

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of	)	Docket No. UT-100820
QWEST COMMUNICATIONS	)	
INTERNATIONAL INC. AND	)	MOTION OF SPRINT NEXTEL
CENTURYTEL, INC.	)	CORPORATION TO ALLOW SPRINT
	)	WITNESS IN MINNESOTA MERGER
For Approval of Indirect Transfer of control of	)	PROCEEDING TO FILE TESTIMONY
Qwest Corporation, Qwest Communications	)	ON HSR DOCUMENTS
Company LLC, and Qwest LD Corp.	)	
<hr/>		

**A. NATURE OF MOTION**

*I* Pursuant to WAC 480-07-375(1)(d) Sprint Nextel Corporation (“Sprint”) hereby respectfully moves for permission to file the Surrebuttal Testimony of Sprint witness James A. Appleby, substantially similar to the testimony filed on October 22, 2010 in *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, OAH Docket No. 11-2500-21391-2; MPUC Docket No. P-421, et al./PA-10-456 (“Minnesota Proceeding”) in this proceeding.<sup>1</sup> In the Minnesota Proceeding, Mr. Appleby filed supplemental surrebuttal testimony based on his review of the Hart-Scott-Rodino Act documents (HSR documents) produced by CenturyLink and Qwest. Pursuant to Order 11 in

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<sup>1</sup> The phrase “substantially similar testimony” is used because the testimony that Mr. Appleby would file in Washington would differ from the Minnesota testimony in that it would be formatted to conform to Washington standards and certain Minnesota-specific references and information would be deleted and/or changed to Washington references. Otherwise, the testimony would be identical as it would be based on the review of the identical documents produced in Minnesota.

this docket the procedural schedule was amended to allow the CLEC Intervenors an opportunity to file, on November 1, 2010, supplemental testimony relating to the HSR documents. Mr. Appleby, however, is an in-house witness and technically excluded from reviewing the HSR documents in Washington under the terms of the Amended Protective Order with Highly Confidential Provisions and therefore excluded from submitting testimony based on review of Highly Confidential documents. Ironically, Mr. Appleby appropriately reviewed the documents under the terms of the Minnesota Protective Order and submitted testimony based on that review. Therefore, Sprint requests that Mr. Appleby be permitted to submit testimony in Washington substantially similar to his Minnesota testimony and that this motion be considered on an expedited basis due to the November 1, 2010 deadline for filing such testimony in Order 11.

#### **B. BASIS FOR MOTION**

- 2 Mr. Appleby is the same Sprint witness in this proceeding and the Minnesota Proceeding. However, in the Washington Proceeding Mr. Appleby is precluded from seeing documents designated as “Highly Confidential” by Par. 14 of Order 01 (AMENDED Protective Order with “Highly Confidential” Provisions), which limits access to one or more outside counsel and one or more outside consultants. It precludes an in-house expert witness, such as Mr. Appleby, from reviewing and using “Highly Confidential” documents in his testimony. The HSR documents have been designated as “Highly Confidential” in Washington
- 3 In contrast, in the Minnesota Proceeding Mr. Appleby has been allowed to review and use the very same HSR documents pursuant to the Second Supplemental Protective Order in the Minnesota Proceeding. (Exhibit A). Mr. Appleby conducted such a review and filed more than twenty pages of surrebuttal testimony based on that review. Attached hereto as Exhibit

B is a copy of the filed Public Version of Mr. Appleby's testimony, which addresses important issues relevant to this merger review. These include the anticipated revenue opportunities that will be produced by virtue of the merger, "owner's economics" of owning a network that allows the avoidance of costs that competitors must bear, and management views on the adoption of Qwest interconnection agreements in Century Link areas.

- 4 Sprint cannot file this testimony because of the limitations contained in Order 01 denying the right of in-house witnesses from reviewing Highly Confidential designated information. Therefore it will be denied the opportunity to file the testimony allowed by Order 11 unless the Commission grants this motion.
- 5 Neither Qwest nor CenturyLink will be prejudiced because whatever competitive harm they might suffer has already been suffered by the filing in the Minnesota Proceeding. Indeed, given the protections in both the Minnesota and Washington protective orders, no additional competitive harm is possible to Qwest or Century Link.
- 6 In contrast, this Commission will be denied access to very relevant information about the true competitive impacts of the merger, which is important for its assessment of the merits of the merger, if Sprint cannot file Mr. Appleby's testimony.
- 7 Furthermore, if Sprint is not allowed to file Mr. Appleby's testimony from the Minnesota Proceeding Sprint will have to enter the records discussed by Mr. Appleby into the record through cross-examination of Qwest and Century Link witnesses. This will lengthen the hearing time and provide the Commission with a less-focused analysis of the significance of these HSR records.
- 8 Sprint brought this motion once it was informed of the Joint CLEC's motion for leave to file supplemental testimony and Order 11. Sprint has communicated with Qwest and

CenturyLink to determine if the Applicants will stipulate to allowing Mr. Appleby to file testimony based on the HSR documents in Washington given the unique circumstance of his filing of testimony in Minnesota based on his review of the HSR documents. A copy of the email communication from Sprint's counsel is attached as Exhibit C. Qwest and CenturyLink initially indicated an objection to Sprint's request but then indicated that they will review the request again. Due to the compressed timeframe caused by the November 1, 2010 testimony due date, Sprint is compelled to file this motion before Qwest and CenturyLink fully respond.

9 The public interest will be served best by a full and complete record regarding this major merger. In its Order approving the Verizon/Frontier merger in docket UT-090842 ( pp. 52 and 53), the Commission stated that its public interest determinations in approving a change of control transaction are broad and include consideration of "the impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition." To determine this impact on competition, parties like Sprint need to develop a FULL factual record on issues such as competitive harm and possible benefits. For instance, the Commission may find that to cure the harm to competition posed by the merger it will require the companies to reduce access rates to spur competition as the FCC and this Commission continually have stressed. Access rates and revenues directly impact competition at the wholesale and retail level and are therefore squarely relevant to this investigation. The HSR documents, now that they are fully produced have a direct bearing on the foregoing issues.

10 Therefore Sprint should be allowed to file testimony in this proceeding substantially similar to Mr. Appleby's sur-rebuttal testimony from the Minnesota Proceeding in this docket. Due to

the November 1, 2010 due date for the filing of the Supplemental Responsive Testimony in Order 11, Sprint requests expedited treatment of this motion.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of October, 2010.

GRAHAM & DUNN PC



Judith A. Endejan, WSBA # 11016  
2801 Alaskan Way ~ Suite 300  
Seattle, WA 98121  
Tel: (206) 624-8300  
Fax: (206) 340-9599  
Email: jendejan@grahamdunn.com

Kristin L. Jacobson  
201 Mission Street, Suite 1500  
San Francisco, CA 94105  
Tel: 707.816.7583  
Email: Kristin.l.jacobson@sprint.com

Kenneth Schifman  
Diane Browning  
6450 Sprint Parkway  
Overland, KS 66251  
Tel: 913.315.9783  
Email: Kenneth.schifman@sprint.com  
Diane.c.browning@sprint.com

## **Exhibit A**

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition of Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp. and Qwest Communications Company LLC and CenturyTel, Inc., SB44 Acquisition Company, CenturyTel Holdings, Inc., and CenturyTel of the Northwest, Inc., CenturyTel of Minnesota, Inc. d/b/a CenturyLink, CenturyTel of Chester, Inc. d/b/a CenturyLink, CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink, CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Corporation, Embarq Minnesota, Inc. d/b/a CenturyLink, and Embarq Communications, Inc. d/b/a CenturyLink Communications for Approval of Indirect Transfer of Control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.

