

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 AMEND  
SCHEDULE**

**Expedited Oral Argument Requested**

**MOTION**

Integra Telecom of Utah, Inc. ("Integra") respectfully moves the Utah Public Service Commission ("Commission") to modify the schedule in this proceeding, provide an opportunity for the filing of supplemental testimony, and postpone the hearings currently scheduled for October 26 – 27, 2010 to December 6 – 7, 2010, or a later date acceptable to the Commission. Integra also requests that the Administrative Law Judge ("ALJ") schedule a telephonic prehearing conference no later than October 14, 2010 for expedited oral argument on this motion.

**ARGUMENT**

Pursuant to the Commission's Scheduling Order and Notice of Hearing issued on June 17, 2010, hearings on the proposed merger between CenturyTel, Inc. ("CenturyLink") and Qwest Communications International, Inc. ("Qwest") are currently scheduled for October 26 –

27, 2010. Unfortunately, those hearing dates will need to be moved, due entirely to CenturyLink's and Qwest's dilatory tactics with respect to discovery in this proceeding. First, CenturyLink's and Qwest's extreme delay in providing responses to Integra's request for production of HSR documents<sup>1</sup>, leaves inadequate time prior to the scheduled hearing dates for Integra to review and analyze the data and submit supplemental testimony addressing the impact of this data on the issues in this proceeding. In addition, CenturyLink and Qwest continue to refuse to produce all documents responsive to Integra's Discovery Requests Nos. 157 – 163, necessitating the filing of yet another motion to compel.<sup>2</sup> Even on an extremely expedited basis, there is insufficient time to resolve this additional discovery dispute prior to the currently scheduled hearing dates.

**A. Qwest and CenturyLink's delays in producing certain HSR documents, and continued refusal to provide documents responsive to other Integra discovery requests necessitate a revised schedule.**

On or about June 29, 2010, Integra propounded on CenturyLink and Qwest Integra's Information Request No. 143, which requested copies of the HSR documents. The deadline for responding to these requests was in mid-July of 2010, well in advance of the August 30, 2010 deadline for Intervenor Direct Testimony. Similar data requests were propounded in a number of other merger review dockets in other states.

CenturyLink and Qwest refused to provide these documents to CLEC intervenors in any state and commenced a series of filings in various states attempting to modify protective orders to create a Staff Eyes Only ("SEO") designation that would preclude CLEC intervenors,

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<sup>1</sup> Integra's Information Request No. 143 requested copies of all documents CenturyLink and Qwest submitted to the U.S. Department of Justice and the Securities and Exchange Commission pursuant to the Hart-Scott-Rodino Act ("HSR Documents"). The dispute over this data request is more fully discussed in Integra's Motion To Compel, filed September 21, 2010. The latter motion has been rendered moot by CenturyLink's and Qwest's recent agreement to provide the HSR documents.

<sup>2</sup> See Integra's Motion to Compel, dated October 11, 2010, filed concurrent herewith.

including outside counsel and outside experts, from reviewing HSR documents. Following the August 24, 2010 denial of the CenturyLink/Qwest SEO motion in the Washington Utilities and Transportation Commission merger review proceeding on, CenturyLink and Qwest continued to refuse to produce the HSR documents and instead commenced a series of negotiations with CLECs in an attempt to narrow the scope of the production, in terms of which documents would be produced, proposed redactions, and limiting the pool of recipients of the documents. None of these offers were satisfactory, and ultimately the parties were forced into renewed litigation.

CLEC motions to compel the HSR documents, or in some cases anticipatory CenturyLink/Qwest motions for *in camera* review, were then filed ad seriatum in numerous state commission proceedings, including Integra's September 21, 2010 motion to compel in this proceeding. As late as October 5, 2010, in a response filed in this proceeding, Qwest and CenturyLink insisted that those HSR Documents would not be produced except under a Staff Eyes Only designation. That designation would have precluded access by Integra's experts, despite the fact that Qwest and CenturyLink had agreed to provide *the same experts* copies of *the same documents* in the Minnesota Commission's merger review proceeding. Faced with the absurdity of this position, on October 7, 2010, CenturyLink and Qwest finally agreed to produce the HSR documents to CLEC outside counsel and outside experts in the Oregon, Washington and Utah merger review proceedings. On October 8, 2010, Qwest delivered to Integra's outside counsel the remaining Qwest HSR documents. As of the filing of the instant Motion, CenturyLink has yet to produce the remaining CenturyLink HSR documents.<sup>3</sup>

The current schedule provides inadequate time for Integra to analyze the recently produced Qwest HSR documents, and yet to be produced CenturyLink HSR documents.

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<sup>3</sup> Counsel for CenturyLink has indicated that CenturyLink will endeavor to produce the documents no later than Tuesday, October 12, 2010.

Qwest's October 8, 2010 production alone was over 1500 pages of previously unproduced material. The volume of pages in CenturyLink's forthcoming production is unknown. These documents should have been produced on or about July 13, 2010. This would have allowed Integra to address the data in the HSR documents in its Direct Testimony, filed August 31, 2010. Instead, Integra was forced to file Direct Testimony without the benefit of this data.

