Kevin K. Zarling
CenturyLink
400 W. 15th Street, Suite 315
Austin TX 78701
512-867-1075 (office)
512-472-0524 (fax)
Kevin.K.Zarling@CenturyLink.com

Attorney for CenturyLink, Inc.

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
503-242-5623 (office)
503-242-8589 (fax)
Alex.Duarte@qwest.com

Attorney for Qwest Communications International, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 Corporation

DOCKET NO. 10-049-16

QWEST'S AND CENTURYLINK'S RESPONSE TO INTEGRA'S MOTION TO AMEND THE SCHEDULE AND REQUEST FOR EXPEDITED ORAL ARGUMENT

Pursuant to R. 746-100-4.D., Qwest Communications International, Inc. and CenturyLink, Inc. (hereafter "the Joint Applicants") hereby respond to the motion to amend the procedural schedule and request for expedited oral argument that Integra Telecom of Utah ("Integra") filed on October 11, 2010. The motion is not necessary, and any delay in the hearing schedule that was set four months ago would unduly prejudice the Joint Applicants and would inconvenience the Commission, as well as all of the numerous witnesses, counsel and support personnel. Further still, any delay is the result of Integra's own delay and lack of diligence in the discovery process. Finally, Integra and its witnesses have now had access to the last of the disputed Hart-Scott-Rodino ("HSR") documents at issue for almost three weeks (and more than three weeks for the vast majority of the HSR documents), since they received all of them in Minnesota by October 1, 2010. Moreover, the Integra witnesses in Minnesota are the same witnesses as here in Utah.

PERTINENT PROCEDURAL HISTORY

The Joint Applicants filed their application for expedited approval of their proposed merger on May 19, 2010. It was not until July 1, 2010, however, that Integra submitted its first set of data requests, consisting of 156 data requests, not including subparts.[1] The Joint Applicants timely responded to the data requests on July 20, 2010, at which time they objected to the production of any HSR documents in their responses to Integra data request No. 143.

Specifically, CenturyLink objected as follows:

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

Qwest objected to this data request as follows:

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

[1] The Joint Applicants did not receive the data requests until July 6, 2010, however, because Integra did not serve them electronically, and only served them by mail, on the Thursday before the 4th of July holiday.

On July 21, 2010, the Joint Applicants filed a motion for the entry of a protective order.[2] The CLECs opposed the motion on July 26, 2010, and the Joint Applicants replied to the opposition on July 29, 2010. Thereafter, on August 20, 2010, the Commission issued a protective order. This was essentially the same protective order used in the *Triennial Review Remand Order* ("*TRRO*") wire center proceedings, which addressed highly-confidential information, but with no description or discussion about the additional protection that the Joint Applicants were seeking for the "Staff's Eyes Only" ("SEO") information that was at issue between the parties. The Commission has since remedied the original protective order by issuing an errata protective order that incorporated the Joint Applicants' form of protective order, but without any "Staff's Eyes Only" provisions. (See Report and Order issued October 6, 2010; Errata Protective Order issued October 12, 2010.)

In the meantime, from July 20, 2010 until about September 1, 2010, after the CLECs had filed voluminous testimony, Integra utterly failed to follow up regarding production of any of these HSR documents in Utah. Then, on or about September 1st, Integra requested any highly-confidential documents that the Joint Applicants had provided to the Division of Public Utilities ("DPU") now that there was a protective order in place, to which the Joint Applicants responded. However, it was not until Thursday, *September 16, 2010*, one business day before it filed its motion to compel (and weeks after Integra and the Joint CLECs had filed more than 400 pages of testimony on August 30, 2010), that Integra's counsel indicated, *for the first time,* that Integra intended to file a motion to compel in Utah if the Joint Applicants did not produce any withheld

[2] The Joint Applicants explained that they were seeking the Commission to enter a protective order governing highly-confidential and competitively-sensitive information, including certain documents requested in this matter in discovery that are so competitively-sensitive and confidential that the Commission's standard confidentiality rule, R. 746-100-46, was not sufficient to prevent competitive harm if that information was disseminated to competitors. (Joint Applicants' Motion, pp. 1-2.)

HSR documents.[3] This was almost *two months* after the Joint Applicants objected to Integra's data request No. 143 seeking HSR documents.