**SECOND SUPPLEMENTAL  
PROTECTIVE ORDER  
APPLICABLE TO HSR  
DOCUMENTS 4, 10, 13, 15, 16,  
23, 33, 35 AND 36, AND THE  
FULLY-ENABLED COMPUTER  
SPREADSHEET SOUGHT BY  
CWA-4**

The purpose of this Second Supplemental Protective Order Applicable to HSR Documents 4, 10, 13, 15, 16, 23, 33, 35 and 36, and the Fully-Enabled Computer Spreadsheet Sought by CWA-4 ("Second Supplemental Order") is to facilitate the disclosure of certain documents and information, as discussed in the Order of the Administrative Law Judge issued on September 30, 2010, regarding the Joint Petitioners' Motion for Reconsideration ("the September 30 Order"). In the September 30 Order, the Administrative Law Judge determined that it was appropriate to grant in part the Joint Petitioners' Motion to Reconsider a prior ruling issued on September 21, 2010, and issue a separate protective order incorporating further restrictions on disclosure with respect to the particular documents at issue in that Order.

The June 15, 2010, Protective Order and September 21, 2010, Supplemental Protective Order remain in effect and continue to govern disclosure of all information

apart from the specific information to be produced under the September 30, 2010, Order that is designated as “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order.”

This Second Supplemental Order is limited in applicability to the specific documents identified below. The Parties may agree to handle information produced under other Information Requests in accordance with this Supplemental Protective Order.

**SUPPLEMENTAL PROVISIONS APPLICABLE TO HSR DOCUMENTS 4, 10, 13, 15, 16, 23, 33, 35 AND 36, AND THE FULLY-ENABLED COMPUTER SPREADSHEET SOUGHT BY CWA-4**

In accordance with the September 30 Order of the Administrative Law Judge, certain information that is to be produced by Joint Petitioners shall be afforded additional protection from disclosure. The following information is covered by this Second Supplemental Protective Order:

<b>Data</b>	<b>Date</b>	<b>Title</b>	<b>Description</b>
HSR #4	3/10/2010	Feb. 2010 Customer Profile and Churn Trends	Pages 9-11 of report containing retail customer data broken down by customer segment with churn data provided by product purchased, and discussing marketing and retention strategies as well as trending data for active Qwest customers
HSR #10	3/26/2010	Due Diligence Response No. 8	Document provided to Qwest during due diligence process regarding CenturyLink's broadband market share, penetration rates and go-to-market strategy for driving broadband penetration vs. the cable operator
HSR #13	4/1/2010	Wholesale Overview	Pages 7-9 of presentation containing carrier proprietary information and other data regarding marketing plans, product development, pending sales, and trends in the Wholesale marketplace



HSR #15	4/1/2010	2010-2013 Long Range Plan Review	Pages 8, 10, 13-18, 20-21, 23, 30, 35, and 42-47 of analysis of CenturyLink's Long Range Plan containing data regarding marketing plans, product development, and trends in the Consumer, Mass Markets, IPTV, Enterprise, and Wholesale markets
HSR #16	3/23/2010	Operations Review	14 pages <sup>1</sup> of the presentation containing data regarding CenturyLink's operating models and marketing plans in the Consumer, Mass Market, and Enterprise markets; market launch data is included in the presentation for upcoming product rollouts.
HSR #23	4/15/2010	IPTV Quartz Review Sensitivities	Presentation containing data relating to the financial assumptions and projected market rollout of IPTV in various markets
HSR #33	4/21/2010	11 Markets Research Presentation	Market research survey commissioned by CenturyLink containing market data research regarding potential product offerings and customer preferences in various markets
HSR #35	4/1/2010	Due Diligence Response No. 150	Document provided to Qwest during due diligence process containing market projections and financial data regarding IPTV offering.
HSR #36	Undated	Consumer Sales Approach	Presentation containing go-to-market plans and information regarding CenturyTel's consumer sales strategy
Electronic version of spread-sheets			Fully enabled copies of computer spreadsheet models projecting future operating and financial prospects for the combined firms (requested in CWA Information Request No. 4)

<sup>1</sup> The pages of the presentation are not numbered. Joint Petitioners seek to redact three pages of the Consumer and Mass Market Overview, nine pages of the IPTV and MDU Overview; and two pages of the Enterprise Overview.

The Joint Petitioners shall designate such information as “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order.” The first page and individual pages of such documents must be marked with a stamp that reads:

“NON-PUBLIC DOCUMENT-HIGHLY SENSITIVE TRADE SECRET INFORMATION SUBJECT TO ADDITIONAL PROTECTION UNDER SECOND SUPPLEMENTAL PROTECTIVE ORDER-USE RESTRICTED PER THE SECOND SUPPLEMENTAL PROTECTIVE ORDER IN DOCKET NO. 10-456”

Placing a “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” stamp on the first page of a document indicates only that one or more pages contain “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” and will not serve to protect the entire contents of a multi-page document. Each page that contains “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” must be marked separately to indicate “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order,” even where that information has been redacted. The un-redacted versions of each page containing “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Trade Secret Information” or “Highly Sensitive Trade Secret Information” described in Sections 1 and 3 of the June 15, 2010, Protective Order, or “Highly Sensitive Trade Secret Information Subject to Additional Protection” described in the September 21, 2010, Supplemental Protective Order. Documents designated “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” shall be eFiled in accordance with the procedures described in the September 30 Order and the Fourth Prehearing Order issued on September 24, 2010.

Parties seeking disclosure of “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” must designate the person(s) to whom they would like the “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “D” of this Second Supplemental Protective Order. The Exhibit “D” shall also describe in detail the job duties or responsibilities of the person being designated to see the “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” and the person’s role in the proceeding.

Notwithstanding any provision to the contrary in the Protective Order issued on June 15, 2010, or the Supplemental Protective Order issued on September 21, 2010, the following provisions shall govern the disclosure of “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order:”

(1) The Communication Workers of America, an Intervenor in this proceeding, shall limit disclosure of materials designated as “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” to its outside counsel and outside consultant, in accordance with its agreement to do so.

(2) All other private Intervenors in this proceeding, regardless of the size of their workforce, shall limit disclosure of “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” to (a) a reasonable number of outside attorneys; (b) one outside consultant; and (c) one in-house employee who is not now involved, and will not for a period of two years involve himself or herself in strategic or competitive decision-making (including, but not limited to, the sale or marketing or pricing of products or services) with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Joint Petitioners.

Any party providing “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” may object to the designation of any individual as a person who may review “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order.” Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “D” within three (3) business days after receiving the challenged individual’s signed Exhibit “D.” Any such objection must demonstrate good cause to exclude the challenged individual from the review of the “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order.” Written response to any objection shall be made within three (3) business days after receipt of the objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” to the challenged individual, the Commission or Administrative Law Judge shall determine whether “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” must be disclosed to the challenged individual.

Copies of “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” may be provided to the outside counsel, outside expert, and, where applicable, the in-house employee who have signed Exhibit “D.”

Persons authorized to review the “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 7 of the June 15, 2010, Protective Order. Any testimony or exhibits prepared that reflect “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically discussed in this section, all other sections of the June 15, 2010, Protective Order applicable to “Trade Secret” and “Highly Sensitive Trade Secret Information” also apply to “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order.”

The designation of any document or information as “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” may be challenged by motion and the classification of the document or information as “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” will be considered *in camera* by the Commission or Administrative Law Judge. The party contending that a document or information is “Highly Sensitive Trade Secret Information Subject to Additional Protection under Second Supplemental Protective Order” bears the burden of proving that such designation is necessary.’

This Second Supplemental Protective Order shall continue in force and effect after these dockets are closed.

Date: September 30, 2010

\_\_\_\_\_  
/s/ Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy L. Wergin	Commissioner

In the Matter of the Joint Petition of Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp. and Qwest Communications Company LLC and CenturyTel, Inc., SB44 Acquisition Company, CenturyTel Holdings, Inc., and CenturyTel of the Northwest, Inc., CenturyTel of Minnesota, Inc. d/b/a CenturyLink, CenturyTel of Chester, Inc. d/b/a CenturyLink, CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink, CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Corporation, Embarq Minnesota, Inc. d/b/a CenturyLink, and Embarq Communications, Inc. d/b/a CenturyLink Communications for Approval of Indirect Transfer of Control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.

