

November 11, 2010

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FEDERAL EXPRESS MAIL

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

Re: UM 1484 CenturyLink/Qwest


Dear Commission:

Enclosed for filing pursuant to Order No. 10-291 are an original and five copies of the Petition of Sprint Nextel Corporation for Relief Under Paragraph 10 of Order No. 10-291 and Highly Confidential Exhibits Sprint/5 through Sprint/37. These come from the Supplementary Testimony of James A. Appleby and are filed on behalf of Sprint Nextel Corporation. A non-confidential version of Mr. Appleby's testimony has been filed electronically. Copies of the confidential pages and exhibits will be served on those parties who have executed highly confidential agreements pursuant to Order No. 10-291.

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
Legal Assistant

DTD/
Enclosures

M42299-1487559

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1484**

In the Matter of)	Docket No. UM 1484
)	
CENTURYLINK, INC.)	PETITION OF SPRINT NEXTEL
)	CORPORATION FOR RELIEF UNDER
Application for Approval of Merger between)	PARAGRAPH 10 OF ORDER NO. 10-
CenturyTel, Inc. and Qwest Communications)	291
International, Inc.)	
)	
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A. NATURE OF MOTION

Pursuant to ¶ 10 of the Highly Confidential Protective Order No. 10-291 in this docket (“Protective Order”), Sprint Nextel Corporation (“Sprint”) hereby respectfully requests the following relief:

- That Sprint in-house witness James Appleby be deemed an eligible individual entitled to see highly confidential documents under the Protective Order; and
- That Sprint be allowed to file the Supplemental Responsive Testimony of Mr. Appleby in this docket.

By rulings dated October 5 and November 4, 2010, the ALJ in this matter provided an opportunity for Intervenor to file supplemental responsive testimony regarding late-produced documents from Joint Petitioners Qwest and CenturyLink (“Petitioners”). These documents relate to the Hart-Scott-Rodino Act (“HSR documents”) that Petitioners have deemed highly confidential.

Under the Protective Order, therefore, Mr. Appleby is not deemed eligible to review these HSR documents because he is an in-house expert.

Mr. Appleby has been allowed to view these HSR documents in the Minnesota merger proceeding, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, OAH Docket No. 11-2500-21391-2; MPUC Docket No. P-421-et al./PA-10-456 (“Minnesota proceeding”). Mr. Appleby filed testimony regarding his review of the HSR documents in the Minnesota proceeding on October 22, 2010.

Mr. Appleby also filed testimony based upon his review of the HSR documents in the Washington merger proceeding, *In the Matter of Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC and Qwest LD Corp.*, Docket No. UT-100820.

Mr. Appleby is precluded from filing testimony in Washington by virtue of Order No. 1 in Docket No. UT-100820, a protective order with “highly confidential” provisions similar to those in Order No. 10-291. However, in Washington, counsel for the Petitioners stipulated to allow Sprint to file this testimony without violating the protective order (Endejan Declaration ¶ 2, Exhibit A).

Sprint now requests relief from this Commission to allow Mr. Appleby to submit testimony substantially similar to his Washington and Minnesota testimony and that this motion be considered on an expedited basis, due to the November 12, 2010 deadline for filing his testimony, and the upcoming hearings. Sprint’s interests will not be adequately represented in this proceeding unless Mr. Appleby is permitted to file the attached testimony.

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B. BASIS FOR MOTION

Mr. Appleby should not be precluded from testifying about highly confidential documents that he has already seen by virtue of the Minnesota proceeding. It follows, therefore, that he should not be precluded from reviewing and using these documents for the preparation and filing of testimony in this case. Paragraph 10 of Order No. 10-291 allows the Commission to provide access to highly confidential documents to a non-eligible individual such as Mr. Appleby if it is “necessary in order to adequately represent the party’s interest in the proceeding.”