In any event, since neither Integra nor the CLECs had demanded the HSR documents until September 16th, despite the Joint Applicants' July 20, 2010 objections to production of such documents, the Joint Applicants had determined there was no need to seek review or rehearing or clarification of the Commission's August 18, 2010 protective order. However, when Integra finally demanded these documents on September 16, 2010, and stated that it would file a motion to compel if the Joint Applicants did not produce them, the Joint Applicants had no choice but to seek reconsideration or clarification of the August 18, 2010 protective order, and seek *in camera* review of these documents. Thus, the Applicants did so on September 20, 2010, the same day that Integra filed the motion to compel.[4]

As stated, on Monday, September 20, 2010, a little more than one month before the October 26-27, 2010 hearing, and *two full months* after the Joint Applicants objected to the production of HSR documents (on July 20, 2010), Integra filed its HSR motion to compel. The Joint Applicants responded to the motion on October 5, 2010. However, because the Administrative Law Judge in Minnesota had ruled a few days before that HSR documents had to be produced in that docket, and because the Joint Applicants did in fact produce them on or around October 1, 2010, the Joint Applicants agreed on October 7, 2010 to produce the HSR documents in Utah, while maintaining their objections, thereby making Integra's September 20th

[3] In its previous September 20th motion to compel, Integra admitted that it was not until "September 16 [that] Integra counsel specifically urged CenturyLink and Qwest to produce the HSR documents." (Integra Motion to Compel, p. 15.) The bottom line is that in Utah, Integra did not request or push for HSR documents after the Joint Applicants' July 20, 2010 objections until two months later, on September 16, 2010.

[4] Integra also served a second voluminous set of data requests (Nos. 157 to 189) on September 17, 2010, to which the Joint Applicants promptly and timely responded on October 1, 2010. CenturyLink's responses to six of those data requests (Nos. 157-163) are at issue in Integra's most recent motion to compel, filed concurrently with its

HSR motion to compel moot. Qwest then produced its remaining HSR documents on October 8, 2010 in Utah, and CenturyLink produced its remaining HSR documents on October 12, 2010.[5]

ARGUMENT

I. ANY DELAYS WERE THE RESULT OF INTEGRA'S LACK OF DILIGENCE

The procedural history is important here to show several key facts. First, despite claiming that they somehow "need" these HSR documents to make their case, Integra and the CLECs were able to file more than *400 pages* of testimony, and hundreds of pages of exhibits (after propounding hundreds of data requests, with multiple subparts), almost *one month before* they filed their motion to compel. Indeed, just last week, on Thursday, October 14, 2010, Integra and the Joint CLECs filed another approximately *270 pages* of (surrebuttal) testimony. Second, despite that it knew on July 20, 2010 that the Joint Applicants objected to the production of these documents, Integra did nothing about those documents in Utah until demanding, *for the first time* and *two months later* (on September 16, 2010), that it intended to file a motion to compel in Utah if the Joint Applicants did not produce the withheld HSR documents.

The Applicants can only surmise that either Integra intentionally waited to file the motion or was so consumed disputing the very same discovery in other states that it simply neglected to do so in Utah. Whatever the case, if not having this information was so important to Integra's case, it would not have waited until just weeks before the hearing (months after receiving the data response) to challenge the Joint Applicants' stated objections to providing the HSR information. In short, Integra delayed and sat on its hands. Thus, it should not be rewarded

---

motion to amend the schedule. That motion is the second prong of its attempt to delay the schedule. The Joint Applicants hereby file a response to that motion to compel, which has no basis and is merely another delay tactic.

[5] Integra cannot claim this was the first time it or its witnesses had seen these documents. These documents were previously provided by Qwest and CenturyLink on or about October 1, 2010 in Minnesota pursuant to that Commission's supplemental protective order. Integra's witnesses in Minnesota are the same witnesses here.

through the procedural gambit of an eleventh-hour delay. On this basis alone, the Commission should deny Integra's motion to delay the procedural and hearing schedule.

