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Carla M. Butler
Lead Paralegal

August 30, 2006

Annette Taylor
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM 1251

Dear Ms. Taylor:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Supplemental Response Testimony of Rachel Torrence (Qwest/25), Exhibit Qwest/26 (Highly Confidential), and Exhibit Qwest/27, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is fluid and cursive.

Carla M. Butler

CMB:

Enclosures

L:\Oregon\Executive\Duarte\UM 1251 (TRRO)\UM 1251 Transmittal Ltr 8-30-06.doc

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1251**

**IN THE MATTER OF THE INVESTIGATION)
INTO QWEST WIRE CENTER DATA)
_____)**

**SUPPLEMENTAL RESPONSE TESTIMONY
OF
RACHEL TORRENCE
ON BEHALF OF
QWEST CORPORATION**

August 30, 2006

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1 **I. IDENTIFICATION OF WITNESS**

2

3 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH**
4 **QWEST CORPORATION.**

5 A. My name is Rachel Torrence. My business address is 700 W. Mineral Ave., Littleton
6 Colorado. I am employed as a Director within the Network Policy Group of Qwest
7 Services Corporation. I am testifying on behalf of Qwest Corporation and its affiliates
8 (“Qwest”).

9

10 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?**

11 A. Yes, I filed direct testimony in this docket on April 21, 2006 and reply testimony on June
12 16, 2006.

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1 **II. PURPOSE OF SUPPLEMENTAL RESPONSE TESTIMONY**

2
3 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL RESPONSE**
4 **TESTIMONY?**

5 A. The purpose of my supplemental response testimony is to respond to the Declaration of
6 Mr. Cleve Tooker of CDS Networks (“CDS”) that was submitted into evidence by the
7 Joint CLECs.

8 Mr. Tooker’s declaration seeks to clarify CDS’ status as a fiber-based collocator in the
9 Medford wire center. My testimony will provide the proper context under which Qwest
10 believes the Commission should consider the declaration, and will show that based on the
11 criteria the FCC set forth in defining a fiber-based collocator, CDS did indeed qualify as
12 a fiber-based collocator as of the March 11, 2005 *TRRO* effective date.

13
14

1 collocation was still serving customers through September 2005. Highly-Confidential
2 Exhibit Qwest/26 is a list of the 306 working circuits in the collocation as of June 20,
3 2005. This list was pulled by Qwest personnel, when, in the absence of any information
4 from CDS, Qwest needed confirmation that the collocation was still operating and that
5 customers were still being served.² It was not until late September 2005 that Qwest
6 confirmed this collocation was no longer serving customers. Subsequently, Qwest
7 initiated the process for decommissioning of the collocation space, and the collocation
8 was thereafter turned down during the November 2005 time frame and placed on the
9 available collocation inventory list.

10 Finally, I understand from a recent review of the bankruptcy proceedings for Mr.
11 Tooker's two companies, CDS and its affiliate, Western Telephone Integrated
12 Communications, Inc. (Case Nos. 04-68413-fra7 and 04-68414-fra7), that EarthLink
13 purportedly entered into an agreement with CDS for the acquisition of CDS' subscribers.
14 Exhibit Qwest/27 is a Motion for a Rule 2004 Examination of EarthLink by the
15 bankruptcy estate trustee, and the affidavit of the attorney for the estate trustee, affirming
16 that the two companies were owned by a single shareholder, Mr. Tooker, and that the
17 affairs of the two companies appear to have been significantly intertwined, and that
18 EarthLink purportedly entered into an agreement to acquire CDS' customers. Thus,
19 although the particular fiber-based collocation in the Medford wire center might have
20 terminated in Autumn 2005, it is clear that CDS was still a viable concern in the process

² Qwest could not initiate any process to turn down or decommission the collocation space while there was the possibility of disconnecting service to any active consumers. This information pull was done independent of *TRRO* efforts.