MPUC DOCKET NO.  
P-421, P-6237, P-5095,  
P-551, P-509, P-563, P-  
5971, P-6258, P-5732, P-  
6478, P-430/PA-10-456

**EXHIBIT "D"**  
**NONDISCLOSURE AGREEMENT FOR "HIGHLY SENSITIVE TRADE SECRET  
INFORMATION SUBJECT TO ADDITIONAL PROTECTION UNDER SECOND  
SUPPLEMENTAL PROTECTIVE ORDER" PRODUCED IN ACCORDANCE WITH  
SEPTEMBER 30, 2010, ORDER REGARDING JOINT PETITIONERS' MOTION FOR  
RECONSIDERATION**

I have read the foregoing Second Supplemental Protective Order Applicable to HSR Documents 4, 10, 13, 15, 16, 23, 33, 35 and 36, and the Fully-Enabled Computer Spreadsheet sought by CWA-4 dated September 30, 2010, in Docket No. 10-456 and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not

authorized to receive materials designated "NON-PUBLIC DOCUMENT-HIGHLY SENSITIVE TRADE SECRET INFORMATION SUBJECT TO ADDITIONAL PROTECTION UNDER SECOND SUPPLEMENTAL PROTECTIVE ORDER-USE RESTRICTED PER THE SECOND SUPPLEMENTAL PROTECTIVE ORDER IN DOCKET NO. 10-456" under the terms of said Second Supplemental Protective Order, or any copies or extracts of information derived thereof, which have been disclosed to me. I further agree to maintain any such materials in a secure location and use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Second Supplemental Protective Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Exhibit B**

**Before the Minnesota Public Utilities Commission**

**State of Minnesota**

**In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of  
Qwest Operating Companies to CenturyLink**

**OAH Docket No. 11-2500-21391-2  
MPUC Docket No. P-421, et al./PA-10-456**

**Public Supplemental Surrebuttal Testimony**

**James A. Appleby**

**October 22, 2010**



**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

**TABLE OF CONTENTS**

I.	Introduction and Purpose.....	1
II.	Summary of Testimony .....	1
III.	The Merged Firm Will Enjoy Unwarranted Market Power Unless Its High Access Rates Are Reduced .....	3
IV.	The Merged Firm’s Market Power is Not Limited to Voice Services .....	13
V.	Merger Approval Should Be Conditioned On Competitors Being Able to Port Qwest/CenturyLink Interconnection Agreements Within The Merged Firm’s Entire Footprint.....	23

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**I. INTRODUCTION AND PURPOSE**

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

A. My name is James A. Appleby. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

**Q. Are you the same James A. Appleby who filed direct and surrebuttal testimony in this proceeding?**

A. Yes, I am.

**Q. What is the purpose of your supplemental surrebuttal testimony?**

A. The purpose of this testimony is to respond to information produced by Joint Petitioners Qwest and CenturyLink (“Petitioners”) pursuant to ALJ Nielson’s September 21, 2010 and September 30, 2010 Orders compelling the production of certain documents that Petitioners sought to withhold from some or all of the parties (“Orders Compelling Production”).

**II. SUMMARY OF TESTIMONY**

**Q. Please summarize your testimony.**

A. The Petitioners’ internal communications about their proposed merger demonstrate that they well understand the market power the Merged Firm will possess. A merger of two ILECs that not only results in the combination of their extensive local networks but also the addition of a comprehensive national long distance network creates significant opportunities to wield market power above and beyond that typically seen in an ILEC-ILEC merger. In addition, the Merged Firm’s combined network is not just a voice network – it is a platform for the Merged Firm to provide

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Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 many other non-voice products. Specifically, the combined network will enable  
2 significant revenue opportunities such as broadband internet service, internet protocol  
3 television, and Fiber-to-the-Cell (FTTC). This, plus the advantageous “owner’s  
4 economics” associated with the Merged Firm’s imposition of excessively high access  
5 charges on all competitors using its now hugely expanded network, increases its  
6 market power even more. Finally, the Merged Firm’s internal communications  
7 demonstrate it acknowledges and anticipates regulatory intervention to control its  
8 ability to wield market power.

9 **Q. Do you sponsor any exhibits with your testimony?**

10 A. No. I cite to a wide variety of documents Petitioners have designated as highly  
11 sensitive trade secret documents pursuant to the Orders Compelling Production, but  
12 do not attach them to my testimony because all parties entitled access to those  
13 documents under the Orders already have them.<sup>1</sup> I will, however, offer these  
14 documents at the November 1, 2010 hearing to be held on the supplemental  
15 surrebuttal and rejoinder testimony filed in this matter, to ensure that the record  
16 before the ALJ and Commission is complete.

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<sup>1</sup> The designation “[**Exhibit C Trade Secret Data Begins . . . Exhibit C Trade Secret Data Ends**]” refers to data governed by the ALJ’s September 21 order compelling production of documents containing “Highly Sensitive Trade Secret Information Subject to Additional Protection.” The designation “[**Exhibit D Trade Secret Data Begins . . . Exhibit D Trade Secret Data Ends**]” refers to data governed by the ALJ’s September 30 order compelling production of documents containing “Highly Sensitive Trade Secret Information Subject to Additional Protection Under Second Supplemental Protective Order.”

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

**III. THE MERGED FIRM WILL ENJOY  
UNWARRANTED MARKET POWER UNLESS ITS HIGH  
ACCESS RATES ARE REDUCED**

1  
2  
3  
4 **Q. Do Petitioners recognize that as a result of the increased magnitude of its**  
5 **operations, regulatory agencies' will closely evaluate whether the merger will**  
6 **lead to increased market power that could harm the competitive marketplace?**

7 **A. Yes. CenturyLink states that as a result of the proposed merger [Begin Exhibit C**  
8 **Trade Secret Data**

9  
10 **Exhibit C Trade Secret Data].<sup>2</sup>**

**End**

11 **Q. Do the merging companies recognize the strategic value of adding a facilities-**  
12 **based interexchange carrier network to the CenturyLink Corporation?**

13 **A. Yes. Besides public statements to that effect, the Petitioners internal communications**  
14 **[Begin Exhibit C Trade Secret Data**

15  
16 **End Exhibit C Trade Secret Data].<sup>3</sup> Petitioners also**  
17 **note that [Begin Exhibit C Trade Secret Data**

18 **End Exhibit C Trade Secret Data].<sup>4</sup>**

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<sup>2</sup> Qwest Exh. C Production- Attachment 4 (c) – 29.

<sup>3</sup> Qwest Exh. C. Production- Attachment 4 (c) – 21 Key Transaction Benefits and Consideration, 4-12-10;  
Attachment 4 (c) – 28 Network Due Diligence, 4-19-10.

<sup>4</sup> Qwest Exh. C Production- Attachment 4 (c) – 31 Rating Agency Presentation, 4-20-10.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **Q. You have testified that the Qwest IXC network provides the Merged Firm with**  
2 **both expense savings and revenue opportunities. Do Petitioners agree?**

3 A. Yes, they say the Qwest IXC creates [Begin Exhibit C Trade Secret Data

4

5

**End**

6 **Exhibit C Trade Secret Data].<sup>5</sup>**

7 **Q. What are the revenue opportunities/synergies available to the Merged Firm?**

8 A. I discussed in my previous testimony that the Merged Firm will have increased sales  
9 opportunities in the residential and enterprise customer (business) market through  
10 bundled local and long distance voice service.<sup>6</sup> And as I discuss further in Section IV  
11 below, the expanded network opens up additional revenue opportunities to provide  
12 broadband and entertainment services either as stand-alone services or bundled with  
13 traditional local/long distance voice services.