II. A CONTINUANCE OF THE HEARING WOULD CAUSE UNDUE PREJUDICE

In this context, it is clear that this motion to amend the schedule, the late-filed motion to compel production of the HSR documents, and the recently-filed and unsupported motion to compel communications with OSS vendors,[6] are not intended to aid Integra's case. The motions Integra filed would only serve to cause delay in the Commission's review of the merger, and would not result in the inclusion of relevant, additional information to the record. Amending the schedule would further result in delay that would unduly prejudice the Joint Applicants, as well as inconvenience the Commission, all of the numerous witnesses, counsel and support personnel.

The Commission scheduled these hearing dates *four months ago*, in June 2010. The dates chosen were the only available consecutive dates during the relevant time period, after a very difficult time in setting the hearing dates because of numerous scheduling conflicts between the parties and the Commission's calendar.[7] To change them now, for what appears to be Integra's procedural gambit to introduce new evidence and apply pressure on the Joint Applicants, would not set the appropriate example for future cases before this Commission. Postponing the hearing for *seven weeks*, as Integra requests, and without even the opportunity to check with all of the numerous stakeholders' schedules, would indeed cause undue prejudice to many participants, especially when the current dates have been in place for more than four months. Indeed, it is very likely that even the week that Integra requests (the week of December 13th) would not be available for some witnesses, counsel or other key participants, which would likely mean,

---

[6] Please refer to the Joint Applicants' simultaneously-filed response to Integra's motion to compel, explaining why that motion is moot and should be denied.

[7] The Commission may well recall that even back in June, when all parties agreed to the October 26-27th hearing dates, the Commission struggled to find any other consecutive days in which to hold a two-day hearing.

especially with the holidays coming up, a delay well into 2011.[8] Thus, the Joint Applicants respectfully submit that a continuation of the hearing would unfairly reward the CLECs' delay tactics and render unimportant the careful scheduling that the Commission has conducted to date.

Further still, in addition to the difficulty in finding adequate replacement dates, the practical effect of granting Integra's motion would be a great inconvenience to all of the parties and witnesses here. The Joint Applicants note that by their count, there were at least **21** witnesses who filed testimony. The vast majority of these witnesses live and work outside of Utah, and thus have made the appropriate travel and work arrangements.[9] All of these witnesses (and counsel) did so with the clear understanding that the hearing would take place on October 26 and 27th. To change the dates at the eleventh hour, especially based on Integra sitting on its hands and waiting until the last minute to compel or seek certain irrelevant discovery, would be an enormous inconvenience to all those involved, and would be a disservice to such witnesses in this important proceeding.

Finally, yet another practical effect of a delay would be that the particular dates which Integra now suggests (unknown dates during the week of December 13th) will not be available for at least some of the hearing participants. This is especially so given everyone's busy schedules, including many individuals' participation in multiple merger dockets across the country.[10] Thus, for the Commission to simply vacate these four-month old dates based on this

---

[8] In fact, CenturyLink's lead counsel in this Utah proceeding, Kevin Zarling, has a contested case hearing in Texas on December 15-16, 2010. In addition, CenturyLink's primary witness on wholesale issues, Michael Hunsucker, is scheduled to be in a federal court hearing in Virginia on December 14–15, 2010.

[9] The same holds true regarding most of the participating parties' counsel and support personnel.

[10] As Integra itself notes (see Motion, p. 4, fn. 6), proposed hearing dates in the future are not very feasible given the hearing schedules in merger approval proceedings in other states, and the fact that many of the witnesses and counsel involved in those hearings are also witnesses and counsel in this proceeding. As Integra further notes (Motion, p. 5, fn. 8), there are hearings scheduled in five other states just in the month of November alone (Integra's motion fails to mention the Montana hearing scheduled for November 22-23), as well as a newly-scheduled hearing on December 1-2 in Oregon, based on the Joint CLECs' successful motion to delay that proceeding. (See

last-minute request would be an undue hardship and prejudice to the Commission, the parties and their witnesses and counsel. The Joint Applicants respectfully submit it would be inappropriate for the Commission to do so under the circumstances.