1 of being acquired by another company during that time period, and that, at a minimum, it
2 was still in operation in March 2005. This is further proof that the claims that Mr.
3 Tooker makes in his declaration appear to be overstated and exaggerated, and that CDS
4 was operational until September 2005, and, at a minimum, that CDS certainly remained a
5 fiber-based collocator in the Medford wire center as of March 11, 2005.

1 **IV. SUMMARY AND CONCLUSION**

2
3 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR TESTIMONY.**

4 A. CDS Networks was an operational fiber-based collocator in the Medford wire center on
5 the effective date of the *TRRO*, March 11, 2005, meeting all defining criteria that the
6 FCC set forth. CDS' collocation was serving a substantial number of customers through
7 at least June 2005, and possibly through September 2005, well after the March 11, 2005
8 effective date of the *TRRO*. The CDS collocation was not decommissioned until
9 November 2005, also well after the March 11, 2005 *TRRO* effective date. As such, CDS
10 Networks was accurately reflected as a fiber-based collocator in the Medford wire center,
11 and thus Qwest's list of unimpaired wire centers should remain unaltered.

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13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A. Yes, it does. Thank you.
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06 JUN 26 PM 3:01
LOGGED _____ REC'D _____
PAID _____ DELETED _____

1 David B. Mills, OSB #77281
2 HAMMONS & MILLS
3 115 W. 8th Ave., Suite 280
4 Eugene, Oregon 97401
5 Phone: (541) 484-1216
6 Fax: (541) 484-5326

7
8 Of Attorneys for David F. Wurst, Trustee

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Western Telephone Integrated
Communications, Inc.,
Debtor.

Case No. 04-68413-fra7

MOTION FOR RULE 2004
EXAMINATION
(*ex parte*)

David F. Wurst, Trustee, hereby moves the Court for an Order pursuant to Bankruptcy Rule 2004, requiring the following entity to appear for examination under and within the scope of BR-2004 as designated below:

<u>Name</u>	<u>Date & Time</u>	<u>Place</u>
Earthlink, Inc.	August 15, 2006 10:00 a.m.	Office of Hammons & Mills 115 W. 8th Ave., Suite 280 Eugene, Oregon 97401

The entity should be ordered to produce the documents described below at the time and place of the entity's Rule 2004 examination.

As described in this motion, the term "documents" refers to all written or graphic material, however provided or reproduced of every kind and description, in the actual or constructive possession, custody, care or control of the examinee. Without limiting the scope of the above definition, examples of documents sought include

MOTION FOR RULE 2004 EXAMINATION

Hammons & Mills
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Eugene, Oregon 97401
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1 originals (or copies when originals are not available) of correspondence, telegrams,
2 notes or sound recordings of any type of personal or telephone conversations or of
3 meetings or conferences of any kind, memoranda, interoffice communications,
4 inventories, photographs, videotape recordings, contracts, agreements, desk calendars,
5 appointment books, sales receipts or invoices, statements of account, diaries, time
6 sheets or logs, expense reports, canceled checks, information of any kind stored in
7 computer or similar equipment, microfilm records, analyses, results of investigations,
8 reports, or papers similar to any of the foregoing and any drafts, amendments or
9 supplements to any of the foregoing:

- 10 1. All agreements between Earthlink, Inc. and CDS Networks, Inc.,
11 Western Telephone Integrated Communications, Inc. and/or Cleve Tooker
12 including, but not limited to: non-competition agreements, instructions
13 for payment of contract proceeds, Subscriber Acquisition Agreements and
14 copies of disbursement checks. **ANY LISTS OR IDENTIFICATION**
15 **OF SUBSCRIBERS CAN BE EXCLUDED.**
- 16 2. All correspondence between Earthlink, Inc. and CDS Networks, Inc.,
17 Western Telephone Integrated Communications, Inc. and/or Cleve Tooker
18 pertaining to: non-competition agreements, instructions for payment of
19 contract proceeds, Subscriber Acquisition Agreements and copies of
20 disbursement checks. **ANY LISTS OR IDENTIFICATION OF**
21 **SUBSCRIBERS CAN BE EXCLUDED.**