Mr. Appleby is the only Sprint witness who has had access to the HSR documents. No other Sprint witness can provide the testimony that Mr. Appleby can provide. Sprint has no outside expert witness. He should not be precluded from providing valuable information to this Commission by virtue of a technicality in the Protective Order.

Counsel for Sprint attempted to work out a stipulation with the Petitioners similar to that in Washington but the Petitioners refused to do so. (Endejan Declaration, ¶ 4). Sprint did not request the Petitioners to stipulate to the admissibility of Mr. Appleby’s testimony but rather to stipulate that as an in-house expert witness he be allowed to review and use highly confidential documents in this testimony. That is all this motion seeks. This is only fair and reasonable given the fact that Mr. Appleby has already been allowed to review and testify about the very same HSR documents at issue in this case in two other proceedings.

Attached hereto is a copy of the testimony that Mr. Appleby seeks to submit in Oregon.¹

Mr. Appleby's testimony addresses important issues relevant to this merger review. Mr. Appleby's review of internal HSR documents reveals that the companies themselves anticipate substantially increased market power due to new revenue opportunities and the "owners' economics" that the merged firm will experience. These economics allow the merged firm to avoid significant costs that the competitors must bear.

Neither Qwest nor CenturyLink will be prejudiced because whatever competitive harm they might suffer from "allowing Mr. Appleby to see the HSR documents" has already been suffered because he has seen the documents in two other proceedings. In contrast, this Commission will be denied access to very relevant information about the true competitive impacts of the merger, which is critical to its assessment of the merits of the merger. Sprint will be deprived of the opportunity to present this testimony important to its positions in this case.

Counsel for CenturyLink in a letter dated October 26, 2010 stated that "CentruryLink authorizes Sprint to use in this docket (UM-1484) the responses provided to it in the parallel Washington merger case. ... Specifically, CenturyLink authorizes the use of CenturyLink's responses to Staff's Discovery Request No. 13 in the Docket No. UT-100820, which consisted of CenturyLink's Hart-Scottt-Rodino (HSR) filing." Preventing Sprint from providing the testimony of Mr. Appleby would frustrate the purpose for allowing Sprint "to use in this docket the responses provided to it" in Washington.

¹ A public or redacted version has been filed with this motion and only those authorized to receive highly confidential information pursuant to Order No. 10-291 have been served with copies.

Furthermore, if Sprint is not allowed to file Mr. Appleby's testimony in this case Sprint will have to enter the records discussed by Mr. Appleby into the record through cross-examination of Qwest and CenturyLink witnesses. This will lengthen the hearing time and provide the Commission with a less focused analysis of the significance of these HSR records.

Due to the time frame created by the ALJ's ruling, Sprint was compelled to file this motion in order to provide timely testimony by November 12, 2010.

The public interest will be served best by full and complete record regard regarding this major merger including its impacts on competition. The HSR documents, now that they are fully produced, have a direct bearing on this issue.

Therefore, pursuant to paragraph 10 of the Highly Confidential Protective Order, Sprint should be allowed to have Mr. Appleby be deemed an individual eligible to review highly confidential documents and to provide testimony based upon this review in this docket.

RESPECTFULLY SUBMITTED this 9th day of November, 2010.

GRAHAM & DUNN PC



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**CERTIFICATE OF SERVICE
UM 1484**

I hereby certify that the Petition of Sprint Nextel Corporation for Relief Under Paragraph 10 of Order No. 10-291 was served on the following persons on November 11, 2010, by email to all parties and by U.S. Mail to the parties who have not waived paper service:

**W=Waive Paper
service**

**C=Confidential
HC=Highly Confidential**

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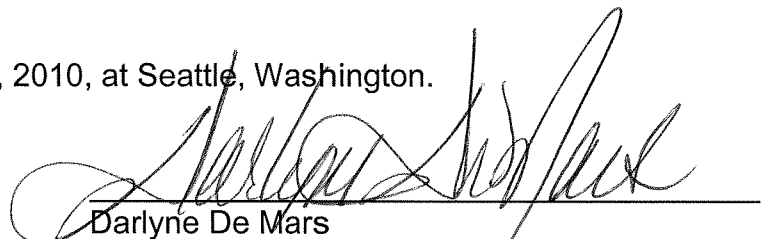
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DATED this 11th day of November, 2010, at Seattle, Washington.



