

**UM 1484**

) REPLY TO JOINT RESPONSE TO  
) MOTION TO CERTIFY QUESTIONS  
) TO COMMISSION

1

The Question should be certified as Sprint satisfies the standard of undue prejudice.<sup>1</sup> Both Sprint and the Commission will be prejudiced as Sprint will not be able to fully inform the Commission regarding whether the transaction satisfies the “no harm” standard without access to the requested information. Moreover, the Washington and Minnesota Commissions required CenturyLink and Qwest to produce responses to the identical data requests and their analysis demonstrates that the requested information in data requests 13 and 14 can help show the impact on competition caused by the merger. Staff and the Merged Firm’s opposition to Sprint’s requested access reductions is not a reason to deny Sprint’s motion to compel. The requested information can help demonstrate the magnitude of the problem that Sprint’s requested access reductions are meant to address. The Commission need not decide in this motion whether access reductions can be ordered,<sup>2</sup> but granting of Sprint’s motion will help in fully informing the Commission.

**I. Sprint will be unduly prejudiced**

Sprint will be unduly prejudiced without access to the requested information. Sprint needs the information to undertake a reasonable investigation into the harms

---

<sup>1</sup> See OAR 860-014-0091; **Appeals to the Commission from Rulings of Administrative Law Judges**

(1) A ruling of the Administrative Law Judge (ALJ) may not be appealed during the proceeding except where the ALJ certifies the question to the Commission pursuant to OAR 860-012-0035(1)(i), upon a finding that the ruling:(a) May result in substantial detriment to the public interest or undue prejudice to any party; or (b) Denies or terminates any person's participation.

<sup>2</sup> Sprint's testimony that it will enter into the record seeks to reduce CenturyLink's intrastate access rates to Qwest intrastate access rate levels and then to reduce both the intrastate rates of the merged company's ILECs to mirror Qwest's interstate rates. Sprint will provide evidence at the hearing and brief why these two conditions are necessary to counteract the loss of competition, the increased ability of the Merged Firm to discriminate against competition and other merger related harms. Sprint's briefs after the hearing will address any related legal issues on the access reduction topic.

created by the merger. Sprint explained in its motion to compel and in its Motion to Certify Question that to help examine the proposed merger's effect on competition, it is important to determine the amount of revenues from switched and special access that the applicants are currently paying each other. Answers to these data requests will allow an analysis of merger savings that will be generated as these access charge payments will become intra-company payments rather than payments from Qwest entities to CenturyLink entities and vice versa. The fact that the Merged Firm will continue to have the same corporate entities and will make accounting entries for payments and receipts of interstate switched and special access charges does not eliminate the truth that the payments and receipts will now fall under the same corporate holding company and will not be payments from one holding company to another. The Merged Firm will have an advantage over its competitors, like Sprint, that cannot internalize those costs as the Merged Firm can. Without the production of the amounts paid by the CenturyLink and Qwest entities now for interstate switched and special access, Sprint is unduly prejudiced as it cannot make a complete presentation of its case and demonstrate in numerical terms the amount of interstate switched and special access savings avoided by the CenturyLink and Qwest.<sup>3</sup>

Sprint submits further that the Commission also would be unduly prejudiced without such information. Since the Washington and Minnesota Commissions compelled the Merged Firm to respond to data requests 13 and 14, Sprint will be able

---

<sup>3</sup> Sprint's Confidential testimony provides the intrastate switched access costs that the Merged Firm will be able to avoid by virtue of the merger. See Frentrup Unredacted Testimony, p. 21 and confidential exhibit JCF-2.

to present a more robust case regarding the harm to competition caused by the merger. In those jurisdictions, Sprint presents in dollars and sense terms the advantages garnered by the Merged Firm over its competitors. Unless the Commission here overturns the discovery ruling, it will not be able to examine the information that its sister state commissions have received.

