



CenturyLink™

805 Broadway, 8th Floor
Vancouver, WA 98660

October 5, 2010

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Ste 215
Salem, Oregon 97301-2551

RE: UM-1484 – Application for Approval of Merger between CenturyTel,
Inc. and Qwest Communications International, Inc.

Dear Commission:

Enclosed for filing is the original and three copies of CenturyLink and Qwest's Response to Joint CLECs Motion to Compel.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Rhonda Kent
Legal Secretary

Encl.

cc: Certificate of Service

**BEFORE THE PUBLIC UTILITY COMMISSION OF
OREGON**

UM 1484

In the Matter of)	
)	CENTURYLINK AND QWEST
CENTURYTEL, INC.)	RESPONSE TO THE JOINT CLECs'
)	MOTION TO COMPEL
Application for an Order to Approve the)	
Indirect Transfer of Control of QWEST)	
CORPORATION)	
_____)	

RESPONSE TO MOTION TO COMPEL

Pursuant to OAR 860-013-0050, applicant CenturyLink, Inc. ("CenturyLink") and intervenor Qwest Communications International, Inc. ("Qwest") (collectively "the Joint Respondents") hereby respond to the motion to compel that the "Joint CLECs" filed on September 20, 2010.¹

The issues that the Joint CLECs raise in their Motion to Compel ("Motion") deal with their requests for certain documents that are both irrelevant and highly-sensitive and commercially-sensitive that CenturyLink and Qwest submitted to the United States Department of Justice ("DOJ") and the Federal Trade Commission ("FTC"), as required for those federal agencies' review of federal antitrust issues under the Hart-Scott-

¹ The Joint CLECs are the following intervenors: XO Communications Services, Inc., tw telecom of oregon, llc, Integra Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, PriorityOne Telecom, Inc., and Charter Fiberlink OR-CCVII, LLC.

Rodino Anti-Trust Improvements Act (“HSR Act”)² for this merger. These documents are collectively referred to as “the HSR documents.” In fact, the main issues for decision in this 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. In addition, the Motion will likely have the effect of unreasonably causing delay and burdening the record.

RELEVANT PROCEDURAL HISTORY

CenturyLink filed its application for expedited approval of the proposed merger on May 24, 2010, along with a request for entry of the standard protective order, which the Commission issued on May 26, 2010. Due to numerous data requests that Commission Staff had issued that required production of highly-confidential information, on June 21, 2010, CenturyLink then filed a motion for a protective order addressing highly-confidential information with a proposed protective order. The Joint CLECs opposed the motion on June 23, 2010, and CenturyLink replied to the opposition on July 7, 2010. Thereafter, Administrative Law Judge Allan Arlow issued the highly-confidential protective order that CenturyLink had requested on July 30, 2010.

In the meantime, although CenturyLink had filed its application on May 24, 2010, it was not until June 29, 2010, more than a month later, that the Joint CLECs submitted their first set of substantive data requests, consisting of 156 data requests, plus

² See 15 U.S.C. §§ 15-19. The Joint Respondents received DOJ antitrust clearance in July 2010.

subparts.³ The Joint Respondents promptly and timely responded to the data requests on July 14, 2010, at which time they objected to the production of any HSR documents in their responses to Joint CLEC data request No 147. Specifically, CenturyLink objected as follows:

CenturyLink objects to this request insofar as it is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The filings prepared by CenturyLink as required by the HSR Act are specifically designed to provide to the Department of Justice and the Federal Trade Commission the information that it requires to analyze the merger on a national level addressing specific federal antitrust issues. This is not the proper jurisdiction for such an analysis. In addition, the information requested is highly confidential, commercially sensitive information the release of which, particularly to CenturyLink's competitors such as Joint CLECs, would cause irreparable competitive harm to CenturyLink, the impact of which would not be mitigated by the terms of the Protective Order.

Qwest objected to this data request as follows:

Qwest objects to this request insofar as it is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The filings prepared by Qwest as required by the HSR Act are specifically designed to provide to the Department of Justice and the Federal Trade Commission the information that it requires to analyze the merger on a national level addressing specific federal antitrust issues under the Clayton Act. This is not the proper jurisdiction for such an analysis. In addition, the information requested is highly confidential, commercially sensitive information the release of which, particularly to Qwest's competitors such as Integra, would cause irreparable competitive harm to Qwest, the impact of which would not be mitigated by the terms of the Protective Order.

