

September 17, 2010

DARLYNE T. DE MARS
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Oregon Public Utility Commission
Attn: Filing Center
550 Capital Street NE #215
Salem, OR 97301-2551

**Re: UM 1484 CenturyLink/Qwest
Motion of Sprint to Certify Questions to Commission**

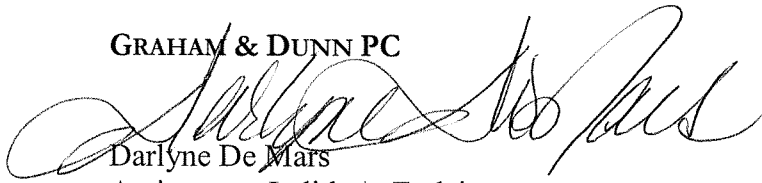
Dear Filing Center:

Enclosed for filing are an original and five copies of Sprint's Motion to Certify Questions to Commission.

Should you have any questions concerning this submission or need additional information, please contact me at the number listed above. Thank you for your assistance.

Very truly yours,

GRAHAM & DUNN PC



Darlyne De Mars
Assistant to Judith A. Endejan

DTD/
Enclosures

M42299-1457488

OF OREGON

) Docket No. UM 1484
)
) MOTION TO CERTIFY QUESTIONS TO
) COMMISSION
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(collectively, “Sprint”), pursuant to OAR 860-014-0091, moves for certification of the following question to the Public Utility Commission.

Question 1: Whether the Administrative Law Judge erred in denying Sprint’s motion to compel responses by CenturyLink, Inc. (“CenturyLink”) and Qwest Communications, Inc. (“Qwest”) to discovery requests 13 and 14 regarding the interstate switched and special access charges respectively for each CenturyLink and Qwest entity in the state imposed on each of the affiliated long distance providers in the state?

To help examine the proposed merger's effect on competition, it is important to determine the amount of revenues from switched and special access that the applicants are currently paying each other. Sprint argued in its motion to compel (attached hereto and incorporated herein) that answers to these data requests will allow an analysis of merger

MOTION OF SPRINT NEXTEL CORPORATION TO
CERTIFY QUESTIONS TO COMMISSION

savings that will be generated as these access charge payments will become intra-company payments rather than payments from Qwest entities to CenturyLink entities and vice versa.

The ALJ denied Sprint's motion reasoning the separate affiliate requirements for the ILEC and IXC arms of CenturyLink and Qwest mitigate any potential of harm caused by the merger. Sprint respectfully disagrees with the ALJ ruling. While CenturyLink and Qwest IXCs are separate affiliates and will continue paying access charges to the ILEC affiliates of CenturyLink and Qwest, there is no denying the fact that each of these affiliates will be all part of the same corporate parent that has consolidated books and results that will be reported publicly. Payment of interstate access charges from one corporate affiliate to another results in an expense on one affiliate's books and revenue on the other's. Whereas, for example, the pre-merger payments made by Qwest's IXC to CenturyLink ILECs for switched and special access were expenses and revenues flowing up to two separate publicly traded holding companies, those very same payments in a post-merger scenario will roll up to the identical post-merger publicly traded holding company. In the post-merger scenario, competition can be affected as the Qwest IXC access expense to a CenturyLink ILEC is internalized in the holding company structure and the Qwest IXC has an enhanced ability to reduce prices or increase investment to the detriment of its competitors. The separate affiliate requirements cited in the ALJ's Order do not change that fact.

Sprint filed a similar motion to compel related to the identical data requests in the Merger proceeding before the Washington Utilities and Transportation Commission. There, the ALJ granted Sprint's motion to compel data requests 13 and 14 over the identical objections made by CenturyLink and Qwest here and noted that "[s]taff suggested, and rightly

so, that the merger's impact on access charges and competition is within the purview of our examination."¹ The Washington Motion to Compel Order is attached hereto.