## **II. The Washington and Minnesota Commissions Compelled the Production of the Identical Data Requests**

Sprint's Motion for Certification cited to and attached the Washington Motion to Compel Order.<sup>4</sup> Subsequently, Sprint filed the Minnesota Public Utility Commission's similar order requiring CenturyLink and Qwest to produce the requested interstate switched and special access information.<sup>5</sup> CenturyLink and Qwest argue that the Washington ruling is inapplicable because of Oregon factors. Then CenturyLink and Qwest quote extensively from the Staff's testimony regarding why access charges should not be reduced as part of this proceeding. Such quotations miss the mark completely. The requested information will inform the Commission's analysis of the harm to competition arising from the merger. Whether the Commission takes the next step and determines to add an access rate reduction condition to the approval of the merger is another matter completely.

---

<sup>4</sup> *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.*, Docket UT-100820, Order 09 (Sept. 10, 2010) ("Washington Motion to Compel Order"), p. 8, ¶ 21. The Washington Motion to Compel Order also acknowledged that since the applicants agreed to provide interstate revenue data in response to Sprint data request 5, then it is wrong for applicants to argue that interstate data in response to requests 13 and 14 cannot also be produced.

<sup>5</sup> *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. P-421, et al. PA 10-456, Order Regarding Motions to Compel filed by Sprint, Integra, and CWA, (Sept. 21, 2010), ("Minnesota Order").

Meanwhile, CenturyLink and Qwest never address the Minnesota ruling.<sup>6</sup> The Minnesota Commission's ruling provides an excellent analysis of why the requested access charge information is necessary to examine the impact on competition of the merger. There the ALJ stated:<sup>7</sup>

After careful consideration of the competing arguments of the parties, and in light of the broad definition of relevancy applied in considering motions to compel, the Administrative Law Judge concludes that Sprint has shown that Information Requests 13 and 14 are reasonably calculated to lead to the discovery of information that is relevant to the issues in this proceeding. The potential impact of the merger on access charges and competition is a proper inquiry in this case. Although it is undisputed that the Commission does not regulate interstate access charges, Sprint has demonstrated that the information sought bears on (or could lead to other matter that could bear on) the impact of the merger on Minnesota customers and on competition in the local telecommunications market. Even if separate organizational entities remain in existence after the merger, and even if there is not any current intention to change the access charges to subsidiaries, the manner in which the access charges are recognized or handled after the merger may create efficiencies or cost reductions that could affect competition in Minnesota.

As in Minnesota, the requested material in Oregon can inform the Commission about whether the manner the access charges are recognized or handled will create efficiencies or cost reductions that could affect competition in Oregon. As in Minnesota, that the Oregon Commission does not regulate interstate access or that the separate organizational entities will remain, has no bearing on the analysis of competition caused by the merger. Sprint will provide evidence at the hearing and brief why access reductions are necessary to counteract the loss of competition, the increased ability of the Merged Firm to discriminate against competition and other merger related harms. That evidence will be used as a suggestion to "cure" the merger- related harms. But the data requests here allow Sprint to present a more

---

<sup>6</sup> CenturyLink and Qwest Response, pp. 4-5.

<sup>7</sup> Minnesota Order, p. 8.

robust picture of the "actual" merger-related harms. Staff's reluctance to tackle the access charge issue provides no reason to deny Sprint's motion to compel.

### **III. Conclusion**

Responses to data requests 13 and 14 will help the Commission quantify the harm to competition caused by the merger of two holding companies that previously bought access services from one another and that now will be able to have owner's economics of such facilities. Sprint and the Commission will be unduly prejudiced without such information. The Minnesota PUC rightly found that they need not make a decision on whether access charges must be reduced to cure merger-related harms before it receives the information that can help quantify such harms.

For the reasons stated in Sprint's motion to compel, its Motion to Certify Question and herein, it is appropriate for the Administrative Law Judge to certify this question to the Commission for consideration and for the Commission to compel production to data requests 13 and 14.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of October, 2010.