³ The Joint Respondents received four previous data requests that merely asked them to provide copies of their responses to data requests that Commission Staff had issued.

The Joint CLECs' argument that not having access to these HSR documents could prevent them from participating in the proceeding in a meaningful manner⁴ is simply not credible. The Joint CLECs have waited until this late date to seek the documents they claim to so desperately need. They received CenturyLink's and Qwest's discovery responses to Staff's Data Request No. 66 (pursuant to Joint CLECs' Data Request No. 3) on July 12, 2010, and the responses to JC-147 on July 13, 2010.⁵ CenturyLink can only surmise that either the Joint CLECs intentionally waited to file the Motion or were so consumed disputing the very same discovery in other states that they simply neglected to do so in Oregon. Whatever the case, if not having this information were so important to the Joint CLECs' case, they would not have waited until just weeks before the hearing (months after receiving the data) to challenge CenturyLink's and Qwest's stated objections to providing the information.

Moreover, despite claiming not to have the information they assert is important to their case, the Joint CLECs were nonetheless able to produce more than 188 pages of testimony based largely on *thousands* of pages of discovery responses provided by CenturyLink and Qwest to approximately 400 Joint CLEC data requests (not including subparts and responses to other parties' requests). Further, the Joint CLECs filed their testimony on August 24, 2010, nearly *six weeks* after receiving the pertinent discovery

⁴ Motion, at p. 6.

⁵ The motion to compel regarding the documents responsive to Staff data request No. 66 is moot as to Qwest because Qwest has previously provided those documents to the Joint CLECs.

responses and objections. Given the length and scope of the Joint CLECs' testimony and the remarkable gap between receipt of the discovery in question and the filing of their testimony, the Joint CLECs must have thoroughly reviewed CenturyLink's and Qwest's discovery responses and objections during that time. The Joint CLECs were granted intervention on the condition that they not unreasonably burden the record or delay the proceedings. This Motion does both and for data that is extraordinarily sensitive and marginally, if at all, relevant to the Joint CLECs' case.

ARGUMENT

The Joint CLECs correctly cite the Commission's rule regarding discovery.⁶ However, their analysis and application of the standard the Commission uses in this instance should stop there. In this case, the timing of the Motion and the nature of the Joint CLECs' intervention weigh heavily in favor of denying the Motion. The Joint CLECs have failed to timely exercise their choice to move the Commission to compel production. Allowing the Motion now will only serve to unreasonably burden the record and delay the proceeding.

I. THE DISCOVERY SOUGHT BY THE JOINT CLECS IS NOT RELEVANT

Even if the Commission decided not to consider the context in which the Joint CLECs' filed the Motion, the application of the balancing standard set forth in the

⁶ Motion, at p. 9, footnote 17.

Motion requires that the Commission reject it. In addition to the balancing tests that the Joint CLECs cite from other jurisdictions,⁷ the Commission's evidence rule states:

(1) Relevant evidence:

(a) Means evidence tending to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence;

(b) Is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(c) *May be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by undue delay.*⁸

In this case, the unfair prejudice and undue delay that the rule discourages will occur immediately, should the Joint CLECs receive the disputed HSR Documents. There would be an immediate effect by disclosure to any CLEC representative because the information in the documents that the Joint CLECs seek goes to the very core of CenturyLink's business plans, would not aid in and is generally irrelevant to the Joint CLECs' case, and the release of the information to any CLEC representative could cause substantial, irreparable and immediate competitive harm to CenturyLink and Qwest. The HSR documents at issue in the Motion contain information regarding critical competitive aspects of both its regulated and unregulated businesses, marketing plans, market specific revenue projections, infrastructure and operational plans unrelated to the Joint CLECs' business, and other critically sensitive information, which is for the most

⁷ Motion, at p. 13. CenturyLink notes that the extra-jurisdictional decisions that the Joint CLECs cite are not binding on this Commission.

⁸ OAR 860-014-0045(1). (Emphasis added.)

part not Oregon-specific. So even under the balancing tests set forth by the Joint CLECs regarding confidentiality,⁹ the Motion should be rejected and the documents should not be produced under the protective order or otherwise to any CLEC representative.¹⁰

The Motion discusses 21 data requests directed at detailed aspects of systems and process integration that Integra inquired about in some of its 188 non-HSR-related data requests directed to the Joint Respondents.¹¹ Reference to these discovery responses does little to support the Motion. Rather, it appears including them is more for the purpose of making the Joint CLECs' case on the merits, which is not appropriate because they are not yet admitted into the record. Although CenturyLink and Qwest believe the discussion related to the yet-to-be admitted discovery is misplaced and should not be given much weight, it nonetheless is compelled to address them and the related underlying theme of the argument, the Joint CLECs' 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.