Darlyne De Mars
Assistant to Judith A. Endejan

**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)	DECLARATION OF JUDITH A.
CenturyTel, Inc. and Qwest Communications)	ENDEJAN IN SUPPORT OF PETITION
International, Inc.)	OF SPRINT NEXTEL CORPORATION
)	FOR RELIEF UNDER PARAGRAPH 10
)	OF ORDER NO. 10-291
)	
)	
)	

I, Judith A. Endejan, declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am an adult resident of the State of Washington and am competent to testify herein. I represent Sprint Nextel Corporation in the above docket.

2. Attached hereto as Exhibit A is a true and correct copy of a stipulation filed with the Washington Utilities and Transportation Commission on November 4, 2010 in Docket No. UT-100820 that allowed Sprint to file the testimony of its witness James A. Appleby regarding his review of the Hart-Scott-Rodino ("HSR") documents.

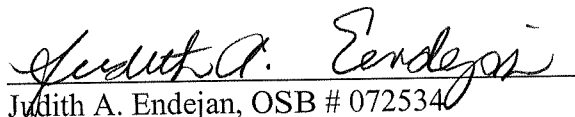
3. I contacted counsel for the Joint Applicants, Qwest and CenturyLink, requesting a stipulation that would allow Mr. Appleby to review the HSR documents, which had been designated as highly confidential, in this docket so that he might file responsive

testimony similar to that filed in Washington. The Joint Applicants refused to enter into this stipulation.

4. Attached hereto as Exhibit B are true and correct copies of the email exchanges between me and counsel for the Joint Applicants.

Executed this 9th day of November, 2010 in Seattle, Washington.

GRAHAM & DUNN PC



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Exhibit A -- Declaration of Judith A. Endejan In
Support of Sprint Nextel Corporation's Petition
for Relief Under ¶ 10 of Order No. 10-291

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

QWEST COMMUNICATIONS
INTERNATIONAL INC. AND
CENTURYTEL, INC.

For Approval of Indirect Transfer of control of
Qwest Corporation, Qwest Communications
Company LLC, and Qwest LD Corp.

) Docket No. UT-100820

) STIPULATION TO ALLOW FILING OF
) SPRINT NEXTEL CORPORATION AND
) CHARTER FIBERLINK WITNESS
) TESTIMONY BASED UPON
) MINNESOTA MERGER PROCEEDING

- 1 On October 29, 2010 Sprint Nextel Corporation ("Sprint") filed a motion for permission to file in this proceeding the supplemental testimony of Sprint witness James A. Appleby based upon similar testimony he filed on October 22, 2010 in *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, OAH Docket No. 11-2500-21391-2; MPUC Docket No. P-421, et al./PA-10-456 ("Minnesota Proceeding") relating to the Hart-Scott-Rodino Act documents (HSR documents) produced by Qwest Communications International Inc. and CenturyTel, Inc. ("Joint Applicants").
- 2 Because Mr. Appleby is an in-house expert he is precluded from seeing documents designated as "Highly Confidential" by Par. 14 of ORDER 01 (AMENDED Protective Order with "Highly Confidential" Provisions), which limits access to one or more outside counsel and one or more outside consultants. However, the Joint Applicants have agreed that Mr. Appleby may be allowed to file testimony in this docket based upon his testimony in the

STIPULATION TO ALLOW FILING
OF SPRINT NEXTEL CORPORATION AND CHARTER FIBERLINK
WITNESS TESTIMONY BASED
UPON MINNESOTA MERGER PROCEEDING

-- UT-100820

Minnesota Proceeding because he has been allowed to see and use the HSR documents in the Minnesota Proceeding. The Joint Applicants' agreement does not waive the Highly Confidential designation for the HSR documents or that they agree that any other in-house expert or in-house counsel from any other intervenor can review the HSR documents. In exchange for the Agreement of the Joint applicants Sprint agrees to strike its pending Motion and to treat the HSR documents referred to in Mr. Appleby's testimony as Highly Confidential pursuant to Order 01 in this docket.

