

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Joint Application of |) | Docket No. UT-100820 |
| QWEST COMMUNICATIONS |) | SPRINT NEXTEL CORPORATION'S AND |
| INTERNATIONAL INC. AND |) | T-MOBILE WEST CORPORATION'S |
| CENTURYTEL, INC. |) | RESPONSE IN OPPOSITION TO |
| For Approval of Indirect Transfer of control of |) | QWEST'S AND CENTURYTEL'S JOINT |
| Qwest Corporation, Qwest Communications |) | MOTION FOR SUPPLEMENT TO |
| Company LLC, and Qwest LD Corp. |) | PROTECTIVE ORDER |
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1 Pursuant to the Commission's Notice of Opportunity to Respond to Joint Motion for Supplemental Protective Order dated July 19, 2010, Sprint Nextel Corporation ("Sprint Nextel") and T-Mobile West Corporation ("T-Mobile") file this Response in opposition to Qwest's and CenturyTel's Joint Motion for Supplement to Protective Order (the "Motion").

A. The Joint Applicants Have Failed to Justify the Extraordinary Restriction They Seek.

2 The Commission has not created a third tier of confidential protection in recent merger proceedings but has used, without incident, the two-tier confidential classification system in Order 01 in this docket.¹ The Motion provides no concrete justification for restricting access of highly relevant confidential information to "Staff's Eyes Only" ("SEO"). Instead, it claims the sort of generalized fear of "competitive harm" that is the basis for

¹ In the Matter of the Joint Application of EMBARQ CORPORATION and CENTURYTEL, INC., For Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc., Docket UT-082119, Protective Order with "Highly Confidential Provisions (2009); In the Matter of the Joint Application of VERIZON COMMUNICATIONS INC. AND FRONTIER COMMUNICATIONS CORPORATION, For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc., Docket UT-090842, Protective Order with "Highly Confidential" Provisions(2010); In the Matter of the Joint Application of VERIZON COMMUNICATIONS INC., AND MCI, INC., For Approval of Agreement and Plan of Merger, Docket UT-050814, Protective Order (2005).

the already restrictive “Highly Confidential” designation in Order 01. This designation restricts access to outside counsel and consultants who warrant their lack of involvement in “competitive decision making”, who agree to be bound by the restrictions of the Protective Order and who agree to use the Highly Confidential information only for the purpose of this case. The Joint Applicants do not explain why the foregoing protections are insufficient or present any prima facie case of actual competitive harm. The Commission should not establish a new, troubling precedent that limits a party’s ability to participate in a major merger proceeding based only upon rank speculation.

3 The alleged precedent cited by the Joint Applicants from Docket UT-030614 (Order No. 7) does not apply to a merger proceeding where the Commission must review the transaction for consistency with the public interest WAC 480-143-170. Docket No. UT-030614 dealt with Qwest’s petition for competitive classification of its basic business exchange telecommunications services. The very essence of that proceeding was whether their services were subject to effective competition. The Commission, in Order No. 6 in Docket No. UT-030614, required all Washington competitive local exchange carriers (“CLEC’s”) to provide competitive information to Commission staff for data aggregation to ascertain the level of CLEC competition. The Commission entered Order No. 7 to protect the CLEC’s company-specific market-sensitive data filed to comply with Order No. 6. Creation of a SEO approach was limited to the requirements of that case, which had a more narrow focus than the instant proceeding.

4 In sum, the type of information the Joint Applicants want to designate as SEO is the same type of information protected by a “Highly Confidential” description in other merger proceedings. They present no persuasive reason why their merger proceeding should be treated differently.

B. The Proposed “SEO” Documents Have Relevance to this Proceeding.

5 The Joint Applicants claim that the SEO information has little or no relevance, so their requested restrictions are insignificant. To the contrary, much of the SEO information is relevant to the wholesale services provided to Sprint Nextel, T-Mobile and other interveners. See No.’s 13, 15, 18, 22, 24 and 25 from the List of Item 4(c) Attachments. Sprint Nextel and T-Mobile need this information to understand how the merger will impact the services they buy from the Joint Applicants. Not only should this information not be designated as SEO, it should be classified only as Confidential so Sprint Nextel and T-Mobile in-house counsel and staff have access to prepare their testimony.

6 In addition, access charges are relevant to the Commission’s public interest examination. The Commission must examine the factor of “[t]he impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition.”² Therefore wholesale arrangements and access charges must be considered in this case. Documents relating to these issues should be made more accessible, not less, by use of SEO designations.

C. A Third Category of Confidentiality Will Pose Unnecessary Administrative Burdens.

7 The Joint Applicants underestimate the administrative burden of dealing with three levels of confidentiality with respect to the preparation of, dissemination of, and use at hearing of an additional super-secret SEO category. As noted above SEO information is relevant and will be discussed. Staff and Public Counsel would have to prepare four sets of testimony because of the restrictions sought by the Joint Applicants. The first would contain an unredacted version that would only be seen by the ALJ, the Commission, Staff

² See in the Matter of the Joint Application of Verizon Communications, Inc., and Frontier Communication Corporation For an Order Declining to Assert Jurisdiction Over, or in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc., Docket UT-090842, Order 06, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (April 16, 2010) at p. 53.

and Public Counsel. The hearing room would have to be closed any time SEO information is mentioned.

8 The second set would have to be redacted to cover SEO, Highly Confidential and Confidential information. This could be disseminated and used by everyone.

9 The third set would redact SEO, but not Highly Confidential and Confidential Information, for use by outside counsel and outside experts.

10 The fourth set would redact SEO and Highly Confidential Information, but not Confidential Information for use by both inside and outside counsel and experts.


Adhering to the proper descriptions at all times will create a logistical nightmare. Furthermore, the Joint Applicants' request puts additional burdens on the ALJ and the parties because the ALJ would be called upon to decide the competitive sensitivity of a document without any assistance from parties who would be in a better position to assess the sensitivity, from a business perspective. Yet the parties will not be able to see them and will have to rely upon the non-specific descriptions given to the documents by the Joint Applicants, who have every interest in providing vague descriptions.³

D. Conclusion.

11 The Motion should be denied for all the foregoing reasons.

RESPECTFULLY SUBMITTED this 27th day of July, 2010.

GRAHAM & DUNN PC

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³ A good example of the difficulty posed by the Motion are Items 10 and 11 on the List of Item 4(c) Attachments. They are virtually identical in description but only one would be labeled SEO. There would be no meaningful way to challenge this description based upon such scant information.

CERTIFICATE OF SERVICE
Docket No. UT-100820

I hereby certify that on July 27, 2010, the original and 15 copies of Sprint Nextel Corporation's and T-Mobile West Corporation's Response In Opposition To Qwest's And Centurytel's Joint Motion For Supplemental Protective Order were sent by email and 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 27th day of July, 2010, served a true and correct copy of the Sprint Nextel Corporation's and T-Mobile West Corporation's Response In Opposition To Qwest's And Centurytel's Joint Motion For Supplemental Protective Order upon the parties of record, via the method(s) noted below, properly addressed as follows:

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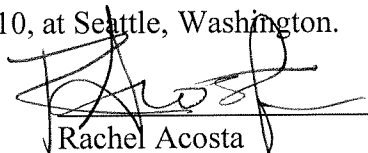
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of July, 2010, at Seattle, Washington.



Rachel Acosta
Assistant to Judith A. Endejan