The Oregon Commission's "no harm" standard in reviewing mergers requires the Commission to review whether the proposed merger will have an adverse impact on competition. An important inquiry on the merger's impact on competition is an analysis of the payments which are now payments between entities that roll up to two separate publicly traded companies and which will become intra-holding company payments. Answers to Sprint's data requests 13 and 14 will inform that analysis.

For the reasons stated herein, it is appropriate for the Administrative Law Judge to certify this question to the Commission for consideration.

RESPECTFULLY SUBMITTED this 17th day of September, 2010.

GRAHAM & DUNN PC



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¹ *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 UT-100820, Order 09 (Sept. 10, 2010) ("Washington Motion to Compel Order"), p. 8, ¶ 21. The Washington Motion to Compel Order also acknowledged that since the applicants agreed to provide interstate revenue data in response to Sprint data request 5, then it is wrong for applicants to argue that interstate data in response to requests 13 and 14 cannot also be produced.

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1484

In the Matter of)	Docket No. UM 1484
CENTURYLINK, INC.)	
Application for Approval of Merger between	)	MOTION OF SPRINT NEXTEL
CenturyTel, Inc. and Qwest Communications	)	CORPORATION TO COMPEL FULL
International, Inc.	)	RESPONSES TO DATA REQUESTS
)	
)	
)	

A. MOTION TO COMPEL

Pursuant to OAR 860-013-0031 and OAR 860-014-0070(3), Sprint Nextel Corporation ("Sprint") hereby respectfully moves to compel responses by Qwest Communications International, Inc. ("QC" or "Qwest") and CenturyTel, Inc. ("CenturyLink") to data requests ("DRs") numbers 5, 13, 14 and 41 propounded by Sprint in this proceeding. The data requests which are the subject of this motion are attached hereto as Appendix A. In general, these requests seek information relevant to the competitive impact of a QC and CenturyLink merger including synergy information. Given that intervenor testimony is due on August 25, 2010, Sprint requests expedited consideration pursuant to OAR 860-013-0050.

**B. CERTIFICATION OF CONFERENCE WITH OPPOSING COUNSEL TO
RESOLVE DISPUTES PURSUANT TO OAR 860-014-0070(3)**

Sprint has made a good-faith effort to resolve these matters informally by conferring with counsel CenturyLink and QC on August 4, 2010 in a telephonic exchange. Thereafter,

on August 5, 2012 Sprint circulated a memo recapping the results of the discovery conference, which resulted in some compromises in what Sprint was requesting and in what QC and CenturyLink agreed to provide. The parties exchanged subsequent email exchanges in the following days in an attempt to narrow the disputes further but issues remain with respect to four data requests, DRs 5, 13, 14, and 41, which Sprint needs responses to in order to complete its analysis and prepare its testimony for this docket. However, Sprint has not received responses to various other DRs promised by QC and CenturyLink as a result of the attempts to narrow the disputes. These include responses to DRs 3, 6, 12, 17, 24, 27, 28, 29, 32-36, 44 and 47. Sprint reserves its rights to bring an additional motion to compel on the above-identified DRs if no responses are forthcoming or the responses are unsatisfactory.

C. ARGUMENT

1. BACKGROUND.

Sprint is certificated as a competitive local exchange carrier (“CLEC”) and an interexchange carrier (“IXC”) by the Commission and currently provides local, intraexchange and interexchange telecommunications services in the State of Oregon. Sprint’s wireless affiliates are licensed by the Federal communications Commission (“FCC”) and provide wireless telecommunications services in Oregon. In its capacities as a CLEC, IXC and wireless carrier, Sprint is a customer of, and a competitor to, QC and CenturyLink.

On May 24, 2010, QC and CenturyLink and their respective subsidiaries and affiliates filed a joint application for expedited approval with the Commission of the indirect transfer of control of QC’s operating subsidiaries, Qwest Corporation, Qwest LD Corp. and Qwest Communications Company, LLC to CenturyLink. Sprint was allowed to intervene in this matter on June 28, 2010.