- 3 Joint Applicants have also received a similar request from Charter FiberLink in connection with the testimony of Mr. Billy Pruitt. Joint Applicants have reached the same agreement with Charter FiberLink as described in paragraph 2 above.

GRAHAM & DUNN PC



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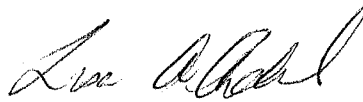
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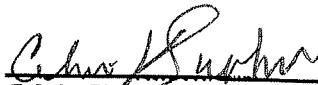
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STIPULATION TO ALLOW FILING
OF SPRINT NEXTEL CORPORATION AND CHARTER FIBERLINK
WITNESS TESTIMONY BASED
UPON MINNESOTA MERGER PROCEEDING

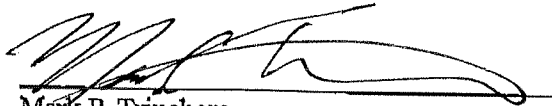
-- UT-100820



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On behalf of Charter Communications. FIBERLINK

STIPULATION TO ALLOW FILING
OF SPRINT NEXTEL CORPORATION
WITNESS TESTIMONY BASED
UPON MINNESOTA MERGER PROCEEDING

-- UT-100820

Exhibit B -- Declaration of Judith A. Endejan In
Support of Sprint Nextel Corporation's Petition
for Relief Under ¶ 10 of Order No. 10-291

Endejan, Judith A.

From: Hendricks, Tre E [Tre.Hendricks@CenturyLink.com]
Sent: Tuesday, November 09, 2010 9:44 AM
To: Endejan, Judith A.; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com; marktrinchero@dwt.com; KCHalm@dwt.com
Cc: alex.duarte@qwest.com; Lisa.Anderl@qwest.com; Simshaw, Cal K
Subject: RE: Qwest and CenturyTel - UT-100820

Judy, Qwest and CenturyLink are not willing to enter into a stipulation as they did in WA. The companies believe it would be inconsistent to agree to the admission of the testimony on the grounds that the witness has seen the documents in other states when there are additional valid grounds in Oregon to object to the testimony as it is written. Also, I agree it would not be appropriate for CenturyLink to rewrite Sprint's testimony. I would however consider any revisions Sprint might offer to address the concerns I raise in the email below regarding the scope of the case in Oregon. The companies of course retain the right to argue that the witness cannot use the HSR in Oregon or to move to strike all or portions of the testimony if Sprint files it. I am sorry I don't have a better answer for you. Let me know if you would like to discuss further. Thanks! Tre

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IMPORTANT NOTICE: This e-mail message is from a lawyer and is intended to be delivered only to persons entitled to receive the private information it may contain. E-mail messages to clients dealing with substantive matters presumptively contain information that is private and legally privileged; similar substantive e-mail messages to those outside of CenturyLink, Inc. are normally private and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back to the initial sender and delete it completely from your computer system.

