



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON, VIRGINIA 22203-1837

September 13, 2010

REPLY TO
ATTENTION OF
Regulatory Law Office
U 4198

VIA ELECTRONIC MAIL (9/13/10) & OVERNIGHT UPS

Commission Executive Director and Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Subject: **DoD/FEA's Motion To Modify Protective Order**

In Re: **Docket No. UT-100820** – Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of the Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.

To The Honorable Commission Executive Director and Secretary:

Pursuant to paragraph 35 of the Protective Order (Order No. 01, June 2, 2010) in the above-referenced proceeding, enclosed for filing are the original and twelve (12) copies of the United States Department of Defense and All Other Federal Executive Agencies' (collectively referred to herein as "DoD/FEA's") Motion To Modify Protective Order.

In accordance with the Commission's Rules, a Certificate of Service is appended. Copies of this filing are being sent to all parties of record in accord with the Certificate of Service. Inquiries to this office regarding this proceeding should be directed to the undersigned at (703) 696-1643.

Thank you for your cooperation and assistance in this matter.

Sincerely,

Stephen S. Melnikoff
General Attorney
Regulatory Law Office (JALS-RL)
U.S. Army Litigation Center
901 N. Stuart Street, Suite 700
Arlington, Virginia 22203-1837
Telephone: (703) 696 - 1643
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Enclosure: Original and twelve (12) copies
CF: See Certificate of Service
Honorable Marguerite E. Friedlander (Email)

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

In the Matter of the Joint Application of	)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL INC. AND)	
CENTURYTEL, INC.	)	THE UNITED STATES
	)	DEPARTMENT OF DEFENSE AND
For Approval of Indirect Transfer of	)	ALL OTHER FEDERAL EXECUTIVE
Control of Qwest Corporation, Qwest	)	AGENCIES'
Communications Company LLC, and)	
Qwest LD Corp.)	
)	
.....	)	CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing document, together with this Certificate of Service, in Docket No. UT-100820 to be sent this day by electronic service (email) and postage prepaid, properly addressed, first class U.S. Mail (or private courier) to the counsel and parties named below, as indicated:

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Transportation Commission
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Dated this 13th day of September 2010,
at Arlington County, Virginia.


Stephen S. Melnikoff
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U.S. Army Legal Services Agency
Department of the Army
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(703) 696 – 1643

(9/9/10)

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

In the Matter of the Joint Application of	)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. AND)	
CENTURYTEL, INC.	)	THE UNITED STATES
	)	DEPARTMENT OF DEFENSE AND
For Approval of Indirect Transfer of	)	ALL OTHER FEDERAL EXECUTIVE
Control of Qwest Corporation, Qwest	)	AGENCIES'
Communications Company LLC, and)	
Qwest LD Corp.	)	MOTION TO MODIFY
	)	PROTECTIVE ORDER
.....)	

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (collectively referred to herein as “DoD/FEA”), hereby requests that the Washington Utilities and Transportation Commission (“the Commission”) modify paragraph 15 its Protective Order¹ in the above-captioned proceeding. DoD/FEA requests that its in-house counsel and in-house litigation staff in this proceeding, like those of the Attorney General’s office of Public Counsel (“Public Counsel”) and Commission Staff, be exempt from the Highly Confidential access eligibility restrictions contained in paragraph 14 of the Protective Order. This Motion is filed pursuant to paragraph 35 of the Protective Order. In support of this Motion, DoD/FEA states as follows:

¹ Order 01--Protective Order with “Highly Confidential” Provisions (“Protective Order”), Docket No. UT-100820, June 2, 2010.

1. DoD/FEA, a Federal government entity-customer (not a competitor) of the Joint Applicants'² operating subsidiaries, is represented exclusively by in-house counsel responsible only for its regulatory litigation matters. Because of its governmental status and non-competitive relationship to Joint Applicants and its internal compartmentalization, any perceived conflicts, or risks and incentives to abuse the protected non-disclosure status of "highly confidential" information or the Protective Order are non-existent.

2. DoD/FEA's in-house counsel and in-house litigation staff are not unlike those of the Commission Staff and Public Counsel, which similarly are internally compartmentalized in-house regulatory litigation personnel of State government entity-customers (not competitors) of Joint Applicants.

WHEREFORE, DoD/FEA's in-house counsel and in-house litigation staff for this proceeding³, like those of the Commission Staff and Public Counsel, should be included in paragraph 15 of the Protective Order as exempt from the restrictions in paragraph 14.⁴ Joint Applicants⁵ have authorized that their agreement to this requested revision of the Protective Order be included in this Motion. Furthermore, both counsel for Commission

² Qwest Communications International, Inc. ("Qwest") and CenturyTel, Inc. ("CenturyLink") (collectively, "Joint Applicants").

³ While the requested revision to the Protective Order is specifically for this proceeding, DoD/FEA recommends that protective orders in future proceedings similarly "exempt" any non-competitor government party's in-house counsel and in-house.