14 **Q. Please explain the expense savings associated with the Merged Firm owning the**  
15 **Qwest IXC.**

16 A. As I have noted in my previous testimony, the Merged Firm will be able to generate  
17 savings on long distance transport as well as local termination costs. The Merged  
18 Firm will save money on long distance transport by moving traffic from a third party  
19 network onto the Merged Firm's network. And by merging with ILECs providing

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<sup>5</sup> Qwest Exh. C Production- Qwest response to CWA IR 01-006S1 Attachment G.

<sup>6</sup> Appleby Surrebuttal at 5-10.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 local termination facilities, the Merged Firm's interexchange carriers will save money  
2 on local termination costs by moving their traffic off of a third party's network onto  
3 its own network for termination to the customer. In both cases, the Merged Firm will  
4 own the network components and enjoy the economic benefits of that ownership.

5 **Q. What does the term "owner's economics" refer to?**

6 A. "Owner's economics" is a commonly used term referring to the economic benefit of  
7 network functions that are available only to the owner of the network facilities, which  
8 I have discussed extensively in my previous testimony.<sup>7</sup> The owner of network  
9 facilities, in this case the Merged Firm, incurs only the actual economic cost of the  
10 functions the network provides. All other companies unaffiliated with the Merged  
11 Firm using those network functions will continue to pay whatever wholesale rates the  
12 Merged Firm chooses to charge, one example being the bloated rates CenturyLink  
13 currently charges for switched and special access services. Qwest IXC will no longer  
14 incur the bloated access charges of the legacy CenturyLink ILECs but instead, as an  
15 affiliated company of the Merged Firm, will incur only the much lower actual cost of  
16 the legacy CenturyLink ILEC's network functionality.

17 **Q. Does CenturyLink acknowledge the benefits of owner's economics?**

18 A. Yes. [Begin Exhibit C Trade Secret Data  
19  
20

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<sup>7</sup> Appleby Surrebuttal at 3-10.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

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**End Exhibit C Trade Secret Data].<sup>8</sup>**

23 **Q. Will the Merged Firm enjoy owner's economics with respect to long distance**  
24 **transport?**

25 A. Yes. The Merged Firm will realize owner's economics on the incremental amount of  
26 long distance traffic that it can move from third-party long distance transport  
27 providers currently handling it to the Qwest long distance transport network. These  
28 long distance transport savings are calculated by comparing the price the Merged  
29 Firm's entities pay other carriers for long distance transport versus Qwest's cost to  
30 carry the incremental traffic on its long distance transport network. When a company  
31 self-provisions, the economic cost is the actual cost the company incurs to provide the

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<sup>8</sup> Tr. Vol. 2b at 123-24.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 service to itself. On the other hand, when a company must purchase the function  
2 from another carrier, the actual cost is the price the company must pay the other  
3 carrier.

4 **Q. Will the Merged Firm also enjoy owner's economics with respect to the costs of**  
5 **local termination, namely switched access and special access services?**

6 A. Yes. As previously noted, I discussed this topic in detail in my surrebuttal testimony.  
7 I explained how the Merged Firm can use its market power against all other  
8 unaffiliated providers.<sup>9</sup>

9 **Q. Do Petitioners acknowledge that as a result of the merger they will realize the**  
10 **economic benefits of reduced termination and long distance transport costs you**  
11 **have identified?**

12 A. Yes. [Begin Exhibit C Trade Secret Data

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18 **End Exhibit C Trade Secret Data].<sup>10</sup>**

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<sup>9</sup> Appleby Surrebuttal at 3-10.

<sup>10</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 28.



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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **Q. You noted earlier that the Merged Firm will have an increased sales opportunity**  
2 **in the enterprise market. Do the Petitioners agree?**

3 A. Yes. **[Begin Exhibit C Trade Secret Data**

4

5 **End Exhibit C Trade Secret Data].**<sup>11</sup> The sales opportunity is primarily **[Begin**  
6 **Exhibit C Trade Secret Data**

7 **End Exhibit C Trade Secret Data].**<sup>12</sup> This is because **[Begin**  
8 **Exhibit C Trade Secret Data** **End**

9 **Exhibit C Trade Secret Data].**<sup>13</sup>

10 **Q. Do Petitioners recognize that this opportunity is based on the economic**  
11 **advantages associated with its ownership of an expanded local network?**

12 A. Yes. **[Begin Exhibit C Trade Secret Data**

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<sup>11</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 21 Key Transaction Benefits and Consideration, 4-12-10.

<sup>12</sup> CenturyLink Exh. C Production- Attachment 4 (c) - 29 Wholesale Diligence Update 4-19-10.

<sup>13</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 3.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

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End Exhibit C Trade Secret Data].<sup>14</sup>

**Q. Do Petitioners recognize this is a significant form of market power?**

**A. Yes. [Begin Exhibit C Trade Secret Data**

End Exhibit C Trade Secret Data].<sup>15</sup>

**Q. You have testified that the accounting of costs and revenues within the Merged Firm means it will no longer be concerned with the access prices that the Qwest IXC will be charged by its affiliated ILECs. Do Petitioners internal communications support your testimony?**

**A. Yes. [Begin Exhibit C Trade Secret Data**

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<sup>14</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 37.

<sup>15</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 21.

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Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **End Exhibit C**

2 **Trade Secret Data]**.<sup>16</sup> This of course follows from the fact that the Merged Firm's  
3 accounting will completely offset the excessive access rates the Qwest IXC will pay  
4 to it's ILEC affiliates with the revenues those excessive rates raise for the ILEC  
5 affiliates.

6 **Q. How has regulation failed to control the market power that the Merged Firm**  
7 **will possess?**

8 A. The market power of the Merged Firm arises from its control of local access facilities.  
9 These are the last-mile facilities that connect the local customer to its carrier of  
10 choice. Regulation has mandated that the ILECs provide wholesale services to other  
11 carriers to enable their customers connect to local customers in an ILEC's service  
12 territory. Among these services are switched access and special access services. In  
13 the monopoly-era, when the ILEC provided the local services for the customers in  
14 their service territories and other carriers provided the non-local services, the prices  
15 of switched and special access services were set by regulators far above their actual  
16 cost. Today, however, the monopoly era is over and carriers are competing with the  
17 ILECs for local services and the ILECs through their affiliates are competing with the  
18 other carriers for the non-local services. Unfortunately, regulation of these wholesale  
19 access services has not kept pace with the development of competition. The Merged  
20 Firm constitutes one company which will enjoy owner's economics with respect to

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<sup>16</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 22.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 both its local and long distance facilities while all other carriers continue to pay the  
2 Merged Firm's bloated access prices established before the development of  
3 competition. And once merged, the Merged Firm's market power will expand even  
4 further unless the Commission imposes limits on the prices of its wholesale access  
5 services as a condition of its approval of the merger.

6 **Q. What are the potential consequences to the retail market if the Merged Firm's**  
7 **market power is unchecked?**

8 A. The Merged Firm must provide quality, timely and reasonably-priced wholesale  
9 services to other carriers to ensure a balanced competitive retail market. If the  
10 Merged Firm is allowed to leverage its market power at the expense of its wholesale  
11 customers, this will have a detrimental effect on retail competition. As the Joint  
12 CLEC witness Mr. Ankum stated:

13 I think we have to differentiate the telecom industry from other industries.  
14 Companies merge all the time, they go bankrupt all the time. Most  
15 industries we don't care. Why don't we care? Because when a company  
16 goes bankrupt, competitors can step in, pick up the slack, and everything  
17 goes on and what emerges we assume is a more efficient industry.  
18 Telecom is different because in telecommunications we deal with  
19 vertically integrated firms. The retail competition at the retail level is  
20 supported by the wholesale industry and that's the structure that Mr. Gates  
21 and I are addressing. What is happening at that wholesale level? Because  
22 if that wholesale level doesn't remain intact, then when there is a problem  
23 with the merger, then what normally happens, that competitors can step in  
24 and salvage some of the problems, that dynamic will be disturbed. So our  
25 focus is on guaranteeing that the wholesale structure has a certain degree  
26 of continuity, stability, and certainty. And that's I think what the  
27 Commission should be looking at. In order to preserve the public interest,  
28 in order to preserve the degree of retail competition we have, it needs to  
29 focus on the wholesale, underlying wholesale market and the relationships  
30 between Qwest, CenturyLink, and the CLECs as well as, you know, other

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 companies. All of that needs to be kept intact and then the Commission  
2 can let this experiment play itself out.<sup>17</sup>

3 **Q. What is Sprint's proposed merger condition for access service in this merger?**

4 A. The merger condition Sprint requests with respect to access rates is:

5 1) No later than 30 days after the closing date of the merger, all legacy  
6 Century Link ILECs in Minnesota (CenturyTel, Embarq ILECs) must  
7 reduce their intrastate switched access rates to mirror the intrastate access  
8 rates and rate structure of the Qwest ILEC in Minnesota; and

9 2) No later than 120 days after the closing date of the Merger, all  
10 CenturyLink ILECs in Minnesota (CenturyTel, Embarq and Qwest ILECs)  
11 must reduce their intrastate switched access rates to mirror the interstate  
12 switched access rates and rate structure of Qwest.