From: JEndejan@GrahamDunn.com [mailto:JEndejan@GrahamDunn.com]
Sent: Tuesday, November 09, 2010 9:28 AM
To: Hendricks, Tre E; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com; marktrinchero@dwt.com; KCHalm@dwt.com
Cc: alex.duarte@qwest.com; Lisa.Anderl@qwest.com; Simshaw, Cal K
Subject: RE: Qwest and CenturyTel - UT-100820

Dear Tre, Sprint would like some clarification about your e-mail below. We did not request that you stipulate to the admission of Jim Appleby's testimony. Rather, as we did in Washington we asked the Joint Applicants to stipulate that Sprint could file the testimony of Mr. Appleby, as an in-house expert who has seen the HSR documents because of his participation in the Minnesota merger docket proceeding. Technically under the Oregon Protective Order Mr. Appleby would be precluded from using the HSR documents because he is in-house. Sprint does not think it is appropriate for you to request the right to edit its testimony before filing. You can always move to strike portions of the testimony or otherwise object to its admission if you substantively have a basis. Sprint's question is will you object to Mr. Appleby's use of the HSR documents or will you stipulate as your companies did in

11/9/2010

Washington? We would appreciate a prompt response. Thank you. Judy Endejan

From: Hendricks, Tre E [mailto:Tre.Hendricks@CenturyLink.com]

Sent: Monday, November 08, 2010 3:31 PM

To: Endejan, Judith A.; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com; marktrinchero@dwt.com; KCHalm@dwt.com

Cc: alex.duarte@qwest.com; Lisa.Anderl@qwest.com; Simshaw, Cal K

Subject: RE: Qwest and CenturyTel - UT-100820

In light of the Oregon Commission's rulings excluding individual service and rate issues, i.e. access charges and E911 service issues, CenturyLink and Qwest take the position that portions of the Pruitt and Appleby testimony address issues that are beyond the scope of the proceeding. As Judge Arlow opined in the November 3 order denying Sprint's Motion to Certify:

There are innumerable facets to the operation of a large incumbent local exchange carrier that have competitive consequences. Each of these facets change to a greater or lesser extent whenever ILEC entities merge. To try to examine each of them in the context of the merger proceeding would unduly delay the proceedings, burden the record and prevent timely conclusion of the review within the practical time limits such a transaction naturally imposes

In addition, the supplemental testimony is to be strictly limited to HSR documents produced after August 24. Therefore, CenturyLink and Qwest are willing to stipulate to the admission of only portions of the Pruitt and Appleby testimony that clearly related to issues raised by the pertinent HSR documents and that are also germane to the proceeding. CenturyLink and Qwest are not prepared to agree to the admission of the Pruitt and Appleby testimony that reference access charges, single POI per LATA, interconnection surcharges, directory surcharges, or other specific service issues. The companies believe that such testimony is clearly beyond the scope of the proceeding as defined by Judge Arlow in the various orders regarding Sprint's access charge arguments and the interventions of the Lincoln City and Tillamook/Lincoln Counties.

Please let me know if you would like to discuss specific changes to the testimony that would allow us to agree to its admission in Oregon. Thank you! Tre

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11/9/2010

From: JEndejan@GrahamDunn.com [mailto:JEndejan@GrahamDunn.com]
Sent: Monday, November 08, 2010 9:17 AM
To: Hendricks, Tre E; alex.duarte@qwest.com; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com
Cc: Lisa.Anderl@qwest.com; Simshaw, Cal K; marktrinchero@dwt.com; KCHalm@dwt.com
Subject: RE: Qwest and CenturyTel - UT-100820

Good morning Tre and Alex, Have you been able to determine if you will agree to allow Sprint to file Mr. Appleby's testimony in Oregon, as we have done so in Washington? Please let us know as soon as possible. Thank you. Judy Endejan

From: Hendricks, Tre E [mailto:Tre.Hendricks@CenturyLink.com]
Sent: Thursday, November 04, 2010 4:20 PM
To: Endejan, Judith A.; alex.duarte@qwest.com; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com
Cc: Lisa.Anderl@qwest.com; Simshaw, Cal K; marktrinchero@dwt.com; KCHalm@dwt.com
Subject: RE: Qwest and CenturyTel - UT-100820

Hi Judy, I have discussed this with Mark Trinchero also and am running it down. I will try to respond tomorrow. Thanks! Tre