III. INTEGRA HAS HAD ACCESS TO ALL HSR DOCUMENTS FOR WEEKS

Further still, and as the Joint Applicants noted previously, Integra and its witnesses have had all of the remaining disputed HSR documents for nearly three weeks. This is so because the Joint Applicants produced the last remaining disputed HSR documents (those designated “Staff's Eyes Only”) to Integra and its witnesses by October 1, 2010 in the Minnesota proceeding as a result of the Minnesota ALJ’s September 30, 2010 ruling and issuance of a second supplemental protective order. Moreover, the Joint Applicants had previously produced the *vast majority* of the HSR documents well before October 1st. Thus, Integra has had all of these HSR documents for almost three weeks, and most of these documents for longer than that. And although Integra may argue that such documents could not be “used” in Utah until October 8th (because of different states’ protective orders), it is important to recognize that Integra’s witnesses in Minnesota (Mr. Gates and Dr. Ankum) are the same witnesses here. As such, these witnesses, who have testified on Integra’s behalf in all of the Qwest in-region states that Integra has participated in, with extremely similar (if not virtually identical) testimony from state-to-state, have had knowledge about these HSR documents, and their contents, since October 1st. There is simply no prejudice to Integra because it has long had these documents almost a month before the October 26-27 hearing.

Attachment A to Integra’s October 18th letter.) Indeed, Integra’s October 18th supplemental filing noted that its originally-proposed delayed dates of December 8 and 9, 2010 for this proceeding are not available for the Commission. In short, the likelihood of all witnesses, counsel and Commission personnel to be available on the two unstated dates “during the week of December 13, 2010” is extremely unlikely.

IV. ALTERNATIVELY, THE COMMISSION COULD SET AN ADDITIONAL DAY

Even if the Commission were to be sympathetic to Integra's dubious request, or inclined to grant any relief, in no case should the hearings next week be canceled, and there is no need for such drastic action. As mentioned, the parties have invested substantial resources in preparations and travel arrangements for those hearings, and it is simply too late in the process to cancel them without substantial prejudice. In the alternative, and at the very most, the Commission could consider (although the Joint Applicants do not believe it is necessary for the reasons stated above) providing for a brief additional round of prefiled testimony and/or a half-day hearing next month. Such additional process, if the Commission were so inclined, should be solely for the very limited purpose of addressing any relevant issues Integra may identify based on its review of the HSR documents it now asserts is so important to its case opposing the merger. This would be a similar process to that which the Minnesota Commission recently set. (See Motion, Ex. 1.)

In the Minnesota proceeding, the Administrative Law Judge ("ALJ") maintained the originally-scheduled three-day hearing conducted on October 5-7, and then scheduled an additional round of prefiled testimony on the HSR issues. Specifically, the ALJ set CLEC testimony for Friday, October 22, 2010, and the Joint Applicants' rejoinder for Friday, October 29, 2010, with a one-day hearing on HSR issues on Monday, November 1, 2010. (See Integra Motion, Ex. 1 (Transcript of October 6, 2010).) Thus, if this Commission were to believe that an additional round of testimony and/or an additional half-day of hearing would be appropriate under the circumstances, it could trail the Minnesota schedule by a few days with additional brief prefiled testimony and a half-day hearing.

The Joint Applicants understand that the only date that appears to be available between November 1st and Thanksgiving for the Commission to hold an additional day of hearing is

November 4, 2010. Thus, the Commission could schedule a half-day hearing on November 4th, with CLEC supplemental testimony due on Wednesday, October 27th, and the Joint Applicants' response testimony due on Tuesday, November 2nd.[11]

V. RULE 746-100-10(F)(5) DOES NOT REQUIRE ANY ADDITIONAL PROCESS

Finally, Integra's October 18, 2010 letter complains that "[c]ontrary to Rule 746-100-10(f)(5), the Joint Applicants and the DPU did not notify the CLEC Intervenors in this proceeding of the settlement negotiations that culminated in the settlement that was filed with the Commission last week." However, as the rule itself shows (see e.g., Integra October 18th letter, p. 2, fn. 3), Integra overstates the requirements in the rule. That rule does not require that all parties be included in settlement negotiations. The rule merely provides that "before accepting an offer of settlement," the Commission "may" require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement discussions.