To provide telecommunications services to its customers in Oregon, Sprint purchases services from both QC and CenturyLink pursuant to interconnection agreements and tariffs. The telecommunications services Sprint offers in Oregon also compete with the Qwest and CenturyLink service offerings. Thus, whether the merger of QC¹ and CenturyLink is approved by the Commission as being in the public interest will affect Sprint both as a customer and competitor of the companies.

2. **THE INFORMATION SPRINT SEEKS IS RELEVANT TO THE COMMISSION'S PUBLIC INTEREST DETERMINATION.**

The Commission, in making its public interest determinations in approving a change of control transaction, should consider the impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition. To determine this impact on competition, parties like Sprint need to develop a factual record on issues such as competitive harm and possible benefits. For instance, the Commission may find that to cure the harm to competition posed by the merger it will require the companies to reduce access rates to spur competition as the FCC and this Commission continually have stressed. Access rates and revenues directly impact competition at the wholesale and retail level and are therefore squarely relevant to this investigation. While QC and CenturyLink may not want access charges to be considered in the context of this merger approval, they are relevant in reviewing the merger. Information regarding access revenues is relevant to determine whether and to what degree access savings by and between CenturyLink

¹ See, In the Matter of United Telephone Company of the Northwest d/b/a/ Embarq Application for Authority to Sell a Building Located in Hood River, Order No. 08-617, Docket No. UP 247 (2008). See also, In the Matter of United Telephone Company of the Northwest, d/b/a/ Sprint Application for Approval of the Sale of a Building Located in Hood River, Oregon, Order No. 02-466; Docket No. UP 195 (2006).

and QC should be shared with access customers like Sprint. Nonetheless, QC and CenturyLink have refused to provide complete responses to Sprint data requests on this topic.

3. **DATA REQUEST NO. 5.**

In this request, Sprint seeks revenues for various services provided over the networks operated by QC and CenturyLink in Oregon. Sprint agreed to narrow its request such that QC and CenturyLink not be required to provide revenue numbers for specific services. But Sprint is still interested in obtaining information on total revenues produced by QC and CenturyLink networks in the state. As discussed above, such information is relevant to the Commission's broad public interest determinations that include examining the impact on competition at the wholesale and retail levels. DR 5 asks for total revenues and QC and CenturyLink agreed to provide only intrastate revenue. Limiting Sprint's analysis to only intrastate revenues does not allow for a complete analysis of the competitive impact of the merger, as both CenturyLink and QC provide multiple services over the same network used for interstate and intrastate service. Moreover, access to total revenues will allow the Commission to determine the overall impact that any access reductions may have on the future combined companies. Therefore, total revenues including interstate revenues from Oregon services are relevant to a determination of the competitive impact of the merger and they should be produced.

4. **DATE REQUESTS 13 AND 14.**

These data requests seek interstate switched access charges and total special access charges for QC and CenturyLink imposed upon each of the affiliated IXC that will be part of the proposed merger. These entities maintain their objections to providing access charge information. Yet, this information is relevant and likely to lead to admissible evidence regarding the impact on competition at the wholesale and retail level. Responses to these requests should be required because they 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 QC entities to CenturyLink entities and vice versa. Any access savings can impact competition as QC and CenturyLink will be able to utilize the savings to develop and market competitive alternatives in the marketplace with which carriers like Sprint must compete. Moreover, an answer to this request will give specific insight into the calculation of synergies resulting from the transaction in Oregon.

The fact that the Commission does not regulate interstate switched access charges and special access charges is not material to the consideration of the proposed merger's impact on competition as a whole in Oregon. Knowledge of the entire scope of savings of the Oregon affiliates of QC and CenturyLink will inform the Commission's competitive analysis. Savings that QC and CenturyLink generate from services the Commission does not regulate still have an impact on the merged company's ability to impact competition in areas the Commission does regulate and will provide insight into synergy calculations. Given the Commission's broad public interest standard, the requests seeking interstate switched access charges and special access charges imposed upon the QC and CenturyLink affiliates must be compelled.

