

BEFORE THE UTAH PUBLIC SERVICE 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 Corporation

Docket No. 10-049-16

INTEGRA’S MOTION TO COMPEL

Oral Argument Requested

MOTION

Pursuant to Rule 37(a) of the Utah Rules of Civil Procedure, Integra Telecom of Utah, Inc. (“Integra”) moves the Utah Public Service Commission (“Commission”) to compel CenturyTel, Inc. (“CenturyLink”) to produce all documents and information responsive to Integra’s Third Set of Discovery Requests, including specifically Request Nos. 157 through 163. Counsel for Integra conferred with counsel for CenturyLink and Qwest, but was unable to resolve this dispute without the instant Motion.

ARGUMENT

Utah law provides for a broad scope of discovery.¹ The Utah Rules of Civil Procedure allow parties “discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,” that is “reasonably calculated to lead to the discovery of admissible evidence.”² This Commission’s rules allow even broader discovery than that allowed under the Utah Rules of Civil Procedure, in that trial preparation materials and the opinions,

¹ *Roundy v. Staley*, 1999 UT App 229, 984 P.2d 404 (Utah App. 1999) (noting that Utah’s discovery rules promote “full disclosure of all relevant testimony and evidence”); *Glacier Land Co., L.L.C. V. Claudia Klawe & Assoc., L.L.C.*, 2006 UT App 516, 154 P.3d 852 (Utah App 2006) (lauding discovery rules for making adversarial proceedings “less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent”).

² Utah R. of Civ. Pro. 26(b)(1).

conclusions, and data of retained experts are discoverable without restriction.³ Despite this liberal standard and Integra's attempts to obtain the requested information without a motion, it is plain that CenturyLink has failed to produce discoverable information.

Integra propounded its Third Set of Discovery Requests on September 17, 2010.⁴ As to all of these requests, Integra indicated that CenturyLink has a duty to supplement its responses: "These information requests are intended to be continuing in nature. The parties responding to these information requests are asked to promptly supplement their responses to the extent they become aware of information that makes any response inaccurate or incomplete"⁵

Request Nos. 157 and 158 ask CenturyLink to identify each vendor (e.g., DSET or Synchronoss) with which CenturyLink has had any communications regarding systems and/or integration plans related to processing or potential processing of orders and ask CenturyLink to provide all related documents.⁶ Request No. 159 asks CenturyLink to identify each vendor (e.g., DSET or Synchronoss) with which CenturyLink has had any communications regarding systems and/or integration plans including systems/integration efforts and also asks CenturyLink to provide "all documents, including but not limited to emails, that evidence, refer or relate to such communications."⁷ Request Nos. 160 and 161 ask whether CenturyLink has communicated with any vendor or gateway provider (e.g., DSET or Synchronoss) that represents CLECs that may request ebonding for processing of orders regarding post-transaction systems consolidation or planning and, if so, requests documents and details relating to those communications.

Specifically, Request No. 161 asks:

³ R746-100-8(C)(2).

⁴ A true and correct copy of Integra's Third Set of Discovery Requests is attached as Exhibit 1 to this Motion.

⁵ Exhibit 1, at 2; *cf.* Utah. R. Civ. P. 26(e).

⁶ Exhibit 1, at 1-2.

⁷ Exhibit 1, at 3.

Has any vendor or gateway provider (e.g., DSET or Synchronoss) indicated that it has customers who want to have an application-to-application interface or e-bonding with CenturyLink, or with the Merged Company after integration of systems with Qwest, relating to the processing or potential processing of LSRs? If your answer is in the affirmative (yes):

- a. Identify each vendor or gateway provider with whom you have had such communications, state the date of each such communication(s), and describe the substance of each communication (including your response and any projected timeline as to when any such interface is or may be available);
- b. Identify each participant in the communication, including each CenturyLink and Qwest employee, agent, or representative who participated in such communication; and
- c. Provide all documents, including but not limited to any emails, that evidence, refer, or relate to such communication.⁸

Local Service Requests (“LSRs”) are used by CLECs to place orders for unbundled network elements (“UNEs”)⁹ used by CLECs to provide local service. Request No. 160 is otherwise identical, but concerns the processing or potential processing of Access Service Requests (“ASRs”) rather than LSRs.¹⁰ Notably, nothing in either request limits discovery to “formal” communications or “formal” requests for ebonding. Rather, Requests Nos. 160 and 161 ask about *any* such communications, request *all* related documents, and further ask for the identity of the vendor or gateway provider, date of each communication, and the Joint Applicants’ employees or representatives that participated in each communications.¹¹ Such communications might also be responsive to Requests Nos. 157-160, which similarly ask CenturyLink to provide

⁸ Exhibit 1, at 5.

⁹ An exception is the UNE Unbundled Dedicated Interoffice Transport (UDIT), which is ordered via ASR in Qwest territory.

¹⁰ Exhibit 1, at 4.

¹¹ Exhibit 1, at 4 – 5.

