

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of

QWEST COMMUNICATIONS
INTERNATIONAL INC. AND
CENTURYTEL, INC.

For Approval of Indirect Transfer of
Control of Qwest Corporation, Qwest
Communications Company LLC, and
Qwest LD Corp.

DOCKET NO. UT-100820

QWEST'S AND CENTURYLINK'S
JOINT MOTION FOR SUPPLEMENT
TO PROTECTIVE ORDER

I. INTRODUCTION

1 Joint Applicants hereby move the Commission to enter a supplemental protective order governing highly confidential/competitively sensitive information. In support, Joint Applicants state that certain documents requested in this matter are so competitively sensitive and confidential that even the "Highly Confidential" designation in the existing protective order is insufficient to prevent competitive harm if that information is disseminated to competitors. Thus, Joint Applicants seek additional protection as described below.

II. DISCUSSION

2 Joint Applicants are seeking creation of a category of confidential information designated as "Staff's Eyes Only" (or "SEO"). Such information would be deemed Competitively Sensitive/Highly Confidential Information and would be disclosed only to Staff and Public

Counsel. The Commission has previously recognized the creation of a “Staff Eyes Only” category in Docket UT-030614, Order No. 7. There the Commission stated:

The company-specific market-sensitive data filed in response to the Commission’s Order is of the type that might impose a serious business risk if disseminated without heightened protections and should be designated “Highly Confidential.” Access to this data will be limited to Commission Staff who have executed the confidentiality agreement attached to this Protective Order. (emphasis added).

Such an approach is even more justified in this case. The information requested includes information that goes to the very essence of Joint Applicants’ anticipated competitive strategies and actions. As such, it has very high competitive value and if even inadvertently disclosed to competitors would cause immediate and irreparable harm to Joint Applicants.

3 Further, at least one other state that is considering this transaction already allows an SEO designation. Colorado permits a party to request a “highly confidential” designation by motion, and typically restricts the distribution of the information to the commission staff and the office of consumer counsel. *See, e.g.,* 4 Colo. Code Reg. 723-1 § 1100(a)(III), and *Public Serv. Co. v. Trigen-Nations Energy Co.*, 982 P.2d 36 (1999).

4 Prior to the filing of this motion, undersigned counsel sent an e-mail polling counsel for the parties on this issue. Counsel for most of the CLEC intervenors stated that the CLECs cannot agree to a Staff’s Eyes Only designation. Staff and Public Counsel have stated that they have both substantive and procedural concerns with such a designation.

5 Attached to this motion and labeled Attachment 1 is the Supplemental Protective Order that Joint Applicants respectfully request the Commission enter in this docket. That Order would create an additional category of information, limited to the following types of documents:

- Strategic business plans and analysis

- New product roll-out timelines
- Market share information

- 6 Such information has already been provided to only Staff and Public Counsel in response to Data Request 2-13, which requested the Joint Applicants' Hart-Scott-Rodino ("HSR") filings with the Department of Justice. Joint Applicants can provide more information to the Commission regarding the highly sensitive nature of these disclosures in oral argument on this motion, or in a confidential submission if such a submission would aid in a decision. Specifically, Joint Applicants are willing to submit a sample of the SEO documents to the Administrative Law Judge for *in camera* review. Joint Applicants are also willing to identify the documents in a "privilege log" type format to aid in the other parties' ability to determine the validity of the SEO designation. Further, to clarify the nature of the SEO documents, attached to this motion as "Confidential" attachments are copies of the Joint Applicants' indexes to their HSR filings.
- 7 The comments that the Joint Applicants have received from other parties have indicated that the intervenors (as well as Staff and Public Counsel), have concerns with the ability to administer the SEO designation in connection with the filing of testimony and briefs. With all due respect, Joint Applicants believe that those administrative concerns can be addressed fairly simply, and that even if those concerns were burdensome, they do not trump the Joint Applicants' legitimate concerns about disclosure.
- 8 In Joint Applicants' view, the SEO information is of limited or no relevance to the issues that the Commission will be considering, so Joint Applicants believe that is unlikely that the SEO information will even make its way into the record in this proceeding. Even if Staff were to want to include it, it would be a fairly simple matter to redact the information and submit a

redacted filing. Redaction is already required for Confidential and Highly Confidential information, so the parties are familiar with both the requirements and the process.

III. CONCLUSION

- 9 Supplementing the protective order governing highly confidential information as set forth in Attachment 1 is consistent with the public interest as it will encourage disclosure, while offering Joint Applicants additional assurances that their highly sensitive information will not be disclosed in a way that might result in competitive harm.

Respectfully submitted this 15th day of July, 2010.

CENTURYLINK

QWEST



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