The Joint CLECs seem dismayed that decisions have not yet been made concerning these detailed aspects of systems and process integration despite the fact

⁹ Motion, at p. 13.

¹⁰ Although a protective order can mitigate the risk of disclosure, the risk of disclosure (even inadvertently) still exists and can be a factor in judging the relevance of requested information. See e.g., *In re Qwest Corp.*, Order No. 03-533, 2003 WL 24038510 (Oregon PUC 2003) (applying the probative value versus unfair prejudice balancing test and analyzing the limit on disclosure of trade secrets in the context of a motion to compel a data response).

¹¹ Motion, at p. 9-11.

that the transaction has not yet closed and will not close for months yet.¹² It is implausible to suggest that final decisions were made regarding wholesale systems during the early merger due diligence process, before the HSR documents were filed. Moreover, CenturyLink recently established a merger integration process that will guide it in the integration of the two companies. That process plan was provided in a supplement to discovery in Oregon on September 22, 2010. The information provided should assuage the concerns of the Joint CLECs regarding the decision-making process and confirm that specific systems decisions, in particular decisions regarding wholesale systems, have in fact not been made yet.¹³ Thus, there is nothing in the HSR documents that bears on the CLECs' primary concern as expressed in their pleadings.

Last, the Joint CLECs rely on other state commissions' rulings on similar discovery issues¹⁴ to distract the Commission from the real issue – whether the documents in question are relevant to the CLECs case and whether, balancing the potential harm to CenturyLink against the relevance (or lack thereof), the documents should be produced. This Commission is not bound by other states' decisions, which

¹² The Joint Respondents 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.

¹³ See Attachment 1

¹⁴ State commissions have ruled both ways on whether the HSR documents in question should be disclosed to Joint CLECs. The Public Utilities Commission of Colorado, for example, just entered an order adopting CenturyLink's proposal prohibiting Joint CLECs in Colorado from access to the most highly-sensitive HSR documents that Joint CLECs now seek in this proceeding. See Attachment 2.

are governed by different standards under state specific rules and law. The appropriate considerations, as discussed above, are specific to the Joint CLECs' actions in Oregon and applicable Commission rules that address discovery.

II. NOTWITHSTANDING THEIR IRRELEVANCE, THE JOINT RESPONDENTS WILL PRODUCE MOST OF THE HSR DOCUMENTS

The FTC and DOJ require the HSR Documents in order to perform their statutorily-required task of reviewing the merger on a national level for any specific federal antitrust violations, primarily under the Clayton Act. *See* 15 U.S.C. §§ 15-19. This includes a review for price discrimination; exclusive dealings or “tying;” a substantial reduction in national competition; and a review of directors. *See id.* The HSR Act was designed to cover larger mergers that affect the entire national economy. *See* 15 U.S.C. § 18(a); *Mattox v. Federal Trade Commission*, 752 F.2d 116, 122 (5th Cir. 1985).

In contrast, the Commission's task is to examine if the merger is consistent with the public interest *in Oregon* which, requires it to determine that the transaction does not result in harm to the public interest. The Commission's standard of review is applicable to *Oregon operating entities*. The Commission's consideration relies upon an analysis of the Oregon local telecommunications marketplace and the ultimate effect that the transaction will have on that local, intrastate marketplace. The federal agencies and this Commission, therefore, are obligated to examine two different subject matters, operate under two distinct jurisdictions, and have two distinct areas of expertise in merger review.

The HSR Documents were compiled specifically to provide to the FTC and DOJ information to assist in its examination of the merger for federal antitrust law violations. The HSR Documents do not generally provide any analysis or information that is specific to Oregon, nor could such information be accurately deduced from the HSR Documents. They are not, therefore, relevant to this proceeding. Such information relevant to the local telecommunications marketplace, if it exists in the HSR Documents, would only come from a fishing expedition by the Joint CLECs through highly-sensitive materials for information that could be more directly obtained from other sources. And, in fact, the CLECs have conducted substantial discovery upon which much of its pre-filed testimony relied. Because the HSR Documents are not relevant to the Commission's own merger-review responsibility, but do contain heightened confidential operational, marketing and financial information and analysis that could cause significant, irreparable harm to CenturyLink if they were to be released to competitors and potential adversaries, the harm of disclosing the HSR Documents would outweigh any benefit of producing them.

