

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION 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 Corp.

DOCKET UT-100820

JOINT RESPONSE OF STAFF,  
PUBLIC COUNSEL, AND  
DoD/FEA TO OBJECTIONS  
TO THE PROCEDURAL  
SCHEDULE

1 Pursuant to the Commission's Notice of Opportunity to Respond to Objections to Procedural Schedule issued June 23, 2010, Staff of the Washington Utilities and Transportation Commission (Staff), Public Counsel, and United States Department of Defense and All Other Federal Executive Agencies (DoD/FEA) file this Joint Response. The Joint Applicants, Qwest Communications International, Inc. (Qwest) and CenturyTel, Inc. (CenturyLink) (collectively, Joint Applicants) filed an objection to the procedural schedule and proposed revisions "to allow the docket to conclude this year."<sup>1</sup> Staff, Public Counsel, and DoD/FEA oppose Joint Applicants' objection and proposal for the following reasons.<sup>2</sup>

<sup>1</sup> Joint Applicants' Objection to, and Request for Review of, the Schedule Established in Prehearing Conference Order 02, filed June 22, 2010, at p.2, ¶ 4.

<sup>2</sup> Public Counsel also filed an objection to the schedule, and Staff and DoD/FEA concur with Public Counsel's arguments and requested relief, including the request for the alternative date no earlier than December 17, 2010, for the distribution of cross-examination exhibits.

2           The compressed schedule proposed by the Joint Applicants would prejudice the other parties to the proceeding. The Joint Applicants propose filing rebuttal testimony October 15, 2010, and holding hearings November 10, 11, and 12, 2010. This proposal would shorten hearing preparation time from five weeks after rebuttal to fewer than three-and-a-half weeks, given that cross examination exhibits would need to be distributed in advance of hearing. Such a shortened preparation time prejudices the other parties in the preparation of their respective cases for hearing. Related to this is the fact that the Joint Applicants' initial filing in this case is quite limited. This raises the possibility that their rebuttal filing may contain additional material, perhaps substantial, that parties will need time to review.

3           The Joint Applicants' reference to other Commission merger schedules is not persuasive. In the Verizon-Frontier merger cited by the Joint Applicants,<sup>3</sup> the procedural schedule provided just over four weeks between the due date for rebuttal testimony and the deadline for predistribution of cross examination exhibits, with the hearing scheduled a week later.<sup>4</sup> In the CenturyTel-Embarq merger, also cited by the Joint Applicants,<sup>5</sup> the hearing was scheduled to begin approximately four-and-a-half weeks after the due date for rebuttal testimony.<sup>6</sup> The Qwest-CenturyLink transaction at issue involves the largest incumbent telecommunications company in the state and involves far more exchanges in Washington than the other two mergers cited by the Joint Applicants. So, under Joint

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<sup>3</sup> Joint Applicants' Objection at p. 2, ¶ 6.

<sup>4</sup> *In the Matter of the Joint Application of Verizon Communications Inc. and Frontier Communications Corporation For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.*, Docket UT-090842, Appendix A, Modified Procedural Schedule (September 1, 2009).

<sup>5</sup> Joint Applicants' Objection at p. 2, ¶ 6.

<sup>6</sup> *In the Matter of the Joint Application of Embarq Corporation and CenturyTel, Inc. For Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc.*, Docket UT-082119, Appendix A, Procedural Schedule (January 6, 2009).

Applicants' proposal, the parties in this proceeding would have less time to prepare for hearing on what is a larger transaction.

4 Each of the hearing dates proposed by the Joint Applicants has a schedule conflict. November 10th is a Commission Open Meeting date. November 11th is Veterans Day, a scheduled holiday for both federal and Washington State employees. November 12th conflicts with a scheduled Pre-hearing Conference in the Arizona Corporation Commission proceeding on the Qwest-CenturyLink transaction in which several parties to the Washington proceeding are participating.<sup>7</sup> Although aware of these conflicts, the Joint Applicants have not advised the Commission of these potential problems nor provided any over-riding rationale so an informed decision can be made.

