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**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 COMPEL AND REQUEST FOR  
EXPEDITED ORAL ARGUMENT**

Pursuant to R. 746-100-4.D., CenturyLink, Inc. ("CenturyLink") and Qwest  
Communications International, Inc. (Qwest") (hereafter "the Joint Applicants") hereby respond  
to the motion to compel that Integra Telecom of Utah ("Integra") filed on October 11, 2010.

**ARGUMENT**

**I. INTEGRA'S MOTION IS MOOT BECAUSE THERE ARE NO DOCUMENTS**

First, the "facts" that Integra asserts in its motion are false. CenturyLink has re-examined  
its responses to Integra's data requests 157 to 163 first on October 1, 2010 when its responses  
were provided (see Integra Motion to Compel, Exhibit 4) and again now with this response to the  
motion to compel. Specifically, CenturyLink had the employees confirm that they diligently  
searched for potentially responsive documents in their possession and control. CenturyLink  
stands by the completeness and accuracy of responses given as evidenced by the Affidavits  
attached to this response as Exhibits 1 and 2. This alone should make Integra's motion to  
compel moot. Second, even if CenturyLink possibly missed a document, to grant the motion, the

Commission would have to find that Joint Applicants' objections to Integra's data requests were not well taken. Integra has provided no such evidence, argument or authority that would support such a finding, however, and thus, the Commission should deny Integra's motion to compel.

## **II. THE RESPONSES ARE COMPLETE AND ACCURATE**

The Joint Applicants are mindful of their obligation to search for records in any case where discovery may be taken, and both companies take that obligation seriously. Integra claims to have conducted an exhaustive analysis of the "facts" of this discovery dispute, which it concludes can only lead to the conclusion that CenturyLink is either indolent or up to something nefarious. Although it is not entirely clear which specific data request that Integra is seeking to compel answers to, it makes much of an email from a company apparently known as "DSET" to a CenturyLink employee, Mike Norton, that CenturyLink did not produce in response to request Nos. 160 and 161.

As Integra notes, a similar dispute regarding virtually the same discovery requests is currently underway in Minnesota. Attached to this response as Exhibits 1 and 2 are affidavits from the CenturyLink employees, Mike Norton and Wholesale Director of Wholesale Operations, Melissa Cloz, responsible for the disputed discovery responses. These affidavits were prepared for the Minnesota proceeding, but address the same disputed discovery requests, as they are the same in both Minnesota and Utah.

Rather than just dismiss Integra's discovery concerns, CenturyLink went back to the employees responsible for the answers to the disputed requests. As is apparent from Mr. Norton's affidavit attached as Exhibit 1, the email in question apparently came from a sales person at DSET. Mr. Norton's sworn affidavit verifies that he has searched his records again and still cannot find the email in question, nor any responses he might have made to it. Given that

Mr. Norton has attested that he receives literally hundreds of emails a day from salespeople, he may well have deleted it without reading it. He goes on to attest to his recollection of a conversation with the DSET salesman, which is entirely consistent with the responses given to the discovery requests in dispute. Integra has only provided contrary information from a third party, not CenturyLink itself. Given Integra's apparent theory of what happened between the DSET salesman and Mr. Norton, DSET should also have email responses (if any) from Mr. Norton confirming CenturyLink's change of position. However, Integra has not provided any such document in its motion, however. If such documentation exists, Integra should produce it.

Moreover, CenturyLink is also providing the Affidavit of CenturyLink Director of Wholesale Operations, Ms. Closz, who is the person at CenturyLink responsible for answering the disputed requests. The affidavit describes the diligence she used in formulating her responses. Her sworn affidavit specifically states that she searched her records, relied on her own recollection, and inquired about the recollections and records of her staff who would have interfaced with persons making inquiries of the type described in the Integra requests. Ms. Closz stands by the accuracy of the response and the completeness of what was produced.

Given the contents of the CenturyLink affidavits, there is no basis for a motion to compel. While it is possible there may be disputed facts, if Integra truly believes it has found a "smoking gun" in these disputed facts, it is entirely appropriate to use this information in cross examination at the upcoming October 26-27, 2010 hearing. However, litigating these disputed facts by motion, or using them as a catalyst to delay the proceeding, is completely inappropriate.

### **III. INTEGRA HAS NOT OVERCOME THE OBJECTIONS TO THE REQUESTS**

The Joint Applicants have established through sworn affidavits that CenturyLink was diligent in its search for responsive documents, and that no responsive document exist to be

provided. But even the Joint Applicants had not done so, Integra has yet another hurdle to clear before the Commission could grant the motion to compel: It needs to establish that the Joint Applicants' objections to providing the information are not well founded.

As stated, the disputed responses are attached as Exhibit 4 to the motion to compel. The responses contain a series of objections to each of the requests including jurisdiction, relevance, undue burden, and confidential information of a third party, as well as being vague, ambiguous and overly broad requests. Rather than address these objections head on, Integra makes only vague references to the breadth of the Utah discovery statutes and rules. The Commission has adopted the Utah Rules of Civil Procedure ("URCP") through R.746-100-8. URCP 33 allows respondents like CenturyLink to make the objections it interposed in this case. Integra has the burden of coming forward with some argument and legal authority to rebut each of the Joint Applicants' objections. Integra has made no attempt to do this, however. Consequently, the motion to compel is *per se* defective, particularly in light of the fact that the Joint Applicants are at an impossible disadvantage, as they are unable to predict what arguments Integra might make in response to the various objections. Given Integra's failure to address the merits of the Joint Applicants' objections to the disputed requests, the Commission should deny motion to compel for this reason as well.

### **CONCLUSION**

The Joint Applicants have provided sworn affidavits from the CenturyLink employees responsible for the discovery in dispute. Their statements demonstrate that they employed proper diligence during the collection of discovery, but they found nothing in CenturyLink's files that was responsive. CenturyLink stands by its responses as complete and accurate. Even if the Commission were to find that CenturyLink had been inept or less than forthcoming in

conducting its search for responsive documents, the Commission would still have to address the Joint Applicants' objections to the requests before granting any motion to compel. Given that Integra has have provided no facts or legal authority to overcome the Joint Applicants' objections, the Commission has no valid way to dismiss them. The Commission should therefore deny Integra's motion to compel in its entirety.

DATED: October 19, 2010

Respectfully submitted,

CENTURYLINK

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