Here, the Joint Applicants have indeed showed that Integra and the other "CLEC Intervenors" have been notified of the settlement with the DPU because the Joint Applicants filed it (and the other settlements) with the Commission. Integra's alleged issues are not unique to Utah, and it has certainly participated in settlement discussions with Joint Applicants elsewhere. Integra could have requested its own discussions with the DPU (or the OCS or the SLCAP), but it apparently has not done so, other than a generic email sent to the DPU and to other state staffs. (See Integra's October 18th supplemental filing, Attachment 2.) The Joint

[11] Based on the Joint Applicants' knowledge of the contents of the HSR documents, the CLECs' HSR testimony is unlikely to be state-specific. Rather, such testimony will undoubtedly be primarily based on the CLECs' general advocacy, as has been the case regarding more than 95 percent of the CLEC testimony in this proceeding. Thus, as the CLECs have done throughout their more than *700* pages of testimony in Utah (Integra and the CLECs filed another 270 pages of "surrebuttal" testimony on Thursday, October 15, 2010, by essentially the same witnesses as in multiple states), they should be able to file their HSR testimony in Utah on October 27, 2010, five days after filing it in Minnesota, without any further delay.

Applicants held individual discussions separately with the DPU, OCS and the SLCAP, which is not unusual, and which is certainly a regular practice in Commission proceedings. The Joint Applicants have done likewise with Integra, both in formal settlement conferences in other states and in individual discussions. Thus, Integra's failure to engage in settlement discussions with the DPU, OCS and SLCAP was of its own doing (or lack thereof).[12]

In any event, all that Rule 746-100-10(f)(5) requires is an opportunity to "oppose the agreements in a manner directed by the Commission." Thus, the Commission can direct that any opposition to the settlement with the DPU take place at the October 26-27th hearing, which is the process the Minnesota Commission employed in that proceeding.[13] The Joint Applicants do not object to Integra examining the DPU about the settlement at the hearing, or to lodge objections to the settlement at the hearing, so long as the Applicants have an opportunity to respond. There is, however, no need for CLECs to submit "additional testimony" on the settlement agreement on November 11, 2010 (as Integra proposes), or at any other time. The substance of the settlement agreement with the DPU is consistent with the DPU's direct testimony and, in particular, with the DPU's prefiled rebuttal testimony. Integra has had ample time prior to hearing to consider the DPU's position on the various issues that of interest to CLECs, and Integra should be

---

Further still, in the unlikely event that Integra prevails in its most recent motion to compel regarding communications with OSS vendors, it would have plenty of opportunity to address those issues in such supplemental testimony on October 27th.

[12] Indeed, the Joint Applicants and the DPU (and OCS and SLCAP as well) proceeded as parties have generally done so in Commission proceedings in the past, including regarding the settlements in the Qwest/U S WEST merger docket more than 10 years ago. Settlement negotiations with individual parties is the process typically used in Commission proceedings. Notably, there is no Commission requirement prohibiting individual settlement negotiations, or requiring global or all-party settlement negotiations. Integra's complaint about Rule 746-100-10(f)(5) is therefore nothing more than a red herring.

Moreover, the fact that the Joint Applicants have been able to reach settlements in Utah, Minnesota and Iowa shows that they have taken settlement discussions seriously, and that they have been able to reach settlements on a good faith and reasonable basis with other key parties, including CLECs in Iowa and 360networks regionally.

[13] See e.g., Attachment 2 of Integra's October 18th supplemental filing, in which one of Integra's in-house attorneys advises members of state utility commission staffs, including Bill Duncan of Commission Staff and Casey

prepared to address through cross examination any issues it has with the settlement agreement between the Joint Applicants and the DPU. Integra will have ample opportunity to "oppose" the settlement with the DPU at the October 26-27th hearing.

CONCLUSION

For all of these reasons, the Joint Applicants respectfully submit that the Commission should deny Integra's motion to amend and delay the procedural schedule in its entirety.

DATED: October 19, 2010

Respectfully submitted,

CENTURYLINK

________/S/__________________

Kevin K. Zarling
CenturyLink
400 W. 15th Street, Suite 315
Austin TX 78701
512-867-1075 (office)
512-472-0524 (fax)
Kevin.K.Zarling@CenturyLink.com

Attorney for CenturyLink, Inc.

QWEST

____

Alex M. Duarte
Qwest Law Department
310 SW Park Avenue, 11th Floor
Portland, OR 97205
503-242-5623 (office)
503-242-8589 (fax)
Alex.Duarte@qwest.com

Attorney for Qwest Communications International, Inc.

Coleman of the DPU, that the Minnesota Department of Commerce ("DOC") witness was cross-examined about the Minnesota settlement between the Joint Applicants and the DOC in that state.