5 Even under the Joint Applicants' proposed compressed schedule, the docket is unlikely to conclude this year. Based on the proposed hearing dates, Joint Applicants presumably are contemplating that post-hearing briefs would be filed shortly before the Christmas holidays, leaving approximately two weeks until the end of this year. So, concluding the docket by the end of the year would provide the parties up to five weeks to file post-hearing briefs, depending on whether the Thanksgiving week is counted, and would provide the Commission with only two or a few remaining weeks to issue a decision. It does not seem advisable to rush a regulatory body to a decision in a case of this magnitude, yet the Joint Applicants' proposed schedule demands exactly this.

6 The proposed dates leave insufficient time for additional settlement negotiations. The existing procedural schedule allows time for the parties to negotiate following the filing of responsive testimony and of rebuttal testimony. This is important, because the parties

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<sup>7</sup> ACC Docket Nos. T-01051B-10-0194, et. al. It also should be noted that the hearings in the Arizona proceeding have been scheduled for November 15th, 16th, 19th and 30th.

may not be prepared to negotiate by August 31, 2010, the date set in the procedural schedule for a settlement conference, or may not be able to reach an agreement then. At the prehearing conference Staff had proposed a settlement conference date that was before the filing date for responsive testimony but that was two months later than the date ultimately set in the procedural schedule. Staff's proposal would have provided the parties an additional two months of discovery and analysis. If the parties to the proceeding are not ready to conduct settlement negotiations on August 31, or cannot reach agreement at that time, the parties likely would hold settlement negotiations after responsive or rebuttal testimony is filed. The compressed schedule that the Joint Applicants propose leaves little opportunity for settlement discussions, especially given that the parties simultaneously would need to be preparing for hearing during this short timeframe.

7 Joint Applicants have not demonstrated or explained why the Commission's adopted schedule creates any specific prejudice to the Joint Applicants. The existing schedule provides more than adequate time for the Commission to issue an order prior to the Joint Applicants' target closing date of the first half of 2011.<sup>8</sup> The companies' generalized desire for a shorter schedule does not constitute a showing of prejudice. The Joint Applicants simply seek to reargue scheduling preferences already presented at the prehearing conference. The existing scheduling order balanced those desires with the recommendations of other parties and the needs of the Commission.

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<sup>8</sup> This target was disseminated in the companies' press release on the transaction, issued April 22, 2010 and currently available online at <http://centurylinkqwestmerger.com/index.php?page=news>. Filings with the federal government reflect the same target—see, for example, CenturyLink's Form S-4 filing with the Securities and Exchange Commission, dated June 4, 2010, which states, "We currently expect to complete the merger in the first half of 2011." Joint Application at Exhibit F: CenturyLink Form S-4, p. 2. In addition, the merger agreement itself provides that Qwest and CenturyLink have until April 21, 2011, to consummate the transaction, and that this date can be extended for up to six months. Joint Application at Exhibit C: Merger Agreement 8K, Section 8.01, p. 80.

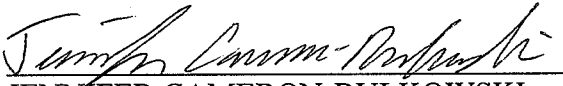
While Staff, Public Counsel, and DoD/FEA recognize the gesture of Joint Applicants in proposing a schedule that compresses only those dates following the due date for prefiled responsive testimony, the proposal does prejudice the other parties to this proceeding and undermines the regulatory review process. Accordingly, Staff, Public Counsel, and DoD/FEA recommend the Commission reject Joint Applicants' proposed schedule modifications.

DATED this 30th day of June 2010.

Respectfully submitted,

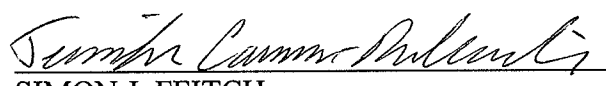
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