GRAHAM & DUNN PC



Judith A. Endejan, OSB # 072534  
2801 Alaskan Way ~ Suite 300  
Seattle, WA 98121  
Tel: (206) 624-8300  
Fax: (206) 340-9599  
Email: jendejan@grahamdunn.com

Kristin L. Jacobson  
201 Mission Street, Suite 1500  
San Francisco, CA 94105  
Tel: 707.816.7583  
Email: Kristin.l.jacobson@sprint.com

Kenneth Schiffman  
Diane Browning  
6450 Sprint Parkway  
Overland, KS 66251  
Tel: 913.315.9783  
Email: Kenneth.schifman@sprint.com  
Diane.c.browning@sprint.com

**CERTIFICATE OF SERVICE**  
**UM 1484**

I hereby certify that on October 14, 2010, I served the foregoing Reply to Joint Response to Motion to Certify Questions to Commission in the above-entitled docket on the following persons via e-mail and U.S. Mail to those who have not waived paper serviced, by mailing a true and correct copy to them in a sealed envelope with postage prepaid, addressed as shown below, and deposited in the U.S. post office in Seattle, Washington.

<b>W=Waive Paper service</b>	<b>C=Confidential HC=Highly Confidential</b>	<b>Name/Company Name</b>
<b>W</b>	<b>CHARLES L BEST (HC) ATTORNEY AT LAW</b>	1631 NE BROADWAY #538 PORTLAND OR 97232-1425 chuck@charleslbest.com
<b>W</b>	<b>360NETWORKS(USA) INC</b>	
	<b>MICHEL SINGER NELSON</b>	370 INTERLOCKEN BLVD STE 600 BROOMFIELD CO 80021-8015 mnelson@360.net
	<b>PENNY STANLEY</b>	370 INTERLOCKEN BLVD STE 600 BROOMFIELD CO 80021-8015 penny.stanley@360.net
<b>W</b>	<b>ATER WYNNE LLP</b>	
	<b>ARTHUR A BUTLER (C) (HC)</b>	601 UNION STREET, STE 1501 SEATTLE WA 98101-3981 aab@aterwynne.com
	<b>JOEL PAISNER ATTORNEY</b>	601 UNION ST STE 1501 SEATTLE WA 98101-2327 jrp@aterwynne.com
<b>W</b>	<b>CENTRAL TELEPHONE INC</b>	
	<b>RICHARD STEVENS</b>	PO BOX 25 GOLDENDALE WA 98620 rstevens@gorge.net
<b>W</b>	<b>CENTURY FARM COURT</b>	
	<b>JOHN FELZ DIRECTOR REGULATORY OPERATIONS</b>	5454 W 110TH ST KSOPKJ0502 OVERLAND PARK KS 66211 john.felz@centurylink.com
<b>W</b>	<b>CENTURYLINK</b>	
	<b>RHONDA KENT</b>	805 BROADWAY 8TH FL VANCOUVER WA 98660 rhonda.kent@centurylink.com
<b>W</b>	<b>CENTURYLINK, INC.</b>	
	<b>WILLIAM E HENDRICKS (C) ATTORNEY</b>	805 BROADWAY ST VANCOUVER WA 98660-3277 tre.hendricks@centurylink.com
<b>W</b>	<b>CHARTER FIBERLINK OR - CCVII LLC</b>	
	<b>MICHAEL R MOORE</b>	12405 POWERSCOURT DR