5. DATE REQUEST 41.

This request seeks the number of local access lines and total revenues from those lines that Qwest and its affiliates have in CenturyLink territories in Oregon. Qwest provided a limited response to #41 designated as "confidential." The confidential response puts access line and territory limitations on the investigation Qwest did to determine if it served customers within the CenturyLink ILEC territory in Oregon. This limitation unnecessarily limits Qwest's response as no such limitations were placed in DR 41. Sprint believes that

Qwest should undertake the necessary investigation in the context of discovery to determine if it serves customers in CenturyLink territory, and if so, it should provide how many access lines and the revenues from those access lines without putting limitations on Qwest's investigation. It is not unduly burdensome for an entity to identify the number of access lines it has in a particular state and the revenues from those lines. Such records are routinely kept. This request is relevant as it will be helpful in determining the merger's impact on actual competition in the state. If the merger is approved, actual or potential Qwest competitive entry into CenturyLink territories and actual or potential CenturyLink competitive entry into Qwest territory will disappear. The two parties will not be helpful in constraining prices and promoting competition in the other's territory. Revenue and customer counts for the competitive ventures of Qwest and CenturyLink are crucial in analyzing the merger's impact upon competition in Oregon. For the reasons previously expressed, this response is relevant and should be provided in order to develop testimony to inform the Commission of the full competitive impact of the proposed merger.

D. CONCLUSION

The Commission has recognized that “[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.” *Re PGE*, OPUC Docket No. UE 102, Order No. 98-294 at 3 (July 16, 1998); *see* OAR § 860-011-0000(3). ORCP 36B(1) allows broad discovery of information “regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery” The Oregon courts and the Commission have interpreted this provision to mean that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence. *Baker v. English*, 324

261, Order No. 91-958 at 5 (July 31, 1991). In addition, when the courts have limited the scope of discovery, restrictions typically have been directed at the use of, rather than the acquisition of, the information sought. *Vaughan v. Taylor*, 79 Or. App. 359, 365 (1986). The Commission rules do not impose any additional limitations on the scope of discoverable information. OAR §§ 860-014-0070, 860-011-0000(3).

The data requests at issue in this motion (numbers 5, 13, 14 and 41) clearly satisfy the broad standard for discovery and this motion should be granted. Sprint reserves its rights to bring an additional motion to compel DRs 3, 6, 12, 17, 24, 27, 28, 29, 32-36, 44 and 47 if no responses are forthcoming or the responses are unsatisfactory.

RESPECTFULLY SUBMITTED this 16th day of August, 2010.

GRAHAM & DUNN PC


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APPENDIX A

Oregon
UM - 1484
Sprint Nextel 1-05

INTERVENOR: Sprint Nextel

REQUEST NO: 05

Please provide the total revenues generated per legal filing entity for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state. In addition please respond to the following revenue questions:

- a. For each ILEC or ILEC affiliate provide total revenue for broadband Internet access (include the underlying transport, e.g., DSL and the ISP service) for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- b. For each ILEC or ILEC affiliate provide total revenue for wireless service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- c. For each ILEC or ILEC affiliate provide total revenue for long distance service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- d. For each ILEC or ILEC affiliate provide total revenue for any products or services provided outside the ILEC serving territory for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- e. For each ILEC or ILEC affiliate provide total revenue for video entertainment, cable television, video satellite dish or comparable service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- f. For each ILEC or ILEC affiliate provide total revenue for residential and business customer premises equipment for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- g. For each ILEC or ILEC affiliate provide total revenue for other services such as maintenance contracts, consulting services, security services or comparable services for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
- h. For each ILEC or ILEC affiliate provide total revenue for LAN, WAN or other comparable private network service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.

