

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

QWEST'S AND CENTURYLINK'S
ANSWER TO JOINT CLECS' MOTION
TO COMPEL

- 1 Pursuant to the schedule previously established, the Joint Applicants hereby file their answer to the motion to compel filed by the Joint CLECs.¹ As the Commission recognized in the notice scheduling answers to the motion to compel, the issues raised by Joint CLECs are intertwined with the issues raised in the already-pending motion for *in camera* review. In fact, the two main issues for decision in each motion have to do with the extremely sensitive nature of the documents at issue, and their lack of relevance to the issues in this case.
- 2 Joint CLECs have filed a motion to compel in order to address the earlier question about whether there was even an active dispute about the documents, but have not presented new

¹ The Joint CLECs are Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., United Communications, Inc. d/b/a Unicom (collectively, "Integra"), tw telecom of Washington, LLC, XO Communications Services, Inc., Pac-West Telecomm, Inc., and McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services.

issues for decision.

3 A primary theme of Joint CLECs' motion to compel is their apparent disbelief that decisions have not yet been made concerning details relating to integration of systems and processes associated with provisioning wholesale services to CLECs. At pages 9 – 12 of the motion, Joint CLECs discuss 21 detailed aspects of systems and process integration that Integra inquired about in some of its 155 non-HSR-related data requests directed to Joint Applicants. Joint CLECs seem dismayed that decisions have not yet been made concerning these detailed aspects of systems and process integration despite the fact that the transaction has not yet closed and will not close for months yet.² Instead, Joint CLECs speculate that the decisions have in fact been made and are hidden somewhere within the SEO HSR documents. This is an amazing leap in logic especially given that the HSR documents were prepared before the merger agreement was even signed.

4 An *in camera* review of the SEO HSR documents will quickly reveal that they have no relevancy to the systems and process integration issues or any other issues legitimately raised by the Joint CLECs in this proceeding. This will become readily apparent to the ALJ and Commission and would have been apparent to the Joint CLECs if they would have inspected the SEO HSR documents pursuant to Joint Applicants' offer to make them available for inspection (see discussion below).

5 Joint Applicants believe that they have offered a reasonable way to proceed with evaluating the documents and determining if they must be produced to the various intervenors. This evaluation will enable the Commission to make two sequential decisions that bear on

² Joint Applicants have explained repeatedly in responses to data requests that in the transaction CenturyLink will be acquiring all of Qwest's systems and process intact and therefore no systems or process conversion need take place before or at closing. Instead, system and process conversions can take place post merger at a prudent pace.

disclosure.

6 First, after *in camera* review, the Commission may determine that the documents are not relevant to any disputed issues, and are not likely to lead to the discovery of admissible evidence. That determination will close the matter, without further review, since that determination would mean that Joint Applicants have no obligation to produce the documents, even under the admittedly broad relevancy standards that govern discovery.

7 Secondly, if the Commission determines that the Joint Applicants do not prevail on the arguments regarding relevancy, there is still the issue of the extremely sensitive nature of the documents. This issue also bears on the manner and extent of any required disclosure of the documents, and is thus also addressed in the motion for *in camera* review. Joint CLECs raise no new issues and make no new arguments in their motion to compel.

8 As is evident from the pleadings, the issues of relevancy and confidentiality of the HSR documents has been actively debated in most of the jurisdictions reviewing the merger. There have been ongoing discussions between the Joint Applicants and the various CLEC intervenors in these various state PUC proceedings. At the time that Joint Applicants submitted their request for *in camera* inspection in this proceeding, CenturyLink had identified 13 documents in its HSR package for which it was still seeking “Staff Eyes Only” treatment. Likewise Qwest had identified 15 documents in its HSR package for which it was seeking “Staff Eyes Only” treatment.³ Given subsequent discussions and ongoing developments in the various jurisdictions, Joint Applicants are willing to modify their requested treatment of HSR documents in Washington in the following manner.

³ See attachments to Joint Applicants’ *Request for In Camera Review of Highly Sensitive Documents and Request for Oral Argument*, filed September 2, 2010.