After careful consideration and review of these documents, and in the spirit of compromise, Qwest and CenturyLink have identified the documents that are least likely to cause substantial harm and will produce those documents. In addition, four of the remaining nine HSR Documents will also be produced with minimal redactions; the redactions are of information that is being withheld for the reasons stated elsewhere in

this Response. For this redacted information, as well as for the remaining five HSR Documents, CenturyLink and Qwest, for the record, continue to object to production of the information because it is not relevant to the Commission's inquiry in this case.¹⁵

A. Description of HSR Documents Being Withheld by CenturyLink

The following is a description of the CenturyLink HSR Documents that are being withheld, in whole or in part:

1. HSR Document No. 10 – Broadband Marketing and Strategy

This two-page document is an analysis of market share, trends and marketing strategy for broadband services in legacy CenturyTel and legacy Embarq territories. Broadband deployment is not a subject that the Commission has jurisdiction over, nor is it directly implicated by the merger review criteria under Oregon law. In addition, broadband market share information is not at all related to the type of wholesale and interconnection issues that the Joint CLECs have raised in this proceeding. However, such information is obviously extremely competitively-sensitive insofar as it reveals CenturyLink's actual broadband market share and market share of new broadband customers in specific geographic markets. Consequently, this document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

¹⁵ CenturyLink and Qwest do not, for the record, waive their discovery objections to the HSR documents they are producing.

2. HSR Document No. 23 – IPTV Qwest Market Business Case Sensitivities

This document contains financial assumptions and projected market rollout information for IPTV in various Qwest markets. Similar to HSR Document No. 10, this document involves an analysis of a service that the Commission has no jurisdiction over and that is not directly implicated by the merger review criteria under Oregon law. The document includes information on key assumptions regarding capital expenditures, average revenue per customer, marketing costs, network upgrade costs, market-specific revenue projections, and more. This type of information related to business case scenarios for a possible rollout of IPTV is not information that is relevant to the issues that have been raised by the Joint CLECs in this proceeding, but such information is very competitively-sensitive. Consequently, this document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

3. HSR Document No. 33 – Proprietary Market Research Data

HSR Document No. 33 contains extensive (over 200 pages) of market research survey data commissioned by CenturyLink and contains proprietary, highly-confidential and competitively-sensitive market data research regarding potential product offerings and customer preferences in various product and geographic markets. Substantively, this market research data focuses on customer preferences for retail voice, Internet and video services that are not relevant to the wholesale

interconnection and integration issues that the Joint CLECs have raised. Neither does this “customer preference” market research data relate to the merger review criteria under Oregon law. Consequently, this document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs’ Motion.

4. HSR Document No. 35 – IPTV Market Study and Financial Projections

Just like HSR Document No. 23 discussed above, HSR Document No. 35 deals with IPTV, a service over which the Commission has no jurisdiction and which is not related to the wholesale interconnection and integration issues raised by the Joint CLECs. HSR Document No. 35 was provided to Qwest during the due diligence process, and contains highly-confidential and competitively-sensitive market projections and financial data regarding CenturyLink’s IPTV offerings. The information is multi-state in nature. Consequently, this document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs’ Motion.

5. HSR Document No. 36 – Consumer Sales Strategy

Once again, the focus of this HSR Document, like so many others, is on retail consumer services. Specifically, HSR Document No. 36 provides details about CenturyLink’s consumer markets sales strategies, which is highly competitively-sensitive information and is not relevant to the wholesale interconnection and

integration issues raised by the Joint CLECs. There are also a few pages that describe CenturyLink's Enterprise market sales organization's structure and market segmentation (service to CLECs is not included in the Enterprise market space), and this information is equally irrelevant to the issues raised by the Joint CLECs. Consequently, this document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

6. HSR Document No. 4 (Redacted Pages¹⁶) – Churn Data

This document is a report containing highly-confidential and competitively-sensitive retail customer data broken down by customer segment with churn data provided by product purchased. The report also discusses marketing and retention strategies as well as trending data for active Qwest customers. It is Century Link's contention that the information in the entire document is not relevant to the issues in this proceeding. It is another demonstration of CenturyLink's willingness to compromise on this discovery dispute that CenturyLink is willing to produce all but three (3) pages of this document. These pages contain churn data related to retail customers, broken down by retail customer segment and retail product segment (e.g., voice only, bundled voice and Internet access, etc.) are in no way relevant to the wholesale interconnection and integration issues raised by Integra and other CLEC parties. This information is not Oregon-specific. Consequently, these three redacted