22 This motion is supported by the Affidavit of David B. Mills attached hereto.

23 HAMMONS & MILLS

24
25 By: 
26 David B. Mills, OSB #77281
27 Of Attorneys for Trustee

28 MOTION FOR RULE 2004 EXAMINATION

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7 Of Attorneys for Trustee

06 JUN 26 PM 3:01
LOGGED _____ RECD _____
PAID _____ DELETED _____

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In re)
11) Case No. 04-68413-fra7
12 Western Telephone Integrated)
13 Communications, Inc.,) AFFIDAVIT
14 Debtor.)

15 STATE OF OREGON)
16 County of Lane) ss.

17 I, David B. Mills, having first been duly sworn, do depose and say that:

18 I am the attorney for David F. Wurst, Trustee herein. This bankruptcy estate holds
19 a large unsecured claim in the bankruptcy case of *In re CDS Networks, Inc.*, US
20 Bankruptcy Court Case No. 04-68414-fra7. That company along with the debtor herein
21 were owned by the same single shareholder, Cleve Tooker. The affairs of the two
22 companies appear to have been significantly intertwined.

23 Prior to the filing of the bankruptcy petitions by those companies, Earthlink, Inc.
24 Purportedly entered into an agreement with CDS Networks, Inc. for the acquisition of


25 ///
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27
28 AFFIDAVIT

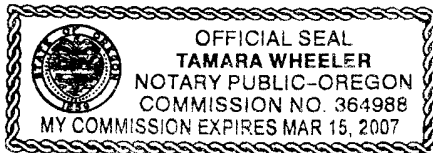
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1 subscribers and a non-competition agreement. The Trustee has received information that
2 the proceeds from those agreements went directly to Cleve Tooker within the one-year
3 period prior to the filing of the bankruptcy petition.

4 The Trustee is investigating those transactions and whether any claims exist in
5 favor of this debtor against Mr. Tooker. Mr. Tooker has filed a significant claim in this
6 bankruptcy proceeding and the Trustee is investigating whether these circumstances give
7 rise to the basis for an equitable subordination claim.

8
9
10 
11 David B. Mills

12 SUBSCRIBED AND SWORN to before me this 26 day of June, 2006 by David
13 B. Mills.



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Notary Public for Oregon
My Commission Expires: 3-15-07

AFFIDAVIT

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CERTIFICATE OF SERVICE

I hereby certify that I served the Motion for Rule 2004 Examination and Affidavit on the following:

Wilson C. Muhlheim, Esq.
88 E. Broadway
Eugene, Oregon 97401


Sanford R. Landress, Esq.
1515 SW Fifth Ave., Suite 600
Portland, Oregon 97201

Thomas A. Huntsberger, Esq.
870 W. Centennial Blvd.
Springfield, Oregon 97477

Candace E. Amborn
PO Box 580
Medford, Oregon 97501

David F. Wurst
PO Box 610
Medford, Oregon 97501

by mailing to each of the above a true copy thereof, certified by me as such, contained in a sealed envelope addressed to each of the above at their last known address, and deposited in the post office at Eugene, Oregon, on this 26 day of June, 2006.

HAMMONS & MILLS
By: 
DAVID B. MILLS, OSB # 77281
Of Attorneys for Trustee

Hammons & Mills
115 W. 8th Ave., #280
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Phone: (541) 484-1216
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CERTIFICATE OF SERVICE

UM 1251

I hereby certify that on the 30th day of August 2006, I served the foregoing QWEST CORPORATION'S SUPPLEMENTAL RESPONSE TESTIMONY OF RACHEL TORRENCE in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 30th day of August, 2006.

QWEST CORPORATION



By: _____

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