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 JOINT CLEC RESPONSE TO MOTION FOR SUPPLEMENTAL PROTECTIVE ORDER

1. Pursuant to the Notice of Opportunity to Respond to Joint Motion for Supplemental Protective Order, Charter Fiberlink WA-CCVII, LLC, Covad Communications Company, Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, Pac-West Telecomm, Inc., tw telecom of washington, llc, and XO Communications Services, Inc. (collectively "Joint CLECs") provide the following response to the motion filed by CenturyTel, Inc., and Qwest Communications International, Inc. (collectively "Applicants"). The Joint CLECs recommend that the Commission deny the motion.

2. The Applicants seek to amend the protective order in this proceeding to authorize them to disclose certain information solely to Commission Staff and Public Counsel. The Joint CLECs have serious concerns with any process in which information that is responsive to data requests or otherwise relevant to this proceeding is disclosed to some parties but not others. Such a process is fundamentally inconsistent with due process and would undermine other parties' ability to protect their interests in this proceeding.

3. The Applicants seek to buttress their motion by comparing it to a prior Commission proceeding in which certain competitively sensitive information was

provided only to Commission Staff. That proceeding, however, presented unique circumstances that are not applicable here. In that case, Staff was charged with aggregating highly sensitive data received from individual companies and making the aggregated data available as a confidential document. All parties thus had access to the data as a whole but not to its component parts. Here, in sharp contrast, the Applicants propose to disclose (and, indeed, have disclosed) information to Staff and Public Counsel to which no other party will have access in any form whatsoever. The Joint CLECs are not aware of any prior proceeding in which the Commission has permitted such selective disclosure.

4. The Applicants' proposal also raises procedural issues. The current protective order includes a process for parties to challenge a party's designation of information as confidential or highly confidential. Those provisions of the order would be meaningless to information designated as "Staff Eyes Only" because a party that cannot review the information cannot possibly assess whether it has been properly designated. The Applicants have offered to provide a privilege log "to aid the other parties' ability to determine the validity of the SEO designation," Motion ¶ 6, but a bare description of a particular document is unlikely to enable parties without access to the documents themselves to make that determination.[1] Parties other than Commission Staff and Public Counsel thus would be in the untenable position of having no ability to determine

[1] A description such as "Correspondence from John Smith to Jane Doe," for example, may be sufficient to demonstrate that the document is subject to the attorney-client privilege if Jane Doe is John Smith's counsel, but such a description does not give any indication of – much less demonstrate – whether the document contains such competitively sensitive information that it should not be disclosed to parties other than Staff and Public Counsel.

whether information designated as "Staff Eyes Only" is properly designated as such, much less whether that information affects their interests.

5. The Applicants also fail to address how the Commission would or could consider such information when making a decision on the merits of the Application if Staff or Public Counsel chose to include "Staff Eyes Only" information as part of the record. The Applicants dismiss such concerns by claiming that such circumstances are unlikely and that even if they occur, "it would be a fairly simple matter to redact the information and submit a redacted filing." Motion ¶ 8. The Applicants miss the point. Under these circumstances, unlikely or not, the Commission would be asked to determine whether the proposed transaction is in the public interest based on a record that includes information to which only the Commission, Staff, and Public Counsel have access. The Applicants fail to offer sufficient justification for such closed-door decision-making.

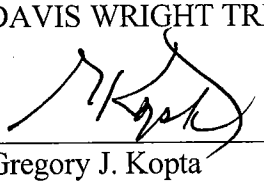
6. The Commission has reviewed several merger proceedings in the past and has never found it necessary to establish a "Staff Eyes Only" level of nondisclosure, including for Hart Scott Rodino filings. If the Applicants have a good faith belief that parts of their Justice Department filing are unique and warrant limitations on disclosure beyond those authorized in the protective order, the appropriate procedure would be to have the Commission conduct an *in camera* review of specific documents on an individual case basis to determine the extent to which access to those documents should be further limited. Even under that procedure, however, outside counsel for the other parties should be permitted access to the documents to ensure that the Commission is fully informed of the nature and potential impact of those documents on all parties in this proceeding. The Commission, however, should not amend the protective order to create

an entirely new level of nondisclosure that gives the Applicants virtually unfettered discretion to designate information that they will disclose only to Staff and Public Counsel.

7. The Commission, therefore, should deny the Motion.

RESPECTFULLY SUBMITTED this 26th day of July 2010.

DAVIS WRIGHT TREMAINE LLP



Gregory J. Kopta

Attorneys for Charter Fiberlink WA-CCVII, LLC, Covad Communications Company, Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, Pac-West Telecomm, Inc., tw telecom of washington, llc, and XO Communications Services, Inc.