

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	ORDER 09
INTERNATIONAL INC. AND)	
CENTURYTEL, INC.)	ORDER GRANTING IN PART AND
)	DENYING IN PART SPRINT
For Approval of Indirect Transfer of)	NEXTEL CORPORATION'S
Control of Qwest Corporation, Qwest)	MOTION TO COMPEL JOINT
Communications Company LLC, and)	APPLICANTS TO RESPOND TO
Qwest LD Corp.)	DATA REQUESTS
.....)	

1 ***Synopsis.** This order resolves a discovery dispute between Sprint Nextel Corporation (Sprint) and Qwest Communications International, Inc. (QCII), and CenturyTel, Inc. (with QCII, Joint Applicants). The Order denies as moot Sprint's motion to compel responses from Joint Applicants to Data Request No. 5, grants the motion as to Data Request Nos. 13 and 14, and grants in part and denies in part as moot Data Request Nos. 41 and 42.*

2 **PROCEEDING.** On May 13, 2010, Qwest Communications International Inc. (QCII) and CenturyTel, Inc. (CenturyLink) filed a joint application with the Washington Utilities and Transportation Commission (Commission) for expedited approval of the indirect transfer of control of QCII's operating subsidiaries, Qwest Corporation, Qwest LD Corp., and Qwest Communications Company LLC (collectively with QCII, Qwest) to CenturyLink (collectively with QCII, Joint Applicants).

3 **APPEARANCES.** Lisa Anderl, in-house counsel, Seattle, Washington, represents Qwest. Calvin K. Simshaw, in-house counsel, Vancouver, Washington, represents CenturyLink. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹ Simon ffitich, Assistant Attorney General, Seattle, Washington, represents the

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do

Public Counsel Section of the Washington Office of Attorney General (Public Counsel).

4 Mark Trincherro, Davis, Wright, Tremaine, LLP, Portland, Oregon, represents Pac-West Telecomm, Inc. (Pac-West); tw telecom of Washington, LLC (tw telecom); McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (PAETEC); XO Communications Services, Inc. (XO Communications); Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., and United Communications, Inc., d/b/a Unicom (collectively, Integra); Charter Fiberlink WA-CCVII, LLC (Charter); and Covad Communications Company (Covad, collectively with Pac-West, tw telecom, PAETEC, XO Communications, Integra, and Charter, Joint CLECs). Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents Level 3 Communications, LLC, Cbeyond Communications LLC, and 360networks (USA) inc. Stephen S. Melnikoff, General Attorney, Arlington, Virginia, represents The Department of Defense and All Other Federal Executive Agencies. Kristin L. Jacobson, in-house counsel, San Francisco, California, represents Sprint Nextel Corporation (Sprint). Judith A. Endejan, Graham & Dunn PC, Seattle, Washington, represents T-Mobile West Corporation.

5 **PROCEDURAL HISTORY.** On August 12, 2010, Sprint filed a request to compel Joint Applicants to respond to Sprint Data Request (DR) Nos. 5, 13, 14, 41, and 42 (Sprint's Motion).² Sprint included copies of the DRs and the responses from Joint Applicants with its request. The Commission issued a notice of opportunity to respond to the Motion on August 17, 2010, with responses due by August 20, 2010. Staff filed a response on August 18, 2010, stating that it takes no formal position on the Motion. On August 20, 2010, Joint Applicants and Joint CLECs filed responses to Sprint's Motion. Joint CLECs recommend that the Commission grant Sprint's Motion.

6 **MOTION TO COMPEL.** Sprint contends that it purchases services from both Joint Applicants pursuant to interconnection agreements and tariffs so as to provide

not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

² In its Motion, Sprint reserved its right to bring an additional motion to compel against Joint Applicants for DR Nos. 3, 6, 12, 17, 24, 27, 28, 29, 32-36, 44, and 47.

telecommunications services to its Washington customers.³ Sprint argues that, not only is it a wholesale customer of Joint Applicants, it is also a competitor.⁴ As a result, Sprint maintains that the Commission's decision on the merger request has the potential to affect both of these roles.⁵

7 Sprint points to a prior decision⁶ in which we found that our public interest evaluation is necessarily broad and includes the "consideration of 'the impact on completion at the wholesale and retail level, including whether the transaction might distort or impair the development of competition.'"⁷ According to Sprint, it must be allowed to develop a factual record on competitive harm and benefits of the merger to present to the Commission.⁸

8 Sprint argues that access rates and revenues are relevant to competition on the wholesale and retail levels.⁹ In addition, Sprint contends that access revenues are relevant in addressing the issue of merger savings and whether such savings should be shared with access customers like Sprint.¹⁰

³ Sprint's Motion, ¶ 5.