“all documents, including but not limited to emails, that evidence, refer or relate to such communications.”¹²

On September 23, in response to similar requests in a parallel proceeding in Minnesota, CenturyLink admitted that inquiries responsive to Integra’s requests had, in fact, been made. Specifically, CenturyLink’s response to Request No. 7 in Minnesota stated:

CenturyLink has received several inquiries from vendors or gateway providers regarding CenturyLink’s capabilities related to ebonding for LSRs, but has not received any formal requests.¹³

CenturyLink’s response to Request No. 6 admitted to similar inquiries about ASRs.¹⁴ Yet, despite admitting the existence of responsive communications, CenturyLink produced no documents in the Minnesota proceeding, identified no vendors or gateway providers, provided no dates, and failed to identify a single employee that participated in such communications.¹⁵

In an effort to pre-empt similarly deficient responses in Utah, counsel for Integra sent a letter to Qwest’s and CenturyLink’s respective counsel on September 27, 2010.¹⁶ That letter identified Utah Requests Nos. 157 – 163 as comparable to certain requests in Minnesota.¹⁷ It explained the material deficiencies in CenturyLink’s Minnesota responses, including the failure to “identify the vendor or gateway provider making inquiries; state the date of the inquiries/communications; or identify each CenturyLink and Qwest employee or representative who participated in such communications.”¹⁸ The letter pointed out that Integra’s requests were

¹² Exhibit 1, at 1 – 3 (emphasis added).

¹³ CenturyLink’s Supplemental Responses to Integra’s Third Set of Information Requests (Minnesota), at 1 – 2. A true and correct copy of those responses, showing Integra’s requests and CenturyLink’s initial and supplemental responses in the Minnesota proceeding, is attached as Exhibit 2 to this Motion.

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ Letter from Mark Trincherro to Alex Duarte and Kevin Zarling, September 27, 2010 (incorporating a letter from Gregory A. Merz to Michael J. Ahern). A true and correct copy of that letter is attached as Exhibit 3 to this Motion.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 4 (“List of Inadequacies”).

in no way limited by the concept of a “formal request,”¹⁹ and warned that similar responses by Joint Applicants in the Utah proceeding would be deemed materially deficient.²⁰

On October 1, 2010, Qwest and CenturyLink submitted their Utah responses to Integra’s Third Set of Discovery Requests.²¹ Despite Integra’s warning, the Utah responses evinced the same deficiencies as in Minnesota. With respect to Requests Nos. 157 – 163, Joint Applicants produced no documents, identified no vendors or gateway providers, provided no dates, and identified no employees. CenturyLink’s response to Request No. 160 stated:

CenturyLink has received several inquiries from vendors or gateway providers regarding CenturyLink’s capabilities related to ebonding for ASRs, but has not received any formal requests. The inquiries that CenturyLink has received were informal discussions that were informational in nature. Because of the informal nature of these inquiries, no notes were taken and no other documentation exists regarding these inquiries.²²

With respect to Request No. 161, CenturyLink also denied that any responsive documents exist:

CenturyLink has received several inquiries from vendors or gateway providers regarding CenturyLink’s capabilities related to ebonding for LSRs, but has not received any formal requests. The inquiries that CenturyLink has received were informal discussions that were informational in nature. Because of the informal nature of these inquiries, no notes were taken and no other documentation exists regarding these inquiries.²³

CenturyLink unequivocally denied that records of such communications existed, stating “no notes were taken and no other documentation exists.”²⁴ CenturyLink further denied that any

¹⁹ *Id.* at 2.

²⁰ *Id.* at 1.

²¹ Qwest’s and CenturyLink’s Responses to Integra’s Third Set of Discovery Requests, at 1. A true and correct copy of Qwest’s and CenturyLink’s Responses to Integra’s Third Set of Discovery Requests is attached as Exhibit 4 to this Motion.

²² *Id.* at 30.

²³ *Id.* at 31.

²⁴ *Id.* at 30 – 31.

“decisions have been made regarding the potential consolidation of wholesale OSS systems after the merger.”²⁵ Qwest adopted CenturyLink’s denials by reference.²⁶

Those flat denials are inconsistent with the facts. As a customer interested in doing business with DSET,²⁷ Integra received an example of documentation that CenturyLink has represented does not exist. Specifically, provided with this Motion is an email regarding this very subject matter between CenturyLink and DSET.²⁸ DSET is a gateway provider to CLECs for electronic interfaces with Qwest’s Operations Support Systems (“OSS”).²⁹

Integra asked DSET, as a gateway provider, about OSS following any merger between Qwest and CenturyLink and specifically asked about ebonding for LSRs.³⁰ By way of a response, on September 1, 2010, Jim Seigler of DSET, when sending a follow-up email to Mike Norton of CenturyLink (the “DSET email”), blind-copied Stephanie Prull, an Integra IT Analyst, on the DSET email.³¹

In the DSET email, Mr. Seigler refers to customers that want ebonding relating to both ASR and LSR processing – the subject matter of Request Nos. 160 and 161. Mr. Seigler confirms the conversation with CenturyLink to the effect that, after the merger, when all the systems have been consolidated, the merged company will support a Unified Order Management (UOM) interface for both ASRs and LSRs.³² This represents a change for wholesale customers because Qwest’s ASR interface is UOM-compliant but its LSR interface is not.³³ The contents

²⁵ *Id.* at 32 – 33.