13 **Q. If the Commission agrees with these conditions, would Minnesota be the only**  
14 **state in which the Merged Firm's intrastate rates are reduced?**

15 A. No. CenturyLink explained that its access revenues will be impacted by past  
16 regulatory and legislative rulings in the states of Virginia, New Jersey, Missouri,  
17 Washington, Kansas, Michigan and Wisconsin. Access revenues will be reduced by  
18 these mandated rate reductions by **[Begin Exhibit C Trade Secret Data**

19 **End Exhibit C**

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<sup>17</sup> Tr. Vol. 3 at 84-84.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **Trade Secret Data].**<sup>18</sup> There are also regulatory rulings pending in at least two other  
2 states, Pennsylvania and Arizona, that may reduce the subsidies embedded in the  
3 Merged Firm's intrastate access rates even further. Many other states have  
4 recognized the need to lower the bloated CenturyLink intrastate switched access rates.  
5 The condition Sprint requests would be consistent with activities in other states.<sup>19</sup>

6 **IV. THE MERGED FIRM'S MARKET POWER IS NOT**  
7 **LIMITED TO VOICE SERVICES**

8 **Q. How should the Commission view the Merged Firm's expanded local and long**  
9 **distance network?**

10 A. The network is not just providing local and long distance voice service as it did in the  
11 past, but providing that and the transmission of all other data necessary to provide  
12 internet, video, and entertainment services. This transition cannot be ignored if the  
13 public interest is to be served. The financial viability of the ILEC holding companies  
14 cannot be evaluated by examining the trend in local access lines, as Petitioners  
15 continually ask the Commission to do.<sup>20</sup> The Commission must take into  
16 consideration all of the services currently provided, as well as the future revenue  
17 opportunities associated with services that will be provided, on the network.<sup>21</sup> The  
18 Commission must reject antiquated thinking that is no longer relevant to the provision

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<sup>18</sup> Qwest Exh. D Production- Attachment 4 (c) – 44.

<sup>19</sup> As noted in Appleby surrebuttal at 10-11, the FCC has addressed access rates in merger proceedings before. The FCC's interstate switched access rate benchmark also recognizes that larger ILECs should have lower access rate levels. 47 C.F.R. § 61.3 (qq). Bell Operating companies rates are set at \$.0055, middle-size ILECs are \$.0065, and the smaller price cap carriers rates are set at \$.0095.

<sup>20</sup> Tr. Vol. 3 at 172-174.

<sup>21</sup> *Id.* at 182-183.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 of telecommunication and data services, such as the need for high switched access  
2 rates for ILECs that I discussed above.

3 **Q. Do Petitioners recognize that the Merged Firm will continue to be the dominant**  
4 **provider of landline service within its service area?**

5 A. Yes. Besides its public statements to that effect, Petitioners internal communications  
6 show **[Begin Exhibit D Trade Secret Data**

7

8 **End**

9 **Exhibit D Trade Secret Data].<sup>22</sup> It is also important to note that in its long-range**  
10 **plan, Qwest is forecasting [Begin Exhibit C Trade Secret Data**

11 **End Exhibit C Trade Secret Data].<sup>23</sup>**

12 **Q. Do the Petitioners recognize that additional non-voice services will help the**  
13 **Merged Firm to compete in the market?**

14 A. Yes. The Merged Firm believes **[Begin Exhibit C Trade Secret Data**  
15 **End Exhibit C Trade Secret Data]**

16 in a competitive retail market.<sup>24</sup> Specifically, the addition of internet protocol  
17 television (“IPTV”) **[Begin Exhibit D Trade Secret Data**

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<sup>22</sup> CenturyLink Exh. D Production- Attachment 4 (c) – 10.

<sup>23</sup> Qwest Exh. C Production- Qwest Long-Range Plan, March 23, 2010.

<sup>24</sup> Qwest Exh. C Production- Attachment 4 (c) – 59.

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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **End Exhibit D**

2 **Trade Secret Data].<sup>25</sup>**

3 **Q. Generally, how have Petitioners' ILECs transitioned their networks from**  
4 **providing only voice to also providing broadband and entertainment services?**

5 A. The ILEC copper network that was built to provide quality voice service was  
6 augmented with DSL technology over the past ten years to provide broadband  
7 services. This involved installing electronic components to the network to connect  
8 customers' local loops to transport facilities that connect to the internet. The distance  
9 between the electronic device and the customer's location determines the bandwidth  
10 or speed of the customer's internet connection. As customers demanded faster  
11 internet connections and the ILECs identified other services such as video  
12 entertainment that can be provisioned over those broadband networks, the ILECs  
13 have extended fiber facilities closer to the customers (fiber to the node) and then  
14 installed electronics closer to the customers to connect that fiber to the copper loops.

15 **Q. Has the Merged Firm acknowledged the existing network in place will facilitate**  
16 **the latest transition to provide IPTV?**

17 A. Yes. It has done so publicly and in its internal communications. CenturyLink  
18 explains [**Begin Exhibit D Trade Secret Data**

19

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<sup>25</sup> Qwest Exh. D Production- Attachment 4 (c) – 42.



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Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **End Exhibit D Trade Secret Data]**<sup>26</sup>

2 Similarly, the Network President of CenturyLink states **[Begin Exhibit C Trade**  
3 **Secret Data**

4 **End Exhibit C Trade Secret Data]**<sup>27</sup> And finally, Qwest

5 explains **[Begin Exhibit C Trade Secret Data**

6

7 **End Exhibit C Trade Secret**

8 **Data]**<sup>28</sup>

9 **Q. Do the retail customers view Qwest solely as a provider of local voice service?**

10 A. No. Qwest tracks the trends of what service packages the customers are purchasing.

11 In its analysis, Qwest tracked what product package the new customers (1-30 days in

12 tenure) purchased. Of those customers, **[Begin Exhibit D Trade Secret Data**

13

14 **End Exhibit**

15 **D Trade Secret Data]**<sup>29</sup> Based on this data, **[Begin Exhibit D Trade Secret Data]**

16

17 **End Exhibit D Trade**

18 **Secret Data]**. Clearly, the customers of Qwest do not view Qwest as only a voice

19 provider or as the only voice provider in the market. In fact, the customers view

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<sup>26</sup> CenturyLink Exh. D Production- Attachment 4 (c) – 42.

<sup>27</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 28.

<sup>28</sup> Qwest Exh. C Production- Qwest information response to CWA 01-006S1 Attachment R – 4-6-10 memo.

<sup>29</sup> CenturyLink Exh. D Production- Attachment 4 (c) – 4.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 Qwest as a broadband provider as much as they view it as a voice service provider  
2 based on their purchase decisions.