⁴ *Id.*

⁵ *Id.*

⁶ Specifically, Sprint cites to *In the Matter of the Joint Application of Verizon Communication s 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.* (Verizon/Frontier merger), Docket UT-090842.

⁷ Sprint's Motion, ¶ 6, citing to Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, Order 06, Verizon/Frontier merger, Docket UT-090842, ¶ 117.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Sprint's Data Request No. 5

- 9 The company has requested information from Joint Applicants regarding their total intrastate revenues for the following telecommunications services: broadband Internet access; wireless service; long distance service; any products or services provided outside the incumbent local exchange carrier (ILEC) service territory; video entertainment, cable television, video satellite dish, or comparable service; residential and business customer premises equipment; other services such as maintenance contracts, consulting services, security services, or comparable services; and local area network, wide area network, or other comparable private network service.¹¹ Sprint states that it narrowed its request such that Joint Applicants would not need to provide amounts for specific services.¹²
- 10 Joint Applicants maintain that Sprint's Motion, as it pertains to DR No. 5, is moot.¹³ They argue that Sprint has been provided with aggregated intrastate and interstate revenue information from both companies.¹⁴
- 11 In response to Bench Request No. 3, Sprint conceded that its Motion pertaining to DR No. 5 is moot since Joint Applicants' supplied Sprint with both intrastate and interstate revenue data.¹⁵
- 12 ***Discussion and decision.*** We find that Sprint's Motion regarding DR No. 5 is moot. Sprint's Motion is denied as to DR No. 5.

¹¹ Sprint's Motion, Appendix A.

¹² *Id.*, ¶ 7. While Sprint represents that it narrowed the request, this is not reflected in Appendix A to its Motion.

¹³ Joint Applicants' Answer, ¶ 2.

¹⁴ *Id.*, ¶ 3.

¹⁵ Sprint's Response to Bench Request No. 3, ¶ 5.

Sprint's Data Request Nos. 13 and 14

- 13 Sprint notes that DR Nos. 13 and 14 “seek interstate switched access charges and total special access charges [that Joint Applicants] imposed upon each of the affiliated [interexchange carriers] that will be part of the proposed merger.”¹⁶ According to Sprint, the information it seeks is relevant since Joint Applicants’ responses “will allow Sprint to demonstrate the amount of access charge savings that the merged company will retain when access charge payments become intracompany payments rather than payments from QCII entities to CenturyLink entities and vice versa.”¹⁷ It contends that Joint Applicants’ responses will also provide an insight into the synergies of the merger within Washington.¹⁸
- 14 Sprint asserts that responses to the DRs will likely lead to the discovery of admissible evidence concerning the merger’s impact on competition at the wholesale and retail levels.¹⁹ Sprint maintains that any access savings enjoyed by Joint Applicants would mean that they are able to “develop and market competitive alternatives in the marketplace” in direct competition with other carriers including Sprint.²⁰
- 15 The company objects to Joint Applicants’ assertion that the Commission does not regulate interstate switched access charges or special access charges and that they should not be required to respond to Sprint’s requests.²¹ Sprint argues that the Commission would be well served by possessing information regarding “the entire scope of savings of the Washington affiliates of [Joint Applicants’].”²² Sprint remarks that savings from operations outside the purview of Commission regulation

¹⁶ Sprint’s Motion, ¶ 8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

is still important and impacts the Joint Applicants' ability to compete within territories under the Commission's jurisdiction.²³