¹⁶ Redacted pages are titled: "Monthly Account Churn Rate by Product Set," "Customer HSI Subs Account Churn Feb 2010," and "Monthly Account Churn Rate by Segment."

pages are not relevant to this proceeding, and their highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

7. HSR Document No. 13 (Redacted Pages) – Cell Site and Inmate Payphone Data

This HSR Document is titled "Wholesale Overview," and provides analyses of CenturyLink's wholesale services and markets. However, none of the wholesale services or market segments reviewed in the document is relevant to the issues raised by the Joint CLECs. Again, it is CenturyLink's position that all of the information in this document is irrelevant to the issues in this proceeding. However, CenturyLink is only objecting to producing three (3) pages that: 1) provide information on the number of wireless carrier cell sites served by CenturyLink, and how many sites are served by fiber, broken down by CenturyLink operating region; 2) additional data on wireless carrier cell sites being served, the number of sites that CenturyLink has proposed to serve, and estimates of the total market opportunity, again by region, and with specific carrier-customer site-specific information; and 3) state-specific revenue information in the inmate (prison) payphone market. All of this information is extremely competitively-sensitive and is clearly unrelated to matters at issue in this proceeding. Consequently, these three redacted pages are not relevant to this proceeding, and their highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

8. **HSR Document No. 15 (Redacted Pages)–Long Range Plan Review**

The title of this document is “2010 – 2013 Long Range Plan Review,” which on its face signifies the information’s extreme competitive sensitivity. Once again, CenturyLink contends that none of the information in this document is relevant to the issues raised by the Joint CLECs. Nevertheless, CenturyLink will agree to compromise and produce the vast majority of the document’s 47 pages, and is only withholding 19 pages.

It would be too unwieldy to describe the content of every page that CenturyLink objects to providing. However, just a description of just a few of the pages demonstrates that redacted information is not relevant: system-wide consumer (mass market) average revenue per unit for voice, Internet, and IPTV services; system-wide trends in Internet subscribership and related business assumptions; system-wide revenue trends and projections for IPTV, as well as IPTV market penetration trends and projections; system-wide Enterprise business market segment revenue trends and projections broken down by product segment; system-wide Wholesale market revenue assumptions, by product group (which does not include any Section 251 interconnection or reciprocal compensation products or revenues) and focused on switched access; 2010 and 2013 revenue projections for standalone CenturyLink (i.e., pre-merger) broken down by product segment; and pages that provide CenturyLink system-wide data on consumer mass market revenue projections through 2013; access line trends and projections (including churn and revenue data) through 2013; trends

and projections for DSL Internet Access (including churn and revenue data) through 2013; trends and projections for Direct Broadcast Satellite (including churn and revenue data) through 2013; trends and projections for Enterprise business market revenues broken down by product segment through 2013; and trends and projections for Wholesale market revenues by product segment through 2013.

None of it is relevant to the wholesale interconnection and integration issues raised by the Joint CLECs. Nearly all of this data concerns products and markets that are of absolutely no concern to the CLECs, and even the Wholesale revenue data is not relevant to the CLECs' concerns regarding CenturyLink's expertise in interconnection and Operational Support Systems. Consequently, these 19 redacted pages are not relevant to this proceeding, and their highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

9. HSR Document No. 16 (Redacted Pages)

The title of this document is "Operations Overview," and it contains highly-confidential and competitively-sensitive market specific data regarding CenturyLink's operating models and marketing plans in the Consumer, Mass Market, and Enterprise markets. Highly-confidential market launch data is included in the presentation for upcoming product rollouts. None of the information for these market segments is relevant to the wholesale interconnection and integration concerns raised by the Joint CLECs. Of the 48 pages included in this document, CenturyLink will compromise and

produce 34 pages with a Highly-Confidential designation, but CenturyLink continues to object to providing 14 pages of information that is both irrelevant and extremely competitively-sensitive.