RESPONSE:

Qwest objects to subparts a-h of this request because they are not reasonably calculated to lead to the discovery of admissible or relevant evidence.

Subject to and without waiving its objections, please see Attachment A.

Respondent: Joyce McDonald, Lead Finance Business Analyst

Oregon
Docket No. UM-1484
Response to Sprint Data Request No. 5
Response Date: July 22, 2010

5. Please provide the total revenues generated per legal filing entity for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state. In addition please respond to the following revenue questions:
- a. For each ILEC or ILEC affiliate provide total revenue for broadband Internet access (include the underlying transport, e.g., DSL and the ISP service) for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - b. For each ILEC or ILEC affiliate provide total revenue for wireless service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - c. For each ILEC or ILEC affiliate provide total revenue for long distance service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - d. For each ILEC or ILEC affiliate provide total revenue for any products or services provided outside the ILEC serving territory for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - e. For each ILEC or ILEC affiliate provide total revenue for video entertainment, cable television, video satellite dish or comparable service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - f. For each ILEC or ILEC affiliate provide total revenue for residential and business customer premises equipment for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - g. For each ILEC or ILEC affiliate provide total revenue for other services such as maintenance contracts, consulting services, security services or comparable services for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.
 - h. For each ILEC or ILEC affiliate provide total revenue for LAN, WAN or other comparable private network service for the years ending 12-31-08 and 12-31-09 and the most recently available month-end for YTD 2010 within the state.

RESPONSE: CenturyLink objects to subparts a, b, c, e, f, g, and h this request because they are not reasonably calculated to lead to the discovery of admissible or relevant

evidence. The products and services indicated in those subparts – broadband, wireless, long distance, video, customer premises equipment, and maintenance services – are not regulated by the Commission, and as such the revenues related to those services and products are not relevant to any issue in this proceeding. For subsection d, CenturyLink objects because the request is overbroad. Only the intrastate revenue for services regulated by the Commission is relevant to the Commission's consideration of this matter. Subject to and without waiving its objections, the 12-31-08 and 12-31-09 intrastate revenues for CenturyTel of Oregon, Inc. d/b/a CenturyLink, CenturyTel of Eastern Oregon, Inc d/b/a CenturyLink, and United Telephone Company of the Northwest d/b/a CenturyLink are included in the companies' annual Commission reports provided in response to Sprint Request 18.

Respondent: John Felz, CenturyLink Director Regulatory Operations

Oregon
UM - 1484
Sprint Nextel 1-013

INTERVENOR: Sprint Nextel

REQUEST NO: 013

Provide the interstate switched access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger. (e.g., total interstate switched access charges Qwest charged CenturyLink affiliated IXC, total interstate switched access charges CenturyLink charged Qwest affiliated IXC, etc.) Provide the charges separately by IXC and by ILEC legal entity.

RESPONSE:

Qwest objects to this request because it is not reasonably calculated to lead to the discovery of admissible or relevant evidence. As noted in the Application and in CenturyLink's and Qwest's testimony, the proposed transaction will not change the corporate identities of the CenturyLink or Qwest companies that assess access charges, nor the tariffs underlying those charges. This request is simply designed to "fish" for information that might be used in advocating positions on issues that are clearly outside the scope of this proceeding (i.e., adjustments to access charges). Moreover, switched access is an industry-wide issue, and thus it is inappropriate to address switched access for the merging entities alone. Further, any attempt by the merged company to adjust access charges would have to be separately submitted to, and approved by, the Commission. Finally, review of or adjustments to access charges have not been considered proper areas of inquiry in Commission dockets reviewing telecommunications merger/acquisition transactions. See, most recently, the Commission orders in Dockets UM 1416 (CenturyTel/Embarq merger) and UM 1431 (Frontier/Verizon sale), neither of which address or adjust access charges.