16 Joint Applicants respond that both interstate switched access charges and special access charges are interstate services and not within the Commission's power to regulate.²⁴ They contend that these charges are not relevant to the instant proceeding because the proposed merger will not modify access charge rates.²⁵ Further, Joint Applicants allege that the Commission did not review access charges in the Verizon-Frontier merger²⁶ or the Embarq-CenturyTel merger.²⁷

17 Joint Applicants disagree with Sprint's contention that responses to DR Nos. 13 and 14 will demonstrate that the access charge savings will be retained by the merged company rather than the going to each separate company.²⁸ They point to the merger application which affirms that subsidiaries will remain separate entities and that wholesale customers will continue to receive service on the same rates, terms and conditions as prior to the merger.²⁹ Joint Applicants contend that they will still charge each other in accordance with their switched access and other tariffs and agreements.³⁰ Since the payments will not change, Joint Applicants maintain that Sprint's argument in favor of these DRs is not supportable.

²³ *Id.*

²⁴ Joint Applicants' Answer, ¶ 4. They note that special access services are primarily, but not entirely, interstate services. *Id.*, n. 2.

²⁵ *Id.*

²⁶ See Docket UT-090842.

²⁷ See Docket UT-082119.

²⁸ Joint Applicants' Answer, ¶ 5.

²⁹ *Id.*

³⁰ *Id.*, ¶ 6.

18 In Sprint’s Response to Bench Request No. 3, the company states that Joint Applicants provided it with both intrastate and interstate revenue data for DR No. 5.³¹ Sprint argues that, if the Joint Applicants could supply it with interstate revenues in response to DR No. 5, “they can and should respond to DR Nos. 13 and 14 with seek interstate switched and special access payments made by the merging companies to each other.”³²

19 ***Discussion and decision.*** The Commission’s rules require that data requests must “seek only information that is relevant to the issues in the adjudicative proceeding or may lead to the production of information that is relevant.”³³ Parties may not object to a data request on the grounds that information may be inadmissible, as the Commission will allow discovery if the information “appears reasonably calculated to lead to discovery of admissible evidence.”³⁴

20 Having considered the contested data requests, the parties’ pleadings and arguments in light of the standards for resolving discovery disputes, Sprint’s Motion relating to DR Nos. 13 and 14 is granted. Sprint, like many of the other intervenors, has an interconnection agreement with the Joint Applicants. In fact, the carrier stated its interest in this proceeding as ensuring “that the combined companies will not provide access services at appropriate rates, terms and conditions given the size and scope of the merged company.”³⁵ Commission Staff pointed out, in its support for Sprint’s late-filed petition, our examination of a merger’s impact on the public interest includes several factors, one of which is “the impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the

³¹ Sprint’s Response to Bench Request No. 3, ¶ 5.

³² *Id.*

³³ WAC 480-07-400(4).

³⁴ *Id.*

³⁵ Sprint’s Late-Filed Petition to Intervene, ¶ 5.

development of competition.”³⁶ Staff suggested, and rightly so, that the mergers impact on access charges and competition is within the purview of our examination.³⁷

21 Joint Applicants’ argument that the interstate data requested is irrelevant because we do not regulate interstate telecommunications services is misplaced. As WAC 480-07-400(4) provides, a party may request inadmissible information, including information relating to activities outside the jurisdiction of the Commission, so long as the information is reasonably calculated to lead to admissible evidence. Further, Joint Applicants have already provided Sprint with interstate revenue data in response to DR. No. 5. The companies cannot now claim that they should not be compelled to provide interstate switched and special access data. The Motion relating to DR Nos. 13 and 14 is granted.

Sprint’s Data Request Nos. 41 and 42

22 Sprint contends that DR Nos. 41 and 42 relate to the number of local access lines and total local access line revenues that QCII and its affiliates have in CenturyLink’s Washington territories and vice versa.³⁸ According to Sprint, QCII furnished a limited response to DR No. 41 and designated it as highly confidential.³⁹ Sprint argues that the response should instead have been designated as confidential.⁴⁰

³⁶ Staff’s Response to Late-Filed Petitions, ¶ 2, quoting *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.

³⁷ *Id.*

³⁸ Sprint’s Motion, ¶ 9.