3 **Q. What effect do the additional services have on the average revenue per user**  
4 **(ARPU)<sup>30</sup>?**

5 A. For Qwest, the mass market ARPU has increased from \$45.83 in the first quarter of  
6 2005 to \$61.64 in the first quarter of 2010, a 34.5% increase.<sup>31</sup> In a similar period,  
7 legacy Embarq reported consumer ARPU increasing from \$49.60 in the first quarter  
8 of 2005 to \$56.71 in the first quarter of 2009, a 14.3% increase.<sup>32</sup> CenturyTel to my  
9 knowledge has never reported such information publicly and does not report the post-  
10 merger data for legacy Embarq areas either. In discovery, however, CenturyLink  
11 revealed its consumer ARPU for all ILEC areas will approximate **[Begin Exhibit D**  
12 **Trade Secret Data End Exhibit D Trade Secret Data]** in 2010, and legacy  
13 Embarq has increased its ARPU to approximately **[Begin Exhibit D Trade Secret**  
14 **Data End Exhibit D Trade Secret Data]** increase from 2005.<sup>33</sup>

15 **Q. What is the ARPU by service sold?**

16 A. CenturyLink revealed it is currently generating **[Begin Exhibit D Trade Secret Data**  
17 **End Exhibit D Trade Secret Data]** for a combination local and long distance  
18 voice services, **[Begin Exhibit D Trade Secret Data End Exhibit D Trade**  
19 **Secret Data]** for broadband internet service, and **[Begin Exhibit D Trade Secret**

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<sup>30</sup> ARPU is the average revenue per user in a given month.

<sup>31</sup> Qwest quarterly public financial statements.

<sup>32</sup> Embarq quarterly public financial statements .

<sup>33</sup> Qwest Exh. D Production- Attachment 4 (c) – 53.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1       **Data**           **End Exhibit D Trade Secret Data]** on the limited number of customers  
2       that have purchased IPTV.<sup>34</sup> The Merged Firm forecasts broadband penetration to  
3       grow **[Begin Exhibit D Trade Secret Data**                                 **End Exhibit D Trade**  
4       **Secret Data],**<sup>35</sup> and its penetration in IPTV markets to reach **[Begin Exhibit D Trade**  
5       **Secret Data**                         **End Exhibit D Trade Secret Data].**<sup>36</sup> Clearly, the Merged  
6       Firm has opportunities to increase ARPU given Qwest’s acknowledgment that **[Begin**  
7       **Exhibit C Trade Secret Data**   **End**  
8       **Exhibit C Trade Secret Data]**<sup>37</sup> and **[Begin Exhibit C Trade Secret Data**  
9   **End Exhibit C Trade Secret**  
10      **Data].**<sup>38</sup>

11      **Q. Did the Petitioners’ higher revenues contribute to higher profit margins in the**  
12      **mass markets?**

13      **A. Yes. Qwest’s profit margin on mass market revenues increased from [Begin Exhibit**  
14      **C Trade Secret Data**                                 **End Exhibit C Trade Secret Data]** from 2007  
15      to 2009.<sup>39</sup>

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<sup>34</sup> *Id.*  
<sup>35</sup> Qwest Exh. D Production- Attachment 4 (c) – 44.  
<sup>36</sup> CenturyLink Exh. D Production- CenturyLink HSR No. 23, IPTV Quartz Review Sensitivities, April 15, 2010.  
<sup>37</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 1.  
<sup>38</sup> CenturyLink Exh. C Production- Attachment 4 (c) – 3.  
<sup>39</sup> Qwest Exh. C Production- Attachment 4 (c) – 59.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **Q. What other facts about broadband high speed internet service are important for**  
2 **the Commission to understand when evaluating the financial strength of the**  
3 **Merged Firm?**

4 A. The cost of Qwest's high-speed internet service in 2009 was **[Begin Exhibit C Trade**  
5 **Secret Data**  
6 **End Exhibit C Trade Secret Data]**.<sup>40</sup> This type of cost efficiency will clearly drive  
7 margin improvements, especially if the Merged Firm is able to penetrate the  
8 broadband market more deeply, as it forecasts it will.

9 **Q. What percentage of Qwest households is covered by the Fiber-to-the-Node**  
10 **(FTTN) technology that makes higher-speed broadband and IPTV possible?**

11 A. Qwest will have deployed FTTN to **[Begin Exhibit C Trade Secret Data**  
12 **End Exhibit C Trade Secret Data]** households in its local  
13 service areas by year-end 2010.<sup>41</sup>

14 **Q. How much incremental revenue is the Merger Firm forecasting from IPTV from**  
15 **2010 to 2013?**

16 A. The Merged Firm forecasts it will increase IPTV revenue from **[Begin Exhibit D**  
17 **Trade Secret Data**  
18 **End Exhibit D Trade Secret Data]**.<sup>42</sup> The Merged Firm  
19 plans to sell IPTV **[Begin Exhibit D Trade Secret Data**

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<sup>40</sup> *Id.*

<sup>41</sup> Qwest Exh. C Production- Attachment 4 (c) - 63

<sup>42</sup> Qwest Exh. D Production- Attachment 4 (c) - 44.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **End Exhibit D Trade Secret Data**].<sup>43</sup> This will be the second non-regulated product  
2 the Merged Firm offers over the local connection that was originally built to provide  
3 voice service that has a **[Begin Exhibit D Trade Secret Data End Exhibit C**  
4 **Trade Secret Data]** ARPU than the original voice product.<sup>44</sup> As a result, the Merged  
5 Firm will have more than **[Begin Exhibit D Trade Secret Data End Exhibit**  
6 **D Trade Secret Data]** the revenue it can collect on its network. Still, the Merged  
7 Firm argues it is entitled to burden all competing carriers with access charges that are  
8 far above the cost of the function provided.

9 **Q. Does CenturyLink plan to offer IPTV service in Minnesota?**

10 A. **[Begin Exhibit D Trade Secret Data**

11 **End Exhibit D**

12 **Trade Secret Data]**.<sup>45</sup>

13 **Q. The other big opportunity the Merged Firm has identified for future growth is**  
14 **Fiber-to-the-Cell site (FTTC). What did the Merged Firm disclose about its**  
15 **FTTC plans?**

16 A. The President of CenturyLink's wholesale operations states that the payback of FTTC  
17 builds is generally **[Begin Exhibit C Trade Secret Data End Exhibit C**

18 **Trade Secret Data]**.<sup>46</sup> Qwest, however, only agrees to build FTTC **[Begin Exhibit**

19 **C Trade Secret Data End**

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<sup>43</sup> *Id.*

<sup>44</sup> Qwest Exh. D Production- Attachment 4 (c) – 44.

<sup>45</sup> CenturyLink Exh. D Production- HSR No. 23.

<sup>46</sup> Qwest Exh. C Production- CWA IR 01-006S1 Attachment R

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 **Exhibit C Trade Secret Data**].<sup>47</sup> Of the estimated **[Begin Exhibit C Trade Secret**  
2 **Data** **End Exhibit C Trade Secret Data]** that will have bandwidth  
3 requirements that justify FTTC deployment by **[Begin Exhibit C Trade Secret Data**  
4 **End Exhibit C Trade Secret Data]**, Qwest already has contracts for **[Begin**  
5 **Exhibit C Trade Secret Data** **End Exhibit C Trade Secret Data]**.<sup>48</sup> The  
6 Merged Firm targets cell sites that have **[Begin Exhibit D Trade Secret Data**  
7 **End Exhibit D Trade Secret Data]** of special access services today, and a  
8 spend of **[Begin Exhibit D Trade Secret Data** **End Exhibit D Trade**  
9 **Secret Data]** per cell tower per year.<sup>49</sup> With paybacks guaranteed as a result of  
10 **[Begin Exhibit C Trade Secret Data**  
11 **End Exhibit C Trade Secret Data]** and **[Begin Exhibit C Trade Secret Data**  
12 **End Exhibit C Trade Secret Data]** of the market addressed to date in Qwest's  
13 service area, the Merged Firm can use its near monopoly market share of local access  
14 facilities to continue to dominate the wireless backhaul market into the future.