²⁶ *Id.* at 2 – 8.

²⁷ Declaration of Stephanie Prull in Minnesota Public Utilities Commission Docket No. P-421, et al./PA-10-456, October 8, 2010 (“Prull Decl.”), ¶¶ 3-4.

²⁸ Attachment A to Prull Decl.

²⁹ Prull Decl., ¶ 2.

³⁰ Prull Decl., ¶ 3.

³¹ Prull Decl., ¶ 4.

³² Attachment A to Prull Decl.

³³ Exhibit 4, at 30-31 (Qwest’s and CenturyLink’s responses to Requests Nos. 160 – 161).

of the DSET email contradict CenturyLink's claim that "no decisions have been made regarding the potential consolidation of systems after the merger."³⁴

DSET interfaces with telecommunications carriers and serves telecommunications carriers as customers and potential customers. DSET is not a party to this merger proceeding. It should be unnecessary for Integra to have to, in order to obtain complete and accurate discovery responses, point CenturyLink to an email communication it had with DSET. CenturyLink has brought the merger proceeding and has an obligation to diligently search its records and provide complete, accurate responses to discovery conducted in that proceeding. Because CenturyLink was not forthcoming in its discovery responses, however, Integra has had to provide the DSET email as support for this motion.

CenturyLink has had the DSET email since September 1, 2010 -- the date it was sent to Mr. Norton's CenturyLink email address. Moreover, the email indicates that it is confirming earlier communications that were also not described in CenturyLink's discovery responses. But, CenturyLink has never produced the DSET email, never identified DSET as a gateway provider with whom CenturyLink has had such communications, and has never identified Mr. Norton as an employee participating in such communications. This is true even though DSET is one of the providers *expressly named* in several discovery requests, including Requests Nos. 160 and 161. Rather than produce the email in response to Integra's requests, CenturyLink's supplemental responses denied its existence, stating that "no notes were taken and no other documentation exists regarding these inquiries."³⁵

³⁴ Exhibit 4, at 30-31 (Qwest's and CenturyLink's responses to Requests Nos. 160 – 161).

³⁵ Exhibit 4, at 30 – 31 (Qwest and CenturyLink responses to Request Nos. 160 – 161).

Obviously, such documentation does exist. CenturyLink's responses reveal that CenturyLink has either failed to conduct a reasonable inquiry concerning such material³⁶ or is withholding such materials. Given that Integra identified DSET *by name* in its request, there is no reason that CenturyLink failed to reference or produce the DSET email. This is particularly true because Mr. Norton appears to work in relatively close proximity to Melissa Closz, CenturyLink's Director Wholesale Operations.³⁷ CenturyLink identified Ms. Closz as the "sponsor" for CenturyLink's responses to Integra's Requests Nos. 157-163.³⁸ The Commission should investigate whether CenturyLink, and Ms. Closz in sponsoring this answer, made any inquiries of Mr. Norton as part of CenturyLink's duty to conduct a reasonable inquiry.³⁹ If CenturyLink has failed to meet its duty to conduct a reasonable inquiry, its responses cannot be relied upon as accurate or complete.⁴⁰

CenturyLink's general and unsupported assertions regarding relevancy and burden are no basis for withholding information. Integra is aware of no confidentiality issues, and CenturyLink marked none of these responses confidential. To the extent that CenturyLink indicates it has concerns about the confidentiality of any documents, however, those concerns are fully addressed by the protective order in this case. Information about the DSET email and others like it should have been produced in response to Integra's Third Set of Requests. That CenturyLink did not provide the DSET email raises the question of what additional documents and information have not been provided in this matter.

For the foregoing reasons, Integra moves the Commission to compel CenturyLink to conduct a reasonable search for all documents and other information responsive to Integra's Data

³⁶ *Cf.* Utah R. Civ. P. 26(g).

³⁷ Prull Decl., ¶5.

³⁸ Exhibit 4, at 27 – 33.

³⁹ *Cf.* Utah R. Civ. P. 26(g).

⁴⁰ *Cf.* Utah R. Civ. P. 26(g).

Requests Nos. 157 through JC-163, and to produce all such documents and other information immediately. Pursuant to the scheduling order in this proceeding, surrebuttal testimony is due October 14, 2010, and evidentiary hearings are scheduled to begin on October 26, 2010. For Integra to be afforded a meaningful opportunity to address the discovery material responsive to these Requests in the evidentiary record in this proceeding, it should be provided the information before it prepares its surrebuttal testimony due October 14, 2010, and – at minimum – in time to prepare for the hearings.⁴¹ Therefore, Integra requests expedited treatment of this Motion to Compel.

Dated: October 11, 2010

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⁴¹ Because even an expedited hearing would not allow adequate time, Joint CLECs have filed a motion to amend the schedule concurrent with the filing of this Motion.