

BEFORE THE WASHINGTON STATE 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

PUBLIC COUNSEL RESPONSE IN
OPPOSITION TO QWEST'S AND
CENTURYLINK'S REQUEST FOR
IN CAMERA REVIEW

1. Public Counsel files this response pursuant to the Commission's September 9, 2010, Notice of Opportunity to Respond to Joint Motion for In Camera Review and Oral Arguments. Public Counsel recommends that the request be denied.
2. The Joint Applicants initially proposed a "Staff Eyes Only" (SEO) Protective Order in this docket which would have permitted only Commission Staff and Public Counsel attorneys, staff, and experts to have access to the same material at issue here. The Commission denied the request, stating, in part:

We find Joint Applicants' arguments unpersuasive and deny their request. Joint Applicants' list of documents that they believe should be designated as SEO *does not, in and of itself, demonstrate the need for a new and extremely restrictive protected category of information. Joint Applicants have failed to demonstrate why the intervenors should be denied access to such a large amount of data* and have failed to explain how the intervenors could be expected to challenge a designation of SEO if neither they nor their outside counsel or consultants could view the data.

Joint Applicants' request has the potential to deprive the intervenors of any meaningful participation in the Commission's decision in this docket. Were the Commission to grant the request and Staff or Public Counsel introduce the

information into the record, we could formulate a decision based upon evidence that neither the intervenors nor their outside counsel or consultants would have seen or had the opportunity to rebut.

*Further, Joint Applicants have presented no evidence to show that the protections already afforded in the existing highly confidential protective order are insufficient.*¹

The pending request for *in camera* review appears to be simply a renewal, by other means, of the previous motion for creation of an additional protected category of information. The Joint Applicants had their opportunity to persuade the Commission that some type of added protection is required and to submit any evidence and arguments in support of their position. The motion was not successful. The Commission has ruled. Joint Applicants may not now have a “second bite of the apple.” The request again introduces procedural burden and delay to the discovery phase of this case.

3. For these reasons, Public Counsel opposes this request and incorporates here by reference the arguments presented in opposition to the original motion for a “Staff Eyes Only” protective order.²

4. DATED this 15th day of September, 2010.

ROBERT M. McKENNA
Attorney General

Simon J. ffitch
Senior Assistant Attorney General
Public Counsel

¹ Order 08, ¶¶ 20-22 (emphasis added).

² Public Counsel Response in Opposition to Joint Applicants' Motion for "Staff Eyes Only" Supplement to Protective Order, July 27, 2010.