The redacted pages include: specifics about CenturyLink's marketing approach to the consumer and mass market segments; trends in Internet access (DSL) churn; trends in consumer market average revenue per unit; and strategic marketing, pricing and product roll out data for IPTV. The information is not Oregon-specific. Most of this data concerns services over which the Commission has no jurisdiction and which are not relevant to the Commission's inquiry in this case. The data in the redacted pages is irrelevant to the wholesale interconnection and integration concerns of the Joint CLECs. Consequently, these 14 redacted pages are not relevant to this proceeding, and their highly-confidential and competitively-sensitive nature weighs in favor of rejecting the Joint CLECs' Motion.

B. Description of HSR Documents Being Withheld by Qwest

As noted in section II, *supra*, Qwest is still withholding six HSR documents. Since Qwest has offered to submit these documents for *in camera* review, the Administrative Law Judge can review the specific documents in detail to confirm that these documents should not be produced.

1. HSR Document 4(c)-44

This document is the same as CenturyLink HSR Document Nos. 13, 14, 15 and

17. Please see discussion at section III.B.2, b.7, and B.8.

2. HSR Document 4(c)-46

This document is the same as CenturyLink HSR Document No. 35. Please see discussion at section III.B.4.

3. HSR Document 4(c)-48 – IPTV Offerings and Financial Impacts

This 15-page document provides an overview of CenturyLink's IPTV offerings and the general financial impacts on the business of deployment. The document includes information about IPTV revenue and penetration growth, and includes an IPTV sample market case study regarding revenue growth, dilution, success models and packaging, pricing and offers, including Video on Demand, DVR programming, and applications. This document is not relevant to this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of sustaining Qwest's relevance objection.

4. HSR Document 4(c)-53

This document is the same as CenturyLink HSR Document No. 16. Please see discussion at section III.B.9.

5. HSR Document 4(c)-81 – Customer Satisfaction Tracking Research

This 42-page document deals with CenturyLink customer satisfaction tracking research for consumer services. The purpose of the study was to track customer perceptions of legacy Embarq, legacy CenturyTel and the combined CenturyLink, as well

as to uncover factors influencing those perceptions, evaluating the competitive threat posed by other providers (especially cable companies), and to determine the propensity to switch to newer telephone technology. The study reached numerous conclusions and made numerous recommendations. The study included an overall Embarq, CenturyTel and CenturyLink satisfaction analysis, including likelihood of customers recommending (or not recommending) these brands, improvements made, key driver analysis for fourth quarter 2009, and overall satisfaction with the brands and perceptions of the brands' value for money. The study also included an analysis of other provider satisfaction and customer loyalty, a potential churn analysis, a customer touch point analysis, a problem detection analysis, and a demographics study. Finally, the study made certain consumer sales approach recommendations, discussed certain sales channel dynamics, and discussed an Enterprise market competitive analysis. It is clear this document is not relevant to this case, and its highly-confidential and competitively-sensitive nature weighs in favor of sustaining Qwest's relevance objection.

6. HSR Document 4(c)-82 – Consumer Sales Approaches

This 12-page document deals with consumer sales approaches. These approaches include an analysis of sales channel dynamics, new incremental channel opportunities under development, and an Enterprise market competitive climate analysis, including for both legacy CenturyTel and legacy Embarq ILEC and CLEC operations. This document is not relevant to

this proceeding, and its highly-confidential and competitively-sensitive nature weighs in favor of sustaining Qwest's relevance objection.

CONCLUSION

For all of these reasons, the Joint Respondents respectfully submit that the Commission should deny the Joint CLECs' motion to compel in its entirety.

DATED: October 5, 2010

CENTURYLINK



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Respectfully submitted,

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Decision No. R10-1071-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10A-350T

IN THE MATTER OF THE JOINT APPLICATION OF QWEST COMMUNICATIONS INTERNATIONAL, INC. AND CENTURYLINK, INC. FOR APPROVAL OF INDIRECT TRANSFER OF CONTROL OF QWEST CORPORATION, EL PASO COUNTY TELEPHONE COMPANY, QWEST COMMUNICATIONS COMPANY, LLC AND QWEST LD CORP.

**INTERIM ORDER OF
HEARING COMMISSIONER
RONALD J. BINZ
GRANTING, IN PART, MOTION FOR
PROTECTIVE ORDER FILED BY JOINT
APPLICANTS ON SEPTEMBER 2, 2010**

Mailed Date: September 30, 2010

I. STATEMENT

1. This matter comes before the Hearing Commissioner for consideration of the Motion for protective order (Motion) filed on September 2, 2010 by CenturyLink, Inc. (CenturyLink) and Qwest Communications International, Inc. (Joint Applicants). Being fully advised in the matter and consistent with the discussion below, the Hearing Commissioner grants the Motion, in part, and denies, in part.