15 **Q. Is wireless backhaul essential to today's wireless services industry and to the**  
16 **continued development of wireless data services?**

17 A. Yes. Wireless services are only truly wireless for a very small portion of the end-to-  
18 end communications path, from the customer's handset to the wireless cell tower.  
19 After that point they usually traverse landline facilities. In addition, wireless

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<sup>47</sup> Qwest Exh. C Production- Attachment 4(c)- 63.

<sup>48</sup> Exh. C Production- Attachment 4 (c) – 63.

<sup>49</sup> Exh. D Production- Attachment 4 (c) – 44.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1 customers are demanding more and more bandwidth for the services that today's  
2 smart phones can provide - email, texting, and streaming mobile video - and to meet  
3 this demand wireless carriers are augmenting the bandwidth between their cell sites  
4 and the mobile carriers' first switching location. Wireless carriers rely on special  
5 access for these connections. The Merged Firm's investment in FTTC means more  
6 opportunity for it to raise revenues from the captive wireless carriers in this market.  
7 And while we are not asking for the Commission to regulate special access rates, our  
8 point is, once again, the market power the Merged Firm has as a result of the  
9 substantial service opportunities its ubiquitous network creates.

10 **Q. Please summarize this section of your testimony.**

11 A. The Merged Firm is not just a provider of voice services. The customers of the  
12 Merged Firm demonstrate this with their purchase decisions. The Merged Firm has  
13 **[Begin Exhibit D Trade Secret Data** **End Exhibit D Trade**  
14 **Secret Data]** the potential revenue it can generate from many its retail customers.  
15 The Merged Firm also has significant opportunities to provide wholesale services  
16 such as FTTC into the future. All of these changes demonstrate the Commission  
17 should recognize the regulation of the ILEC must change. Specifically, continuing to  
18 permit the Merged Firm to burden all competing carriers with high switched access  
19 rates is not necessary financially, and is anti-competitive. If the Commission is  
20 inclined to approve the merger, it should order Sprint's proposed limitations on the  
21 Merged Firm's access charges as a condition of its approval.

**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1           **V.   MERGER APPROVAL SHOULD BE CONDITIONED ON**  
2           **COMPETITORS BEING ABLE TO PORT QWEST/CENTURYLINK**  
3           **INTERCONNECTION AGREEMENTS WITHIN THE MERGED FIRM'S**  
4           **ENTIRE FOOTPRINT**

5   **Q. In your surrebuttal testimony you explained the significant returns the equity**  
6   **shareholders of CenturyLink have received over time. Did the Merged Firm's**  
7   **discovery responses provide further clarity as to the returns of the CenturyLink**  
8   **shareholders?**

9   **A. Yes. CenturyLink demonstrated that it returned more than [Begin Exhibit C Trade**  
10   **Secret Data           End Exhibit C Trade Secret Data] of the cumulative free cash**  
11   **flows to shareholders during the period from 2004 to third quarter 2009. A total of**  
12   **[Begin Exhibit C Trade Secret Data                           End Exhibit C Trade Secret**  
13   **Data] was shared with shareholders, [Begin Exhibit C Trade Secret Data \$**  
14   **End Exhibit C Trade Secret Data] in dividends and [Begin Exhibit C**  
15   **Trade Secret Data                           End Exhibit C Trade Secret Data] in stock**  
16   **repurchases occurred during the period.<sup>50</sup> This history demonstrates retail and**  
17   **wholesale customers are not likely to benefit unless the Commission prescribes**  
18   **conditions on this merger, should it be approved.**

19   **Q. What do Petitioners' internal communications reveal about Sprint's proposal**  
20   **that the merger should be conditioned on the competing carriers' ability to port**  
21   **local interconnection agreements (ICAs) between the Merged Firm ILECs**  
22   **within Minnesota and across state boundaries??**

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<sup>50</sup> Qwest Exh. C Production- Attachment 4 (c) – 73.



**Public Document-  
Highly Sensitive Trade Secret Data Subject to Additional Protection Under  
Supplemental and Second Supplemental Protective Orders Excised**

Supplemental Surrebuttal Testimony  
James A. Appleby

1    **A. [Begin Exhibit C Trade Secret Data**

2

3

4

5

6

**End Exhibit C Trade**

7    **Secret Data].**<sup>51</sup> This is even more evidence that competing carriers will be  
8    disadvantaged in the market if the merger is approved without conditions. Sprint's  
9    conditions on ICA porting will preclude CenturyLink from imposing worse terms and  
10   conditions on interconnecting carriers.

11   **Q. What conclusions have you drawn from reviewing Petitioners' internal**  
12   **communications about the proposed merger?**

13   **A.** First, Petitioners clearly realize that the regulatory agencies will recognize the  
14   Merged Firm's enhanced size raises market power issues. Second, that Sprint and the  
15   other competing carriers who have intervened in this proceeding are correct that the  
16   Merged Firm will indeed have enhanced market power and intends to exercise that  
17   power. And finally, if the Commission is inclined to approve the merger Sprint's  
18   proposed conditions are necessary to preserve the public interest.

19   **Q. Does this conclude your testimony?**

20   **A.**     Yes.

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<sup>51</sup> Qwest Exh. C Production- Attachment 4 (c) – 24.

## **Exhibit C**

**Endejan, Judith A.**

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**From:** Schifman, Kenneth A [GA] [Kenneth.Schifman@sprint.com]  
**Sent:** Wednesday, October 27, 2010 2:56 PM  
**To:** Hendricks, Tre E; Anderl, Lisa; Endejan, Judith A.  
**Subject:** Washington supplemental testimony

Tre/Lisa,

Sprint's witness in Minnesota, Jim Appleby, was permitted under the Minnesota procedures to file supplemental testimony based on the HSR documents. He reviewed the documents and filed the testimony this last week. Mr. Appleby is an in-house witness and currently excluded under the protective order in Washington from seeing Highly Confidential documents. This leads me to two questions.

1. Are all of the HSR documents classified as "Highly Confidential" ?
2. Since Mr. Appleby has already seen the documents and filed testimony on them, do the applicants have an objection to Mr. Appleby filing the same or similar testimony in Washington?

If the applicants object to Mr. Appleby filing supplemental testimony in Washington, Sprint will argue in a motion that there is no prejudice to the Applicants as Mr. Appleby already has seen the documents before in another state. The perceived competitive harm from the "Highly Confidential" designation in Washington is abrogated by him already submitting supplemental testimony in Minnesota based on the very same documents. Also, if Mr. Appleby is not allowed to proceed and file testimony, Sprint will have to enter the information into the record through cross examination of the Applicants' witnesses. This will be very laborious and time consuming at the hearing. I believe we will be able to save time and money and avoid having to bring another issue to the ALJ by allowing Mr. Appleby to file the testimony in Washington.

Sprint would have brought this to your attention earlier had we known about the joint motion filed with the Joint CLECs seeking leave to file the supplemental testimony and replies.

Please let me know what your thoughts are on this issue by tomorrow morning. I would be happy to discuss.

