

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control)	WC Docket No. 10-110
)	

PROTECTIVE ORDER

Adopted: October 29, 2010

Released: October 29, 2010

By the Chief, Wireline Competition Bureau:

1. On May 28, 2010, the Wireline Competition Bureau (the Bureau) issued a Protective Order (the First Protective Order) regarding confidential or proprietary documents that have been or may be submitted by Qwest Communications International, Inc. (Qwest) and CenturyTel, Inc. d/b/a CenturyLink (CenturyLink and, together with Qwest, the Applicants); and others that have or may become parties to this proceeding (individually, each a Submitting Party, and collectively the Submitting Parties). For the reasons set forth below, we hereby adopt a further Protective Order (the “Second Protective Order”) to ensure that certain highly confidential and competitively sensitive documents and information that may be submitted by the Submitting Parties are afforded adequate protection.

2. On October 18, 2010, the Bureau issued an Information Request to the Applicants.¹ On October 25, 2010, the Applicants filed a Petition for Adoption of Second Protective Order with the Commission, stating that some of the information that they intend to file in response to the Bureau’s request is so confidential that disclosure should be limited to outside counsel and experts.² The Applicants state that their response to these requests would contain some of their most sensitive data, the release of which would have a significant adverse impact on the Applicants’ business and place them at a significant competitive disadvantage in the market. The Applicants further state that the information for which they seek enhanced protection is similar to information as to which the Commission has previously limited disclosure to outside counsel and experts only. The Applicants explain why the information at issue is highly competitively sensitive and needs such enhanced protection.

3. The Commission will grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.³

¹ See Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Tom Gerke, CenturyLink, Inc., and Steven Davis, Qwest Communications International, Inc., WC Docket 10-110, DA 10-1999 (Oct. 18, 2010) (Information Request).

² Petition for Adoption of Second Protective Order, WC Docket 10-110 (filed Oct. 25, 2010).

³ See, e.g., *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket 09-95, DA 10-221 (rel. Feb. 2, 2010) (adopting a second protective order); *News Corporation, The DIRECTV Group, Inc., and Liberty Media Corporation, Application for Authority to Transfer Control*, MB Docket 07-18, Order, DA 07-3106 (rel. July 10, 2007) (adopting a second protective order); *Adelphia Communications Corp., Time Warner Cable Inc. and Comcast Corp., Applications for Consent to the*

Accordingly, we will permit persons submitting such documents and information and those of a similarly competitively sensitive nature to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to Outside Counsel of Record, their employees, and Outside Consultants whom they retain to assist them in this proceeding. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding and therefore require their production. We are mindful of their highly sensitive nature, but we must also protect the right of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in this Second Protective Order will give appropriate access to the public while protecting a Submitting Party's competitively sensitive information, and will thereby serve the public interest. We stress that this Second Protective Order covers only the specific data identified in paragraph 6 below that contain Highly Confidential Information.

4. *Acknowledgment.* Any party seeking access to highly confidential documents subject to this Second Protective Order shall request access pursuant to the terms of the Second Protective Order and must sign the Acknowledgement of Confidentiality, attached as Appendix A ("Acknowledgement").

5. *Definitions.* As used herein, capitalized terms not otherwise defined in this Second Protective Order shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 10-110 before the Federal Communications Commission," unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains information that the Submitting Party believes should be subject to protection under FOIA, the Commission's implementing rules and this Second Protective Order.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived there from that is not otherwise available from public sources and that the Submitting Party has kept strictly confidential. Specifically, the responses to the Bureau's request covered by the Second Protective Order are those portions of documents or data – or entire documents, if eligible in their entirety – that disclose one or more of the categories of highly competitively sensitive information covered by this Second Protective Order. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this Second Protective Order only those documents specifically authorized by the Bureau.

"Outside Counsel of Record" or "Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these

proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Outside Consultants” means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Reviewing Party” means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 9 and 12 of this Second Protective Order.

6. *Categories of Highly Confidential Information Covered by This Second Protective Order.* A document or a portion of a document may be submitted under the Second Protective Order only if it is responsive to the Information Request *and* it contains Highly Confidential Information as defined above. The scope of this Second Protective Order is limited to the following categories of information:

- Information and maps regarding the Applicants’ network facilities and network deployment plans that is sufficiently granular to describe the types of connections and capabilities that the Applicants have at specific buildings. Also, information that is detailed enough to reveal information about specific customers and specific customer demand. *See* Information Request 4.
- Business and marketing plans, including detailed plans for wholesale services and operations, expected broadband deployment, plans for deployment of advanced broadband services, including, IPTV. Other detailed planning documents, including, forward-looking detailed competitive analyses, plans and studies that discuss competition for any specific customers or class of customers; engineering capacity planning documents, plans to contrast new facilities or deploy new services in particular locations or areas, documents concerning anticipated integration or changes to OSS, documents concerning anticipated changes in customer demand or volume of traffic, and other non-public information and detailed documents that describe deployment strategies, product strategies, services strategies, human resources and staffing strategies, procurement strategies, and marketing strategies. *See* Information Requests 4, 5, 6, 8, 9, 10, and 12.
- Information concerning the specific steps that the Applicants will take to integrate the companies, including granular details regarding the specific benefits, costs, risks, timeframe and other detailed quantifications of integration, including the expected costs, benefits and risks of synergies arising from integration. *See* Information Requests 5, 6, 7, and 12.

7. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Second Protective Order shall use the information solely for the preparation and conduct of this license transfer proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly

Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Second Protective Order.

8. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Second Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed further.

9. *Permissible Disclosure.* Subject to the requirements of paragraph 12, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party.

10. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 12 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Second Protective Order. Such persons shall further have the obligation to ensure that Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Second Protective Order.

11. *Copying Sensitive Documents.* Any Highly Confidential Documents may be marked with the legend "Additional Copying Prohibited." A reviewing party shall receive only one copy of the document and no further copies of such document, in any form, shall be made, subject to the provisions for access to information in electronic format in paragraph 13. Application for relief from this restriction against further copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

12. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 9, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality ("Acknowledgment") and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 9, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after

receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 9, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that the Applicants shall make available for review all of their Stamped Highly Confidential Documents at the offices of one Applicant's Outside Counsel of Record (the "Applicants' Custodian Counsel"). Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site; (2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents; or (3) parties may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment. This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referred to above. All copies of documents that are removed from the Submitting Party's office will be stamped as described herein and must be returned or destroyed in accordance with the terms of this Second Protective Order.

13. *Highly Confidential Information in Electronic Format.* If a party's Outside Counsel or Outside Consultant has been granted access to Stamped Highly Confidential Documents and Highly Confidential Information pursuant to paragraphs 9 and 12, that Outside Counsel or Outside Consultant may request one copy of information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device. The disk or other medium containing Highly Confidential Information in electronic format shall be physically sent to the Outside Counsel or Outside Consultant; it shall not be transmitted electronically.

a. A person in receipt of Highly Confidential Information in electronic format shall load the information onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose. The original disk or other storage medium shall be stored in a secure location and a record kept of any persons given access to the disk. Only persons who have signed the Acknowledgement to this Second Protective Order may be given access to the disk.

b. Once loaded onto a computer, the files containing Highly Confidential Information shall be password protected immediately. The password shall be given only to persons who have signed the Acknowledgement to this Order. The Highly Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the underlying Highly Confidential Information) to a mobile data storage medium. All files containing Highly Confidential Information shall be deleted from the computer as soon as practicable.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Second Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

15. *Filings with the Commission.* Persons described in paragraphs 9 and 12 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure:

a. The cover or first page of the filing, and each page of the filing that contains or discloses Confidential Information subject to this order must be clearly marked: “Highly Confidential Information – subject to Protective Order in WC Docket No. 10-110 before the Federal Communications Commission;”

b. One copy of the filing shall be filed with the Secretary’s Office. The filing shall be accompanied by a cover letter stating “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 10-110 before the Federal Communications Commission.” The filing shall be made under seal, and will not be placed in the Commission’s public file.

c. Those portions of the filing that constitute Highly Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Highly Confidential Information are readily identifiable based on an examination of the filing.

d. Two redacted copies of the filing containing neither Highly Confidential Information nor Confidential Information (the “Redacted Confidential Filing”) shall also be filed with the Secretary’s Office. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. The two copies of the Redacted Confidential Filing and their accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” The cover letter accompanying the Redacted Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing.

e. Two copies of the filing containing Highly Confidential Information and the accompanying cover letter shall be delivered in person to Gary Remondino, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition, a person making a filing containing Highly Confidential Information shall serve a copy on the relevant Submitting Party.

f. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

16. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising there from and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

18. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Second Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with

the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

19. *Violations of Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Second Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Second Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Protective Order.

20. *Termination of Proceeding.* The provisions of this Second Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 9 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 9 and 12) may retain, under the continuing strictures of this Second Protective Order, two copies of pleadings (one of which may be in electronic format) containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

21. *Authority.* This Order is issued pursuant to Sections 4(i) and 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 214(a), Section 2 of the Cable Landing Act, 47 U.S.C. § 35, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 10-110

I hereby acknowledge that I have received and read a copy of the foregoing Second Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Second Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Second Protective Order. I acknowledge that a violation of the Second Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the Second Protective Order is due solely to my capacity as Outside Counsel or Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 9 of the foregoing Second Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Second Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Second Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Protective Order.

Executed at _____ this ___ day of _____, ____.

[Name]
[Position]
[Address]
[Telephone]