
11 under CenturyLink interconnection agreements. To date, this is only a
12 CenturyLink practice, and has not been implemented in the Qwest territories.
13 Obviously, if this anticompetitive practice were extended to all of the Merged
14 Company's territories post-merger, merger-related harm would occur and the
15 harm would be substantial.

16 **Q. WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER**
17 **PORTING?**

18 A. In several orders implementing Section 251(e)(2) of the Act, the FCC held that
19 carriers are required to recover their costs of implementing LNP through tariffed
20 end-user charges.¹⁵⁶ In these orders, the FCC determined that ILECs may recover
21

¹⁵⁶ The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost

1 through *end-user charges* their carrier-specific costs directly related to providing
2 number portability. The FCC concluded that this framework for cost recovery
3 (from end users rather than other carriers) best serves the statutory goal of
4 competitive neutrality.

5 **Q. HOW DOES THE CONCEPT OF “COMPETITIVE NEUTRALITY”**
6 **APPLY TO NUMBER PORTING CHARGES?**

7
8 A. Section 251(e)(2) of the Act requires that the costs of establishing number
9 portability be “borne by all telecommunications carriers on a competitively
10 neutral basis.”¹⁵⁷ This principle of competitive neutrality is an important
11 component of the FCC’s number porting cost recovery rules. However,
12 CenturyLink’s repeated attempts to assess charges on CLECs undermine
13 competition and the competitive neutrality the FCC sought to establish. As the
14 FCC explained, “[i]f the [FCC] ensured the competitive neutrality of only the
15 distribution of costs, carriers could effectively undo this competitively neutral
16 distribution by recovering from other carriers.”¹⁵⁸

17 **Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING**
18 **CHARGES ASSESSED UPON COMPETITORS. HAS THE FCC EVER**
19 **ADDRESSED THE LEGALITY OF SUCH CHARGES?**

20
21 A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is
22 the most troubling aspect of CenturyLink’s wholesale practice, it violates clear
23 policies set forth by the FCC in early number portability cost recovery orders.

Recovery Reconsideration Order”), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

¹⁵⁷ 47 U.S.C. § 251(e)(2).

¹⁵⁸ *Cost Recovery Order*, at ¶ 39.

1 Specifically, in a 2002 Number Portability Cost Reconsideration Order the FCC
2 ruled that:

3 [I]ncumbent LECs may not recover any number portability costs
4 through interconnection charges or add-ons to interconnection
5 charges to their carrier “customers,” nor may they recover carrier-
6 specific costs through interconnection charges to other carriers
7 where no number portability functionality is provided.¹⁵⁹

8 This language clearly prohibits interconnection-based surcharges on number
9 porting actions like those imposed by CenturyLink. The statement leaves no
10 doubt that the Commission does not permit incumbent LECs to assess charges
11 upon other carriers for number porting. This decision is still valid law, and has
12 never been reversed or modified.

13 **Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC’S RULES?**

14 A. Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC
15 regulation entitled “Recovery of carrier specific costs directly related to providing
16 long-term number portability.”

17 **Q. WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY**
18 **BE ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?**

19 A. These fees are currently assessed upon competitors because CenturyLink is able
20 to leverage its market power to impose these surcharges as a condition of
21 interconnection with CenturyLink. If the proposed transaction is approved,
22 CenturyLink will be the third largest ILEC in the nation, and its market power
23

¹⁵⁹ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

1 will span 37 states.¹⁶⁰ That is why I expect these surcharges will be assessed by
2 the merged company unless this Commission adopts a condition that prohibits the
3 merged company from doing so.

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

5 A. Yes, it does.

¹⁶⁰ “CenturyLink and Qwest Agree to Merge,” Available at:
<http://news.qwest.com/centurylinkqwestmerger>