- 9 CenturyLink continues to seek complete “Staff Eyes Only” treatment for only five HSR documents (Nos. 10, 23, 33, 35 and 36). CenturyLink will re-designate four other HSR documents as Highly Confidential with limited redaction (Nos. 4, 13, 15 and 16). The remaining four documents (Nos. 9, 24, 25 and 37) that were identified as “Staff Eyes Only” in the *In Camera* Motion can be downgraded to Highly Confidential with no redactions. A revised listing of these 13 CenturyLink HSR documents is attached hereto as Attachment 1.
- 10 Qwest has determined that seven (7) of its HSR documents that were identified for “Staff Eyes Only” treatment in the Motion can now be downgraded to “Highly Confidential.” Qwest continues to seek “Staff Eyes Only” treatment for the remaining eight (8) documents that were identified in the *In Camera* Motion. A revised listing of these Qwest HSR documents is attached hereto as Attachment 2. For clarification, Qwest states that all of these documents are CenturyLink-authored documents. To the extent that CenturyLink has offered to disclose some of these documents either as Highly Confidential, or Highly Confidential with redactions, Qwest will treat those documents consistently with those designations.
- 11 In the motion to compel, Joint CLECs draw attention to seven CenturyLink HSR documents as being potentially relevant in this proceeding (Joint CLECs’ Motion, at pp. 6-7). Four of the documents (Nos. 24, 25, 37 and 9) have been subsequently downgraded to Highly Confidential based upon the discussion above (See Attachment 1). Two of the documents (Nos. 14 and 15) can be downgraded with limited redaction. CenturyLink continues to seek complete “Staff Eyes Only” treatment for only one of the documents (No. 33) mentioned by Joint CLECs. Document No. 33 consists of extremely sensitive market research, much of which was commissioned to a third party researcher and paid for by CenturyLink. It deals with retail markets. Joint Applicants submit that upon *in camera* inspection it will be readily apparent that Document 33 has no relevancy to CLEC’s wholesale integration issues or is in any other

way relevant to the Commission's review of the merger. Likewise, *in camera* inspection of Documents 4, 13, 14 and 15 will show that the redacted material is similarly not relevant.


- 12 With respect to Qwest's HSR package, Joint CLEC's motion draws attention only to Documents Nos. 4c-39, 4c-42, 4c-44, 4c-46, 4c-48, 4c-53, and 4c-82 (Joint CLECs' Motion, at pp. 7-8). These documents are documents within Qwest's HSR package that were authored by CenturyLink. Joint Applicants will treat these documents as follows: Documents Nos. 4c-39 - CenturyLink will release this information as Highly Confidential; 4c-42 - this document is the same as CenturyLink 17, treated as Highly Confidential; 4c-44 - consists of documents contained in CenturyLink 13, 14, 15, and 17 as well as Qwest 46, and will be treated consistently with those documents; 4c-46 - will be provided as Highly Confidential; 4c-48 - the same as CenturyLink 35, not disclosed; 4c-53 - the same as CenturyLink 16, see Attachment 1; and 4c-82 - the same as CenturyLink 36, not disclosed. There are a total of four remaining documents that continue to be withheld - they contain information that is highly sensitive, as previously described, and not relevant to the issues in this proceeding.
- 13 Joint Applicants have produced thousands of pages of documents in response to the parties' data requests. Thus, the *in camera* review is for a *very* limited number of documents. Joint Applicants have offered to allow outside counsel access to the documents for review, in order to either (a) determine that they would not seek further access; or (b) prepare for the *in camera* process. Joint CLECs refused this offer, demanding instead that copies of the documents be produced.
- 14 Under Joint Applicants' proposal, access to the documents would take place in either Qwest or CenturyLink offices, and could thus occur in Seattle, Olympia, Vancouver, Portland, Minneapolis, or some other city of the Joint CLECs' choosing, so long as Qwest or CenturyLink has an office in that city.

- 15 Joint Applicants have asked counsel for the Joint CLECs to at least conduct an initial review on premises, so that they could see for themselves that an on-premises review would be workable, but they have refused to do so. The Commission should not grant the motion to compel when the Joint CLECs have had an opportunity to review the disputed documents but have not taken advantage of that opportunity.
- 16 Joint Applicants will produce the redesignated documents to the requesting parties who have signed Exhibit C later this week.

Dated this 28th day of September, 2010.

CENTURYLINK

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