⁴ In the alternative, the Commission should clarify that DoD/FEA's in-house counsel and in-house litigation staff are eligible to access "highly confidential" documents or information under paragraph 14 of the Protective Order. The constrained interpretations in Joint Applicants' Motion to Exclude Access to Highly Confidential Information Under the Protective Order, filed August 26, 2010, ignore practical reality and are inconsistent with the practices implementing protective orders over the recent period of years. See the attached Affidavit of Stephen S. Melnikoff.

⁵ Joint Applicants support a revision to the Protective Order so that for this docket DoD/FEA is grouped with Commission Staff and Public Counsel in paragraph 15, and thereby is allowed access to "Highly Confidential" documents and information.

Staff⁶ and Public Counsel⁷ have authorized that their support for this requested revision of the Protective Order be included in this Motion.

Respectfully submitted,



Stephen S. Melnikoff

General Attorney
Regulatory Law Office (JALS-RL)
U.S. Army Litigation Center
901 North Stuart Street, Suite 700
Arlington, Virginia 22203-1837

For
The United States Department of Defense
And
All Other Federal Executive Agencies

Dated: September 13, 2010

⁶ Commission Staff “supports DOD/FEA access to all materials in this proceeding under the same ‘exemption’ currently in place for UTC staff and Public Counsel in the protective order. [Staff] further support[s] extending this ‘exemption’ in future protective orders to cover government parties not competing with the regulated company or companies that are parties to the same proceeding.

⁷ Public Counsel “supports access by the Department of Defense/Federal Executive Agencies to all confidential or highly confidential materials in this proceeding under the same provisions currently in place for UTC staff and Public Counsel in the protective order in this docket. [It] would also support ... similarly extending these provisions in future protective orders to cover DOD/FEA to the extent they are not competing with the regulated company or companies that are parties to the same proceeding.”

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

In the Matter of the Joint Application of) DOCKET UT-100820
)
QWEST COMMUNICATIONS)
INTERNATIONAL, INC. AND)
CENTURYTEL, INC.) THE UNITED STATES DEPARTMENT
) OF DEFENSE AND ALL OTHER
For Approval of Indirect Transfer of) FEDERAL EXECUTIVE AGENCIES'
Control of Qwest Corporation, Qwest)
Communications Company LLC, and) AFFIDAVIT OF STEPHEN S. MELNIKOFF
Qwest LD Corp.) IN SUPPORT OF MOTION TO MODIFY
) PROTECTIVE ORDER
.....)

1. My name is Stephen S. Melnikoff. I am a Federal civilian employee of the U.S. Army Legal Services Agency's Regulatory Law and Intellectual Property Division and, as such, am in-house counsel for the U.S. Department of Defense and All Other Federal Executive Agencies ("DoD/FEA") in the above-captioned proceeding. I make this Affidavit in support of DoD/FEA's Motion to Modify Protective Order.

2. I have represented DoD/FEA in all telecommunications regulatory matters before the Washington Utilities and Transportation Commission ("WUTC") since 2002. At least since that time DoD/FEA has been represented in such matters exclusively by in-house counsel assisted by in-house litigation staff, all responsible only for its regulatory litigation matters. At no time during this period have I ever been denied access to "Highly Confidential" documents or information, once requested under any protective order, nor has there ever been an objection to my access to such material, until the present attempt by the Joint Applicants' Motion to Limit Access to Highly Confidential Information, filed August 26, 2010 herein.

3. In at least two proceeding¹ over the past three years, protective orders virtually identical to the text and Exhibit C (Highly Confidential Information Agreement) of the Protective Order herein have been utilized. In neither proceeding was there any challenge to my accessing “Highly Confidential” documents or information ever made by the parties involved (Verizon, Frontier or, importantly, Qwest).

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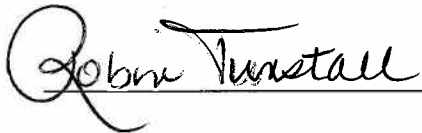
¹ Docket No. UT-090842 (The Verizon Communications Inc. and Frontier Communications Corporation transaction transferring control of Verizon Northwest Inc.); and Docket No. UT- 061625 (Qwest’s Alternative Form of Regulation).

Commonwealth of Virginia)
County of Arlington)

I, Stephen S. Melnikoff, being first duly sworn, depose and state that I am an attorney for the U.S. Department of Defense and All Other Federal Executive Agencies ("DoD/FEA"), that I have read the foregoing AFFIDAVIT OF STEPHEN S. MELNIKOFF IN SUPPORT OF MOTION TO MODIFY PROTECTIVE ORDER and know the contents thereof and that the statements therein contained are true and correct to the best of my knowledge, information and belief.


Stephen S. Melnikoff 9/13/2010

Subscribed and sworn to before me
this 13th day of September 2010.

, Notary Public

My commission expires: 9/30/2012