2. In their Motion, the Joint Applicants request extraordinary protection for two categories of highly confidential documents. First, the Joint Applicants request the Commission grant extraordinary protection to the information and documents included in Attachment PUC 6-2, which are the “disclosure letters” to the merger agreement, and to the information and documents included in Attachment PUC 6-3(a), which are portions of the Hart-Scott-Rodino filings made with the Department of Justice and the Federal Trade Commission. The Joint Applicants request that access to these documents be limited as follows: to the Commission, its

advisors and advisory counsel; Trial Staff and its attorneys; the Director and employees of the Colorado Office of Consumer Counsel (OCC) and its attorneys; and one outside attorney and one outside expert for the intervenors other than Trial Staff and the OCC. The Joint Applicants state that this category of highly confidential documents includes sensitive information about customers, future products and services, business plans, privileged information about risks and litigations faced by each company, business plans and execution, customer profiles, and marketing strategies.

3. Second, the Joint Applicants request that the Commission grant extraordinary protection to the information and documents included in Attachment PUC 6-3(b), which are select portions of the Hart-Scott-Rodino filings. The Joint Applicants request that access to these documents be limited to the Commission, its advisors, and advisory counsel; Trial Staff and its attorneys; and the Director and employees of the OCC and its attorneys. The Joint Applicants represent that this category of highly confidential documents includes commercially-sensitive information, such as the details of forward-looking business plans and strategies, marketing and retention strategies, trending data for current customers, market share information, go-to-market strategies, financial assumptions and projected market rollout of IPTV in various markets, marketing plans, product development, sales strategies, as well as potential acquisitions of or investments in third parties. The Joint Applicants argue that their competitors or vendors should not be permitted access to these commercially-sensitive documents.

4. The Hearing Commissioner granted the Motion on an interim basis by Decision No. R10-0977-I, mailed on September 3, 2010. The Hearing Commissioner ordered the Joint Applicants to provide copies of the information and documents subject to the Motion as set forth

in the Motion, pending a resolution on the permanent basis. The Hearing Commissioner, on his own motion, shortened response time to the Motion to September 13, 2010.

5. Two parties timely filed responses to the Motion: the Communication Workers of America, AFL-CIO, CLC (CWA); and the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA).

6. Rule 1100(a)(III) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 requires the party seeking extraordinary protection to bear the burden of proof of establishing the need for extraordinary protection. That party must also demonstrate that protection under the rules governing ordinary confidentiality would not be sufficient. Rule 1100(a)(III) also requires the moving party to submit an affidavit containing the names of persons with access to the information and the period of time for which the information must remain undisclosed, if known.

7. The Hearing Commissioner finds that the Joint Applicants complied with the requirements of Rule 1100(a)(III) and that the information contained in Attachment PUC 6-2 and Attachment PUC 6-3(a), as well as Attachment PUC 6-3(b) merits extraordinary protection. The Hearing Commissioner must now weigh these confidentiality considerations with the facts and circumstances of this case in order to comply with the procedural due process requirements and determine what access, if any, CWA and DoD/FEA will receive to that information.

A. CWA

8. In its response, the CWA generally argues that it is not a competitor of the Joint Applicants. It further cites to an order by the Arizona Corporation Commission which denied a motion for protective order filed by the Joint Applicants in a parallel merger docket. The CWA argues that the Joint Applicants have failed to show that the information for which they request

extraordinary protection is highly confidential or that the Commission Rules governing ordinary confidentiality will not provide sufficient protection. The CWA points out that it is a union that represents various employees of the Joint Applicants. The CWA argues that it is not a competitor of the Joint Applicants and thus it should not be restricted in its access to the highly confidential information.

9. The Hearing Commissioner reviewed the arguments that CenturyLink presented previously concerning the CWA and the extent to which it should be granted access to highly confidential information.¹ CenturyLink argued that even though the CWA is not a competitor of the Joint Applicants, it may represent not only the employees of the Joint Applicants, but also the employees of other telecommunications companies, who are competitors of the Joint Applicants. CenturyLink also argued that disclosure of certain highly confidential information to CWA without limits would result in a bargaining disadvantage and risk of economic harm to the Joint Applicants, and confer an advantage on the CWA in its dealings with the Joint Applicants outside the scope and litigation of this docket.