Subject to and without waiving these objections, Qwest responds as follows:

Qwest and each of its affiliates pay and receive payment from CenturyLink and each of its affiliates for interstate switched access services pursuant to the tariffs filed by each entity with the Commission.

Respondent: Legal, Qwest

Oregon
Docket No. UM-1484
Response to Sprint Data Request No. 13
Response Date: July 22, 2010

Attachment 1
Sprint Motion Certify Questions to
Commission

13. Provide the interstate switched access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger. (e.g., total interstate switched access charges Qwest charged CenturyLink affiliated IXC, total interstate switched access charges CenturyLink charged Qwest affiliated IXC, etc.) Provide the charges separately by IXC and by ILEC legal entity.

OBJECTION:

CenturyLink objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant. As noted in the Application and Applicant's testimony, the proposed transaction will not change the corporate identities of the CenturyLink or Qwest companies assessing access charges nor the tariffs implementing those charges. Any attempt by the Applicants to adjust access charges is appropriate only in a separate proceeding and by Commission approval. Review of, or adjustments to access charges have not been considered proper areas of inquiry in Commission dockets reviewing merger/acquisition transactions. See most recently, Commission orders in UM-1416 (CenturyTel/Embarq) and UM-1431 (Frontier/Verizon), neither of which address or adjust access charges.

RESPONSE:

Subject to and without waiving its objections, CenturyLink states that CenturyLink and each of its affiliates pay and receive payment from Qwest and each of its affiliates for intrastate switched access services pursuant to the tariffs filed by each entity with the Commission.

Respondent: John Felz, CenturyLink Director Regulatory Operations

Oregon
UM - 1484
Sprint Nextel 1-014

INTERVENOR: Sprint Nextel

REQUEST NO: 014

Provide the total special access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger. (e.g., total intrastate and interstate special access charges Qwest charged CenturyLink affiliated IXC, total intrastate and interstate special access charges CenturyLink charged Qwest affiliated IXC, etc.) Provide the charges separately by IXC and by ILEC legal entity.

RESPONSE:

Qwest objects to this request because it is not reasonably calculated to lead to the discovery of admissible or relevant evidence. As noted in the Application and in CenturyLink's and Qwest's testimony, the proposed transaction will not change the corporate identities of the CenturyLink or Qwest companies that assess access charges, nor the tariffs underlying those charges. This request is simply designed to "fish" for information that might be used in advocating positions on issues that are clearly outside the scope of this proceeding (i.e., adjustments to access charges). Moreover, special access is an industry-wide issue, and thus it is inappropriate to address special access for the merging entities alone. Further, any attempt by the merged company to adjust access charges would have to be separately submitted to, and approved by, the Commission. Finally, review of or adjustments to access charges have not been considered proper areas of inquiry in Commission dockets reviewing telecommunications merger/acquisition transactions. See, most recently, the Commission orders in Dockets UM 1416 (CenturyTel/Embarq merger) and UM 1431 (Frontier/Verizon sale), neither of which address or adjust access charges.

Subject to and without waiving these objections, Qwest responds as follows:

Qwest and each of its affiliates pay and receive payment from CenturyLink and each of its affiliates for interstate special access services pursuant to the tariffs filed by each entity with the Commission. Qwest's intrastate special access charges can be found in Qwest's Private Line transport Services Catalog, which can be located at:
http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_or_plt_c.htm

Respondent: Lisa Eckert-Hensley, Director, Qwest

Oregon
Docket No. UM-1484
Response to Sprint Data Request No. 14
Response Date: July 22, 2010

14. Provide the total special access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger. (e.g., total intrastate and interstate special access charges Qwest charged CenturyLink affiliated IXC, total intrastate and interstate special access charges CenturyLink charged Qwest affiliated IXC, etc.) Provide the charges separately by IXC and by ILEC legal entity.