ST LOUIS MO 63131  
michael.moore@chartercom.com

W

**CITIZENS' UTILITY BOARD OF  
OREGON**

GORDON FEIGNER (C)  
ENERGY ANALYST

610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
gordon@oregoncub.org

ROBERT JENKS (C) (HC)  
EXECUTIVE DIRECTOR

610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
bob@oregoncub.org

G. CATRIONA  
MCCRACKEN (C) (HC)  
LEGAL COUNSEL/STAFF ATTY

610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
catriona@oregoncub.org

RAYMOND MYERS (C) (HC)  
ATTORNEY

610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
ray@oregoncub.org

KEVIN ELLIOTT PARKS (C) (HC)  
STAFF ATTORNEY

610 SW BROADWAY, STE 400  
PORTLAND OR 97205  
kevin@oregoncub.org

W

**CITY OF LINCOLN CITY**

DAVID HAWKER  
CITY MANAGER

801 SW HIGHWAY 101  
LINCOLN CITY OR 97367  
davidh@lincolncity.org

DOUGLAS R HOLBROOK  
ATTORNEY

PO BOX 2087  
NEWPORT OR 97365  
doug@lawbyhs.com

W

**COMMUNICATION CONNECTION**

CHARLES JONES  
MANAGER

14250 NW SCIENCE PARK DR - STE B  
PORTLAND OR 97229  
charlesjones@cms-nw.com

W

**CONVERGE COMMUNICATIONS**

MARSHA SPELLMAN

10425 SW HAWTHORNE LN  
PORTLAND OR 97225  
marsha@convergecomm.com

W

**CORPORATE LAWYERS PC**

FRANK G PATRICK

PO BOX 231119  
PORTLAND OR 97281  
fgplawpc@hotmail.com

**COVAD COMMUNICATIONS CO**

KATHERINE K MUDGE  
DIRECTOR, STATE AFFAIRS & ILEC  
RELATIONS

7000 N MOPAC EXPWY 2ND FL  
AUSTIN TX 78731  
kmudge@covad.com

W

**DAVIS WRIGHT TREMAINE LLP**

K C HALM (C) (HC)

1919 PENNSYLVANIA AVE NW 2ND FL  
WASHINGTON DC 20006-3458  
kchalm@dwt.com

GREGORY J KOPTA  
DAVIS WRIGHT TREMAINE LLP

1201 THIRD AVE - STE 2200  
SEATTLE WA 98101-1688  
gregkopta@dwt.com

MARK P TRINCHERO (C) (HC)

1300 SW FIFTH AVE STE 2300  
PORTLAND OR 97201-5682  
marktrinchero@dwt.com

**DEPARTMENT OF JUSTICE**

JASON W JONES (C) (HC)  
ASSISTANT ATTORNEY GENERAL

BUSINESS ACTIVITIES SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
jason.w.jones@state.or.us

**W GRAHAM & DUNN PC**

JUDITH ENDEJAN (C)

2801 ALASKIAN WAY  
SUITE 300  
SEATTLE WA 98121  
jendejan@grahamdunn.com

**W GRAY PLANT MOOTY**

GREGORY MERZ (C) (HC)  
ATTORNEY

500 IDS CENTER  
80 S EIGHTH ST  
MINNEAPOLIS MN 55402  
gregory.merz@gpmlaw.com

**W INTEGRA TELCOM INC**

KAREN L CLAUSON (C)  
VICE PRESIDENT, LAW & POLICY

6160 GOLDEN HILLS DR  
GOLDEN VALLEY MN 55416-1020  
klclauson@integratelecom.com

**W LEVEL 3 COMMUNICATIONS LLC**

GREG L ROGERS (C)  
SR CORPORATE COUNSEL

1025 ELDORADO BLVD  
BROOMFIELD CO 80021  
greg.rogers@level3.com

**W LINCOLN COUNTY COUNSEL**

WAYNE BELMONT

225 W OLIVE ST, RM 110  
NEWPORT OR 97365  
wbelmont@co.lincoln.or.us

**W MCDOWELL RACKNER & GIBSON PC**

ADAM LOWNEY (C) (HC)

