

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

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

PETITION FOR ADOPTION OF SECOND PROTECTIVE ORDER

CenturyLink, Inc. and Qwest Communications International Inc. (the “Applicants”) hereby petition the Commission to adopt a second protective order in the above captioned matter to ensure that certain highly confidential and sensitive documents and information that may be produced by the Applicants are afforded adequate protection. The Applicants currently are assembling documents and information to submit to the Commission in response to its Initial Information and Document Request dated October 18, 2010 (“Information Request”), and will be producing such documents and information on or before November 1, 2010. The Applicants expect that a portion of the documents and information that they produce will contain extremely sensitive data, the disclosure of which to competitors would have a significant adverse impact on Applicants’ business and place them at a competitive disadvantage. Accordingly, the Applicants request that that the Commission implement a second protective order that permits them to designate certain materials as Highly Confidential and limits access to such materials only to outside counsel of record, their employees, and outside consultants or experts who are not involved in competitive decision-making. The Commission has authority to issue such an order pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C.

§§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

The Commission in many prior transactions has granted special protection, with more limited access, for materials that, if released to competitors, would allow those competitors to gain advantage in the marketplace.¹ Among the types of documents for which the Commission has granted this additional protection are lists of specific customers or customer data (such as revenues attributed by customer or customer data aggregated to a relatively detailed level), competitive analyses such as future pricing, product or marketing plans, detailed engineering capacity information, build out plans, detailed merger integration specifics or efficiencies, and other future business plans.² The Information Request calls for many categories of documents and information that will contain some of the most sensitive information regarding the

¹ See, e.g., *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, Second Protective Order, WC Docket No. 06-74, ¶ 3 (July 7, 2006); *SBC Communications Inc. and AT&T Corp. Applications for Transfer of Control*, Second Protective Order, WC Docket No. 05-65, ¶ 3 (May 9, 2005); *Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Second Protective Order, 24 FCC Rcd 14569 (WTB 2009); *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Second Protective Order, 24 FCC Rcd 7182 (WTB 2009); *Application of News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control*, MB Docket 07-18, Protective Order, 22 FCC Rcd 12797 (MB 2007) (adopting a second protective order); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelpia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, MB Docket No. 05-192, Order, 20 FCC Rcd 20073 (MB 2005) (adopting a second protective order); *News Corporation, General Motors Corporation, and Hughes Electronic Corporation*, MB Docket No. 03-124, Order, 18 FCC Rcd 15198 (MB 2003) (adopting a second protective order).

² See, e.g., *AT&T/BellSouth Second Protective Order*, ¶¶ 3, 5; *AT&T/SBC Second Protective Order* ¶¶ 3, 4.

Applicants' businesses and that fall within the categories for which the Commission has previously granted Highly Confidential treatment.

The Applicants seek enhanced protection for detailed proprietary information and maps regarding their network facilities and network deployment plans, including information about the types of connections and capacities that each company has at specific buildings, the duration of leases, and their expected service offerings to specific buildings within the next two years. *See, e.g.,* Information Request 4. This information is not only commercially sensitive in itself, but much of it is sufficiently granular that it would reveal information about the Applicants' specific customers and customer demand, and would allow competitors to analyze the strengths and weaknesses of their service offerings at precise locations and to particular customers and classes of customers.

The Applicants also seek enhanced protection for documents and information that discuss their business and marketing plans, including plans for wholesale services and wholesale operations, their expected broadband deployment and availability following the close of this transaction, plans for deployment of advanced broadband services including IPTV, and other types of planning documents. These planning documents contain some of the Applicants' most competitively sensitive information. Disclosure of such information to competitors would enable competitors to incorporate this information into their own business and marketing strategies, and gain them unfair competitive advantage. Enhanced protection therefore should apply to all forward looking competitive analyses, studies, or plans that discuss competition for any specific customers or customer class; engineering capacity planning documents; plans to construct new facilities or deploy new services or services to new locations; plans regarding anticipated integration or changes to OSS; documents concerning anticipated changes in customer demand

or volume of traffic; and any other information and documents that would reveal 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, 12.

The Applicants also seek enhanced protection for competitively sensitive information regarding the specific steps that the Applicants will take to integrate the companies, including details regarding the specific benefits, costs, risks, timeframe and other quantifications of integration, including expected costs, benefits, and risks of synergies arising from integration. *See* Information Requests 5, 6, 7, 12. This information is highly commercially sensitive and its disclosure would give competitors unfair competitive advantages, and indeed some of the specific integration information is so sensitive that the merging parties have not shared it with each other.

The Commission therefore should adopt a second protective order that would permit the Applicants to designate documents containing the foregoing information “Highly Confidential,” and limit disclosure of such documents only to outside counsel of record, their employees, and their outside consultants or experts. Limiting access to outside counsel and their experts is absolutely essential to preserve the competitive dynamics in the marketplace and ensure that the Applicants are not placed at a significant competitive disadvantage. In addition, the Commission should specify that any person who obtains access to Highly Confidential information shall use the documents or information solely for the preparation and conduct of this proceeding before the Commission, and shall not use such documents or information for any other purpose, including without limitation any business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings.³ The Commission repeatedly has found that

³ *See, e.g., AT&T/BellSouth Second Protective Order* ¶ 6.

such enhanced protection for highly sensitive categories of information appropriately balances the Commission's need to develop a more complete record on which to base its decision, the public's right to participate in proceedings, and the merging parties' interests in safeguarding highly sensitive data.⁴

Because the Applicants expect to produce highly confidential documents in response to the Information Request on or before November 1, 2010, the Applicants respectfully request that the Commission expeditiously grant this petition.

October 25, 2010

Respectfully submitted,

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⁴ See, e.g., *AT&T/BellSouth Second Protective Order* ¶ 3; see also *AT&T/SBC Second Protective Order* ¶ 3.