OBJECTION:

CenturyLink objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not relevant. As noted in the Application and Applicant's testimony, the proposed transaction will not change the corporate identities of the CenturyLink or Qwest companies assessing access charges nor the tariffs implementing those charges. Any attempt by the Applicants to adjust access charges is appropriate only in a separate proceeding and by Commission approval. Review of, or adjustments to access charges have not been considered proper areas of inquiry in Commission dockets reviewing merger/acquisition transactions. See most recently, Commission orders in UM-1416 (CenturyTel/Embarq) and UM-1431 (Frontier/Verizon), neither of which address or adjust access charges.

RESPONSE:

Subject to and without waiving its objections, CenturyLink states that CenturyLink and each of its affiliates pay and receive payment from Qwest and each of its affiliates for intrastate switched access services pursuant to the tariffs filed by each entity with the Commission.

Respondent: John Felz, CenturyLink Director Regulatory Operations

Oregon
UM - 1484
Sprint Nextel 1-041

INTERVENOR: Sprint Nextel

REQUEST NO: 041

List the number of local access lines and total revenues received from those access lines that Qwest and its affiliates have in CenturyLink ILEC territories in the state.

RESPONSE:

Please see Confidential Attachment A.

Respondent: Robert Brigham, Qwest Staff Director Public Policy

WASHINGTON
Docket No. UT-100820
Sprint Set 1, No. 41
Highly Confidential
Attachment A

[HIGHLY CONFIDENTIAL BEGINS]

Attachment 1
Sprint Motion Certify Questions to
Commission

[ENDS]

[HIGHLY CONFIDENTIAL]

Oregon
Docket No. UM-1484
Response to Sprint Data Request No. 41
Response Date: July 22, 2010

Attachment 1
Sprint Motion Certify Questions to
Commission

41. List the number of local access lines and total revenues received from those access lines that Qwest and its affiliates have in CenturyLink ILEC territories in the state.

RESPONSE:

Please refer to the answers and objections, if any, of Qwest to this request, which are incorporated herein by reference.

Respondent: Legal

**CERTIFICATE OF SERVICE
UM 1484**

I hereby certify that the Motion of Sprint Nextel Corporation to Compel Full Responses to Data Requests was served on the following persons on August 16, 2010, by email to all parties and by U.S. Mail to the parties who have not waived paper service:

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CITIZENS' UTILITY BOARD OF OREGON

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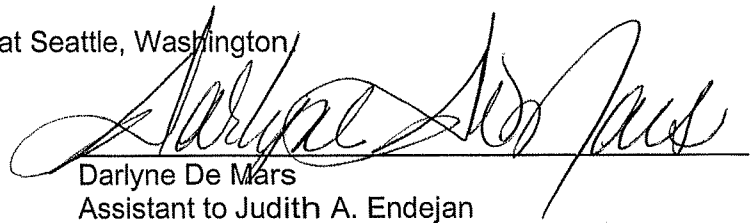
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DATED this 16th day of August, 2010, at Seattle, Washington



Darlyne De Mars
Assistant to Judith A. Endejan

[Service Date September 10, 2010]

**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 ffitch, 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

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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.*

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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.**

CERTIFICATE OF SERVICE **UM 1484**

I hereby certify that the Motion of Sprint to Certify Questions to Commission was served on the following persons on September 17, 2010 by email to all parties and by U.S. Mail to the parties who have not waived paper service:

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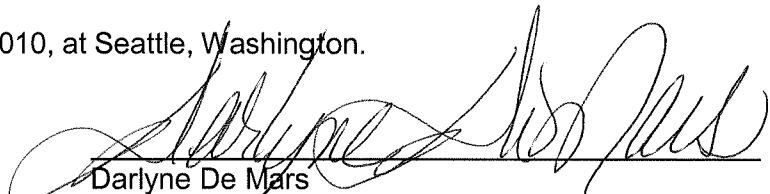
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DATED this 17th day of September, 2010, at Seattle, Washington.



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