419 SW 11TH AVE, STE 400  
PORTLAND OR 97205  
adam@mcd-law.com

WENDY MCINDOO (C)  
OFFICE MANAGER

419 SW 11TH AVE., SUITE 400  
PORTLAND OR 97205  
wendy@mcd-law.com

LISA F RACKNER (C)  
ATTORNEY

419 SW 11TH AVE., SUITE 400  
PORTLAND OR 97205  
lisa@mcd-law.com

**W NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL**

GREG MARSHALL  
PRESIDENT

2373 NW 185TH AVE - # 310  
HILLSBORO OR 97124  
gmarshall@corbantechologies.com

**W PACIFIC NORTHWEST PAYPHONE**

RANDY LINDERMAN

1315 NW 185TH AVE STE 215  
BEAVERTON OR 97006-1947  
rlinderman@gofirestream.com

W	<b>PARKER TELECOMMUNICATIONS</b>  EDWIN B PARKER	PO BOX 402 GLENEDEN BEACH OR 97388 edparker@teleport.com
W	<b>PRIORITYONE TELECOMMUNICATIONS INC</b>  KELLY MUTCH (C)	PO BOX 758 LA GRANDE OR 97850-6462 managers@p1tel.com
W	<b>PUBLIC UTILITY COMMISSION OF OREGON</b>  BRYAN CONWAY (C) (HC)  MICHAEL DOUGHERTY (C) (HC)	PO BOX 2148 SALEM OR 97308-2148 bryan.conway@state.or.us  PO BOX 2148 SALEM OR 97308-2148 michael.dougherty@state.or.us
	<b>QSI CONSULTING, INC</b>  PATRICK L PHIPPS (C) (HC) VICE PRESIDENT	3504 SUNDANCE DR SPRINGFIELD IL 62711
	<b>QWEST CORPORATION</b>  ALEX M DUARTE (C) CORPORATE COUNSEL  MARK REYNOLDS	310 SW PARK AVE 11TH FL PORTLAND OR 97205-3715 alex.duarte@qwest.com  1600 7TH AVE RM 3206 SEATTLE WA 98191 mark.reynolds3@qwest.com
W	<b>SPRINT COMMUNICATIONS CO LP</b>  DIANE BROWNING  KENNETH SCHIFMAN	6450 SPRINT PKWY OVERLAND PARK KS 66251 diane.c.browning@sprint.com  6450 SPRINT PKWY OVERLAND PARK KS 66251 kenneth.schifman@sprint.com
W	<b>SPRINT NEXTEL</b>  KRISTIN L JACOBSON (C)	201 MISSION ST STE 1500 SAN FRANCISCO CA 94105 kristin.l.jacobson@sprint.com
	<b>T-MOBILE USA INC</b>  DAVE CONN	12920 SE 38TH ST BELLEVUE WA 98006 dave.conn@t-mobile.com
W	<b>TILLAMOOK COUNTY</b>  WILLIAM SARGENT TILLAMOOK COUNTY COUNSEL	1134 MAIN AVE TILLAMOOK OR 97141 wsargent@oregoncoast.com
	<b>TW TELECOM OF OREGON LLC</b>	

LYNDALL NIPPS (C)  
VICE PRESIDENT, REGULATORY  
AFFAIRS

9665 GRANITE RIDGE DR - STE 500  
SAN DIEGO CA 92123  
lyndall.nipps@twtelecom.com

UNITED TELEPHONE COMPANY OF  
THE NORTHWEST

BARBARA YOUNG

902 WASCO ST ORHDRA0305  
HOOD RIVER OR 97031  
barbara.c.young@centurylink.com

W

WSTC

ADAM HAAS


10425 SW HAWTHORNE LN  
PORTLAND OR 97225  
adamhaas@convergecomm.com

XO COMMUNICATIONS SERVICES INC

REX M KNOWLES  
REGIONAL VICE PRESIDENT -  
REGULATORY

7050 UNION PARK AVE - STE 400  
MIDVALE UT 84047  
rex.knowles@xo.com

DATED this 14<sup>th</sup> day of October, 2010.



Darlyne De Mars  
Legal Assistant to Judith A. Endejan