From: JEndejan@GrahamDunn.com [mailto:JEndejan@GrahamDunn.com]
Sent: Thursday, November 04, 2010 4:18 PM
To: Hendricks, Tre E; alex.duarte@qwest.com; Kenneth.Schifman@sprint.com; Kristin.L.Jacobson@sprint.com; James.A.Appleby@sprint.com
Cc: Lisa.Anderl@qwest.com; Simshaw, Cal K; marktrinchero@dwt.com; KCHalm@dwt.com
Subject: FW: Qwest and CenturyTel - UT-100820

Hi Tre and Alex, Sprint would like to file for its supplemental testimony the testimony of Jim Appleby, a Qwest in-house expert, who was allowed to review the confidential HSR documents in the Minnesota proceeding. Your counterparts in Washington have agreed, per the attached stipulation to allow Sprint to file the Appleby testimony in Washington as well. We hope that you would agree as well. Could you please let us know as soon as possible if you agree or if not, why not, so that we can bring the matter to the attention of the ALJ? Thank you very much, Judy Endejan

From: De Mars, Darlyne T.
Sent: Thursday, November 04, 2010 12:17 PM
To: 'records@utc.wa.gov'
Cc: 'aab@aterwynne.com'; 'greg.rogers@level3.com'; 'kristin.l.jacobson@sprint.com'; 'kenneth.schifman@sprint.com'; 'diane.c.browning@sprint.com'; 'Anderl, Lisa'; 'simonf@atg.wa.gov'; 'stephen.melnikoff@hqda.army.mil'; 'kmudge@covad.com'; 'jcameron@utc.wa.gov'; 'michel.nelson@360.net'; 'penny.stanley@360.net'; 'Simshaw, Cal K'; 'kchalm@dwt.com'; 'mark.reynolds3@qwest.com'; 'klclauson@integratelecom.com'; 'rex.knowles@xo.com'; 'william.haas@paetec.com'; 'lyndall.nipps@twtelecom.com'; 'jfalvey@pacwest.com'; 'gregory.merz@gpmlaw.com'; 'michael.moore@chartercom.com'; 'gene.watkins@cbeyond.net'; 'andrew_fisher@comcast.com'; 'marktrinchero@dwt.com'; 'dave.conn@t-mobile.com'; 'mfriedla@utc.wa.gov'; Endejan, Judith A.
Subject: Qwest and CenturyTel - UT-100820

11/9/2010

Attached for filing please find a Stipulation to Allow Filing of Sprint Nextel Corporation and Charter Fiberlink Witness Testimony Based Upon Minnesota Merger Proceeding, Certificate of Service and cover letter. The original will be sent to the WUTC via Federal Express mail.

Darlyne De Mars

Legal Assistant

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Thank you.

11/9/2010

**CERTIFICATE OF SERVICE
UM 1484**

I hereby certify that the Declaration of Judith A. Endejan in Support of Petition of Sprint Nextel Corporation for Relief Under Paragraph 10 of Order No. 10-291 was served on the following persons on November 11, 2010, by email to all parties and by U.S. Mail to the parties who have not waived paper service:

**W=Waive Paper
service**

**C=Confidential
HC=Highly Confidential**

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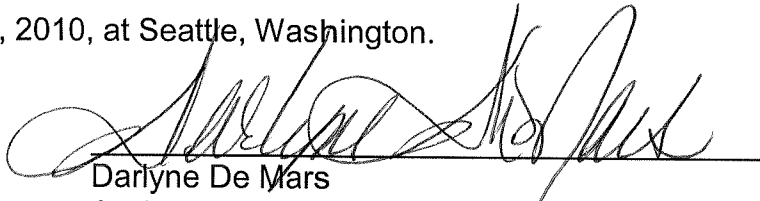
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DATED this 11th day of November, 2010, at Seattle, Washington.



Darlyne De Mars
Assistant to Judith A. Endejan