10. The Hearing Commissioner agrees with the arguments presented by CenturyLink. It is true that the CWA is not a direct competitor of the Joint Applicants. On the other hand, the CWA also may be in a position to use certain highly confidential information to its advantage in its dealings with the Joint Applicants outside this docket. The Hearing Commissioner also notes that the order issued by the Arizona Corporation Commission does not specify the information for which highly confidential treatment was denied. Finally, while an order issued by another state utility commission may be persuasive, the Commission is not bound by that order. The

¹ See *Reply of CenturyLink, Inc., to CWA's Response to Motion for Protective Order Affording Extraordinary Protection For Highly Confidential Information and Documents*, dated August 17, 2010.

Hearing Commissioner finds that the two-tiered treatment of highly confidential information proposed by the Joint Applicants in the Motion is appropriate as to the CWA and will therefore grant that aspect of the Motion.

B. DoD/FEA

11. In its response, DoD/FEA argues that its in-house counsel should be granted access to both proposed levels of highly confidential information. DoD/FEA further argues it is a federal government entity and a customer of the Joint Applicants, not a competitor. DoD/FEA states that it is represented exclusively by its in-house counsel responsible only for its regulatory litigation matters. DoD/FEA contends that, because of its governmental status, non-competitive relationship to the Joint Applicants, and its internal compartmentalization, any perceived risks or conflicts and incentives to abuse the protected status of highly confidential information are non-existent. DoD/FEA argues that its in-house counsel and in-house litigation staff are not unlike the Commission, Staff (advisory and trial), or the OCC. DoD/FEA cites to an order issued by the Washington Utilities and Transportation Commission in support of this argument.

12. On September 20, 2010, the Joint Applicants filed a Motion for Leave to File Reply to DoD/FEA's Response and a Reply to DoD/FEA's Response. As a preliminary matter, the Hearing Commissioner finds that the arguments made by the Joint Applicants in its Reply will be useful in ruling on the merits of the matter. The Hearing Commissioner therefore grants the Motion for Leave to File Reply to DoD/FEA's Response and waives response time thereto.

13. In their Reply, the Joint Applicants state they do not oppose DoD/FEA's in-house counsel and in-house litigation staff obtaining access to Attachment PUC 6-2 and to Attachment PUC 6-3(a), given the uniqueness of its compartmentalized organization. The Joint Applicants continue to oppose DoD/FEA's in-house counsel and in-house litigation staff

obtaining access to Attachment PUC 6-3(b). The Joint Applicants argue that there are differences in the treatment of highly confidential information in Colorado and Washington and that DoD/FEA's reliance on an order issued by the Washington commission is therefore misplaced. Further, the Joint Applicants argue that DoD/FEA is different from Staff or the OCC, since it is not appointed to carry out the provisions of the public utilities law or to protect the interests of consumers in Commission proceedings. The Joint Applicants finally state that DoD/FEA is a large customer that purchases telecommunications services, often pursuant to negotiated special contracts, and the fact that it is a federal government agency does not entitle it to unlimited disclosure of highly confidential information.

14. The Hearing Commissioner finds the two-tiered treatment of highly confidential information proposed by the Joint Applicants in their Motion is excessive as to DoD/FEA and that DoD/FEA's in-house counsel and litigation staff should be permitted access to Attachment PUC 6-2, Attachment PUC 6-3(a), and Attachment PUC 6-3(b), subject to an appropriate non-disclosure agreement. The Hearing Commissioner will therefore deny the Motion, in part. The Hearing Commissioner finds that the unique status of DoD/FEA and its compartmentalized organization will provide sufficient assurances that its in-house counsel will not be able to use the highly confidential information obtained in this proceeding, in negotiating special contracts for telecommunications services or otherwise.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to File Reply filed on September 20, 2010 by CenturyLink, Inc. and Qwest Communications International, Inc. (Joint Applicants) is granted and response time thereto is waived.

2. The Motion for protective order filed by the Joint Applicants on September 20, 2010 is granted, in part, and denied, in part, consistent with the discussion above.
3. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

Hearing Commissioner

ATTEST: A TRUE COPY

A handwritten signature in black ink that reads "Doug Dean".

Doug Dean,
Director

CERTIFICATE OF SERVICE
UM-1484

I certify that on October 5, 2010, a true and correct copy of CenturyLink and Qwest's Response to Joint CLECs Motion to Compel in Docket UM-1484 was served on the following parties via electronic mail and where paper service is not waived, by U.S. mail:

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