Ken Schifman  
Director/Sr. Counsel  
Sprint, State Regulatory Affairs  
North Region  
v: 913.315.9783  
m: 913.219.6529  
kenneth.schifman@sprint.com

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10/28/2010

**CERTIFICATE OF SERVICE**  
**Docket No. UT-100820**

I hereby certify that on October 28, 2010, the original and twelve copies of the Motion of Sprint Nextel Corporation to Allow Sprint Witness in Minnesota Merger Proceeding to file Testimony on HSR Documents were sent by Federal Express to:

David S. Danner  
Secretary and Executive Director  
c/o Washington Utilities and Transportation Commission  
Records Department  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7250

I hereby certify that I have this 28<sup>th</sup> day of October, 2010, served a true and correct copy of the above listed document upon the parties of record, via email and U.S. Mail as follows:

<p>Arthur A. Butler Ater Wynne LLP 601 Union Street, Suite 1501 Seattle, WA 98101-3981 Tel: 206.623.4711 Tax: 206.467.8406 Email: aab@aterwynne.com <b>On behalf of Level 3 Communications, LLC</b></p> <p><i>Confidentiality Status: Confidential</i></p>	<p>Gregory L. Rogers Senior Corporate Counsel Level 3 Communications, LLC 1025 El Dorado Boulevard Bloomfield, CO 80021-8869 Tel: 720.888.2512 Fax: 720.888.5134 Email: greg.rogers@level3.com <b>On behalf of Level 3 Communications, LLC</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Kristin L. Jacobson Sprint Nextel Corporation 201 Mission Street, Suite 1500 San Francisco, CA 94105 Tel: 707.816.7583 Email: Kristin.l.jacobson@sprint.com <b>On behalf of Sprint Nextel Corporation</b></p> <p><i>Confidentiality Status: Confidential</i></p>	<p>Kenneth Schifman Diane Browning Sprint Nextel Corporation 6450 Sprint Parkway Overland, KS 66251 Tel: 913.315.9783 Tel: 913.315.9284 Email: Kenneth.schifman@sprint.com Diane.c.browning@sprint.com <b>On behalf of Sprint Nextel Corporation</b></p> <p><i>Confidentiality Status: Confidential</i></p>

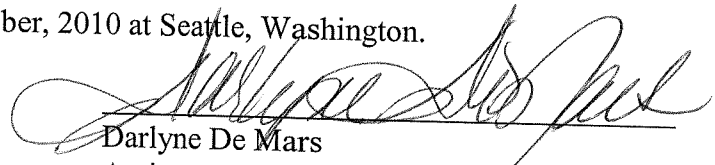
<p>Lisa A. Anderl  Associate General Counsel  Regulatory Law Department  Qwest Corporation  1600 7<sup>th</sup> Avenue, Room 1506  Seattle, WA 98191  Fax: 206.343.4040  Email: lisa.anderl@qwest.com  <b>On behalf of Qwest Communications</b></p> <p><i>Confidentiality Status: Highly Confidential</i></p>	<p>Simon J. ffitich  Attorney General of Washington  Public Counsel Section  Suite 2000  800 Fifth Avenue  Seattle, WA 98104-3188  Fax: 206.389.2079  Email: simonf@atg.wa.gov  <b>On behalf of Public Counsel</b></p> <p><i>Confidentiality Status: Confidential</i></p>
<p>Stephen S. Melnikoff  U.S. Army Litigation Division  Regulatory Law Office  901 N. Stuart Street, Suite 700  Arlington, VA 22203-1837  Fax: 703.696.2960  Email: Stephen.melnikoff@hqda.army.mil  <b>On behalf of Department of Defense and All Other Federal Executive Agencies</b></p> <p><i>Confidentiality Status: Highly Confidential</i></p>	<p>Katherine K. Mudge  Director, State Affairs &amp; ILEC Relations  Covad Communications Company  7000 N. Mopac Expressway, 2<sup>nd</sup> Floor  Austin, TX 78731  Fax: 512.514.6520  Email: kmudge@covad.com  <b>On behalf of Covad Communications Company</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Jennifer Cameron-Rulkowski  Assistant Attorney General  State of Washington  1400 S. Evergreen Park Drive SW  P.O. Box 40128  Olympia, WA 98504-7250  Email: jcameron@utc.wa.gov  <b>On behalf of Commission Staff</b></p> <p><i>Confidentiality Status: Confidential</i></p>	<p>Michel L. Singer-Nelson  Penny Stanley  360networks (USA) inc.  370 Interlocken Boulevard, Suite 600  Broomfield, CO 80021  Email: <a href="mailto:michel.nelson@360.net">michel.nelson@360.net</a>  <a href="mailto:Penny.stanley@360.net">Penny.stanley@360.net</a>  <b>On behalf of 360networks</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Calvin Simshaw  CenturyLink  805 Broadway, Floor 8  Vancouver, WA 98660  Email: calvin.simshaw@centurylinkl.com  <b>On behalf of CenturyLink</b></p> <p><i>Confidentiality Status: Confidential</i></p>	<p>K.C. Halm  Davis Wright Tremaine LP  1919 Pennsylvania Avenue NW, Suite 200  Washington, DC 20006  Email: <a href="mailto:kchalm@dwt.com">kchalm@dwt.com</a>  <b>On behalf of Charter Communications</b></p> <p><i>Confidentiality Status: Highly Confidential</i></p>

<p>Mark S. Reynolds Senior Director-Policy &amp; Law Qwest Corporation (T156) 1600 7<sup>th</sup> Avenue Seattle, WA 98191 Email: Mark.Reynolds@qwest.com</p> <p><i>Confidentiality Status: Highly Confidential</i></p>	<p>Karen L. Clauson Vice President of Law &amp; Policy Integra Telecom of Washington, Inc. (T1164) 6160 Golden Hills Drive Golden Valley, MN 55416 Fax: 763.745.8459 Email: klclauson@integratelecom.com <b>On Behalf of Integra Telecom</b></p> <p><i>Confidentiality Status: Confidential</i></p>
<p>Rex Knowles XO Communications Services, Inc. 13865 Sunrise Valley Drive Herndon, VA 20171 Fax: 801.983.1667 Email: rexknowles@xo.com <b>On behalf of XO Communications, Services, Inc.</b></p> <p><i>Confidentiality Status: Public</i></p>	<p>William Haas Vice President Regulatory and Public Policy PAETEC Communications, Inc. 1 Martha's Way Cedar Rapids, IA 52233 Email: William.haas@paetec.com <b>On behalf of PAETEC</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Lyndall Nipps Vice President Regulatory tw telecom 845 Camino Sur Palm Springs, CA 92262-4157 Email: lyndall.nipps@twtelecom.com <b>On behalf of twtelecom</b></p> <p><i>Confidentiality Status: Public</i></p>	<p>James C. Falvey Senior Regulatory Counsel Pac-West Telecomm, Inc. 420 Chinquapin Round Road Suite 2-I Annapolis, MD 21401 Email: jfalvey@pacwest.com <b>On behalf of Pac-West Telecomm</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Gregory Merz Gray, Plant, Mooty, Mooty &amp; Bennett, P.A. 500 IDS Center 80 South Eight Street Minneapolis, MN 55402 Fax: 612.632.4257 Email: Gregory.merz@gpmlaw.com <b>On behalf of Integra</b></p> <p><i>Confidentiality Status: Highly Confidential</i></p>	<p>Michael C. Sloan Davis Wright Tremaine LP 1919 Pennsylvania Avenue NW, Suite 200 Washington, DC 20006 Email: kchalm@dwt.com <b>On behalf of Comcast Cable Communications</b></p> <p><i>Confidentiality Status: Public</i></p>
<p>Michael R. Moore Charter Communications 12405 Powerscourt Drive St. Louis, MI 63131 Email: Michael.moore@chartercom.com <b>On behalf of Charter Fiberlink</b></p> <p><i>Confidentiality Status: Public</i></p>	<p>Charles E. Watkins Cbeyond Communications, LLC 320 Interstate North Parkway, Suite 300 Atlanta, GA 30339 Email: gene.watkins@cbeyond.net <b>On behalf of Cbeyond</b></p> <p><i>Confidentiality Status: Confidential</i></p>

Andrew Fisher Comcast Cable Communications, LLC One Comcast Center Philadelphia, PA 19103 Email: Andrew_Fisher@Comcast.com  <i>Confidentiality Status: Public</i>	Mark P. Trincherro Davis Wright Tremaine LLP Suite 2300 1300 SW Fifth Avenue Portland, OR 97201-5630 Email: marktrincherro@dwt.com <b>On behalf of Joint CLECs</b>  <i>Confidentiality Status: Highly Confidential</i>
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of October, 2010 at Seattle, Washington.

  
Darlyne De Mars  
Assistant to Judith A. Endejan