Accordingly, Integra requests that the procedural schedule in this proceeding be modified to include an opportunity for the filing of supplemental testimony to address the HSR materials. In the Minnesota proceeding, the CLEC intervenors have been afforded such an opportunity.<sup>4</sup> In addition, surrebuttal testimony is currently scheduled for October 14, 2010. Integra, therefore, requests that the deadline for the filing of supplemental and surrebuttal testimony be scheduled late enough to allow the same testimony to address data produced in response to this new motion to compel as well. Integra requests that the procedural schedule be modified as follows<sup>5</sup>:

Surrebuttal Testimony to Sept. 30 Testimony and	
Supplemental Testimony on HSR Materials	November 11, 2010
Evidentiary Hearings	December 8 – 9, 2010 <sup>6</sup>

As discussed further below, Integra has filed concurrent herewith a motion to compel additional information that CenturyLink and Qwest have refused to provide. Under rule R746-100, CenturyLink and Qwest have 15 days to file a response to the motion to compel filed today,

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<sup>4</sup> See, attached hereto as Exhibit 1, excerpts of the transcript of the October 6, 2010 hearings in *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Minnesota Public Utilities Commission Docket No. P421, *et al.*/PA-10-456.

<sup>5</sup> This procedural schedule is predicated on an expedited schedule for the resolution of Integra's Motion to Compel filed concurrent herewith. See discussion below.

<sup>6</sup> The proposed hearing dates are the first feasible dates given the hearing schedules in merger approval proceedings other states. Many of the counsel and witnesses involved in those hearings are also counsel and witnesses in this proceeding.

and Integra has 10 additional days to file a reply<sup>7</sup>. Integra proposes that the schedule for resolution of the motion to compel be expedited by cutting these response and reply periods in half, with CenturyLink & Qwest filing their Response no later than October 18, 2010 and Integra filing its Reply no later than October 25, 2010. This will allow time for the ALJ to rule on the motion to compel and, should the ALJ order data to be produced, for Integra (and other parties) to review and analyze the data and address it in their supplemental testimony.

**B. The proposed changes to the procedural schedule will not prejudice CenturyLink, Qwest, or any other party.**

CenturyLink and Qwest currently have hearings scheduled in other state commission merger review proceedings throughout November.<sup>8</sup> To accommodate the potential need for witnesses and counsel in this matter to participate in, and prepare for, hearings in other states, Integra proposes December 8 – 9, 2010 as the earliest feasible dates for a rescheduled hearing in this proceeding. It is Integra’s understanding that Qwest and CenturyLink do not have merger review hearings before any other state commissions on those dates, and that the new proposed dates are feasible for staff Counsel.<sup>9</sup>

Postponing the hearings in this matter to early December will not delay CenturyLink’s and Qwest’s ability to timely close the proposed transaction. The procedural schedule in the Washington Commission’s merger review proceeding calls for hearings on January 5 – 7, 2011,

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<sup>7</sup> See Utah Administrative Code R746-100-4 (“Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.”).

<sup>8</sup> There are currently hearings scheduled for: November 1 (Minnesota), November 4 (New Jersey), November 8-10 (Colorado), November 12 (Colorado), November 15-16 (Arizona), November 19 (Arizona), November 22-23 (Montana), and November 30 (Arizona). November 11 is Veteran’s Day and November 25 is Thanksgiving. The hearing in Oregon is currently scheduled for October 20-21, but Integra, along with other CLECs in that case, is filing a motion to move the hearing to December 1 and 2, 2010. Although no hearing is scheduled for November 17 or 18, the necessity of preparing for and travelling to and from the final day of the Arizona hearing on November 20 precludes a hearing in Utah on those days.

<sup>9</sup> In a telephone conversation between Mark Trincherro and Ms. Patricia Schmid, October 11, 2010, Ms. Schmid indicated that she would prefer December 8 – 9 rather than December 6 – 7 due to another hearing.

with simultaneous post-hearing briefs due February 7, 2011.<sup>10</sup> Thus, the earliest the Washington Commission could enter an order approving the proposed merger would be some time after February 7, 2011. With hearings in early December, this Commission will very likely enter a final decision well before the Washington Commission.

**C. The instant motion must be resolved on an expedited basis.**

Integra further requests that this motion to amend be given expedited review so that it will be decided before the currently scheduled October 26<sup>th</sup> and 27<sup>st</sup> hearing and, if possible, before the current deadline for surrebuttal testimony on October 14, 2010 . Integra requests that the ALJ schedule a telephonic prehearing conference at the earliest possible date, and no later than October 14, 2010, to receive expedited oral argument on this motion. This will allow the parties to timely modify travel schedules.

DATED this 11th day of October, 2010.

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<sup>10</sup> See June 10, 2010 Pre-hearing Conference Order, *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.*, Washington Utilities and Transportation Commission Docket No. UT-100820, Order No. 02, Appendix B (attached hereto as Exhibit 3).