³⁹ *Id.*

⁴⁰ *Id.*

- 23 Sprint also claims that CenturyLink failed to provide the number of access lines and its revenue from those access lines.⁴¹ The company maintains that this information is relevant since it would “be helpful in determining the merger’s impact on actual competition in the state.”⁴² Sprint asserts that, if the merger is approved, neither party would be likely to promote competition in the other party’s territory.⁴³
- 24 Joint Applicants state that they have re-designated Qwest’s data as confidential in response to Sprint’s request.⁴⁴ Joint Applicants also insist that CenturyLink updated its response to include access line data and revenues on August 13, 2010.⁴⁵ Thus, Joint Applicants’ declare Sprint’s Motion with regard to DR Nos. 41 and 42 is moot.⁴⁶
- 25 Sprint disagrees and renews its Motion with regard to these DRs. Specifically, Sprint alleges that, while QCII did reclassify its response as confidential, the company limited its response to “whether it competes in CenturyLink territory to the size of exchanges and the geographic proximity of CenturyLink exchanges to [QCII].”⁴⁷ Sprint states that QCII makes the claim that its services do not meet the definition of access lines without providing any precise definition of the term.⁴⁸ The company also claims that CenturyLink also asserts a narrow definition of the term access lines without support for the definition.⁴⁹ Finally, Sprint insists that Joint Applicants have provided information limited to QCII and have not included any information

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Joint Applicants’ Answer, ¶ 7.

⁴⁵ *Id.*, ¶ 8.

⁴⁶ *Id.*

⁴⁷ Sprint’s Response to Bench Request No. 4, ¶ 11.

⁴⁸ *Id.*

⁴⁹ *Id.*, ¶ 12.

regarding QCII's affiliates.⁵⁰ According to Sprint, the DRs were not similarly limited.⁵¹

26 ***Discussion and decision.*** We find that Sprint's Motion concerning DR No. 41 is rendered moot by Qwest's supplemental responses and thus deny the Motion. With regard to DR No. 42, we grant in part and deny in part as moot Sprint's Motion.

27 It appears the dispute surrounding DR No. 41, regarding Qwest's designation of certain information as highly confidential, has been resolved as a result of Qwest's re-designation of the disputed material as confidential. With respect to the remaining two disputes, we deny Sprint's motion to compel Qwest's response to DR No. 41. We agree with Sprint that Qwest's initial response to the data request was overly limited and inappropriately narrowed the response to access lines and revenues served by QC within exchanges served by CenturyLink that are of particular size and geographic proximity to existing Qwest exchange areas. However, through two supplemental responses, as reflected within Confidential Attachment A to Supplemental Response 41 S-2 Qwest has apparently expanded its analysis and response to encompass all CenturyLink exchanges in Washington where the Qwest entities subject to our jurisdiction serve customers. Given the apparent scope of Qwest's supplemental responses we find as moot and, accordingly, deny Sprint's Motion with respect to DR No. 41.

28 As to Sprint's motion regarding the adequacy of CenturyLink's response to DR No. 42, we grant the Motion to the extent that CenturyLink has not provided the revenues associated with the Ethernet services it provides to customers within Qwest's service area. We interpret the company's response to mean that the only customers that CenturyLink serves within Qwest's Washington exchange service areas are customers of its Ethernet services, not its traditional local exchange services encompassing the provision of access lines. We accept CenturyLink's assertion that there are no access lines that could be reported in response to the data request, however, we require the company to provide to Sprint the revenues associated with the Ethernet services it provides to customers within Qwest's ILEC service territory in Washington.

⁵⁰ *Id.*, ¶ 11.

⁵¹ *Id.*

ORDER

29 **THE COMMISSION ORDERS**

- 30 (1) Sprint Nextel Corporation's motion to compel Joint Applicants to respond to
Sprint Data Request No. 5 is denied as moot.
- 31 (2) Sprint Nextel Corporation's motion to compel Joint Applicants to respond to
Sprint Data Request Nos. 13 and 14 is granted.
- 32 (3) Sprint Nextel Corporation's motion to compel Joint Applicants to respond to
Sprint Data Request Nos. 41 and 42 is granted in part and denied in part in
accordance with paragraphs 27 and 28 above.

Dated at Olympia, Washington, and effective September 10, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.