

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of	)	DOCKET UT-100820
)	
	)	ORDER 05
QWEST COMMUNICATIONS)	
INTERNATIONAL INC. AND	)	ORDER GRANTING PUBLIC
CENTURYTEL, INC.	)	COUNSEL’S OBJECTION TO THE
	)	PROCEDURAL SCHEDULE;
For Approval of Indirect Transfer of	)	DENYING JOINT APPLICANTS’
Control of Qwest Corporation, Qwest	)	OBJECTION TO THE
Communications Company LLC, and	)	PROCEDURAL SCHEDULE; AND
Qwest LD Corp.	)	REVISING PROCEDURAL
	)	SCHEDULE
)	
	)	(Cross examination exhibits are now
	)	due by December 23, 2010.)
)	
	)	(Prehearing conference to mark
	)	exhibits now scheduled for December
	)	30, 2010, at 1:30 p.m.)

.....

1 **PROCEEDINGS.** On May 13, 2010, Qwest Communications International Inc. (QCII) and CenturyTel, Inc. (CenturyLink, collectively with QCII, Joint Applicants) filed a joint application for expedited approval with the Washington Utilities and Transportation Commission (Commission) of the indirect transfer of control of QCII’s operating subsidiaries, Qwest Corporation (Qwest Corp.), Qwest LD Corp. (QLDC) and Qwest Communications Company LLC (QCC) (collectively Qwest) to CenturyLink.

2 **OBJECTIONS TO PROCEDURAL SCHEDULE.** On June 10, 2010, the Commission entered a prehearing conference order, Order 02, establishing the procedural schedule in this docket. On June 21, 2010, Joint Applicants filed an objection to, and request for review of, the procedural schedule (Joint Applicants’ Objection). Public Counsel filed a similar objection to the procedural schedule (Public Counsel’s Objection) on June 22, 2010.

- 3 Joint Applicants assert that they will be prejudiced by the procedural schedule since it is “too lengthy.”¹ Joint Applicants state that the process has already finished in California and Hawaii, and that four states have schedules that will allow the case to wrap up this year.² According to Joint Applicants, the schedule in this matter is extended beyond what was established in the two prior merger cases addressed by the Commission.³ Joint Applicants request that the Commission move the due date for them to file their rebuttal testimony from November 1, 2010, to October 15, 2010.⁴ Joint Applicants also recommend moving the evidentiary hearing from January 5-7, 2011, to November 10-12, 2010.⁵
- 4 Public Counsel proposes that the Commission move the deadline for the parties to distribute cross examination exhibits from December 6, 2010, to December 29, 2010.⁶ Public Counsel states that this date is one month before the start of the hearing and does not take into account that many parties finalize their positions and conduct final rounds of discovery in the weeks leading up to the hearing.⁷ Public Counsel suggests that, if December 29, 2010, proves unworkable because of the holiday season, that the Commission consider setting the deadline no earlier than December 17, 2010.⁸

¹ Joint Applicants’ Objection, ¶ 4.

² *Id.* ¶ 5. The four states Joint Applicants point to are Minnesota, Oregon, Utah, and Pennsylvania.

³ *Id.* ¶ 6. Joint Applicants are referencing the CenturyTel/Embarq merger in Docket UT-082119 and the Verizon/Frontier merger in Docket UT-090842.

⁴ *Id.*

⁵ *Id.* ¶ 7.

⁶ Public Counsel’s Objection, ¶ 2.

⁷ *Id.*

⁸ *Id.* ¶ 3.

5 **RESPONSES TO OBJECTIONS.** On June 29, 2010, Charter Fiberlink WA-CCVII, LLC, Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, Pac-West Telecomm, Inc., tw telecom of Washington, LLC, and XO Communications Services, Inc. (collectively, Joint CLECs) filed a response to the objections to the procedural schedule.⁹ The Joint CLECs agree with Public Counsel’s objection and ask that the Commission move the deadline for the distribution of cross examination exhibits to December 29, 2010.¹⁰ Joint CLECs do not, however, support Joint Applicants’ schedule revisions.¹¹ They assert that the proceedings in Minnesota, which Joint Applicants have referenced, are unlikely to conclude before the end of 2010.¹² They state that states like California and Hawaii have managed to complete review of the transaction because Qwest is not an incumbent local exchange carrier (ILEC) in those states as it is in Washington.¹³ Further, the Joint CLECs contend that the Arizona Corporation Commission (the ACC) has scheduled an evidentiary hearing during the last two weeks of November and the ACC is unlikely to issue a decision before the end of the year.¹⁴

6 Public Counsel, Staff, and the United States Department of Defense and All Other Federal Executive Agencies (DoD/FEA) jointly filed a response to Joint Applicants’ Objection on June 30, 2010. Public Counsel, Staff, and the DoD/FEA oppose Joint Applicants’ request to move the hearing to November.¹⁵ They assert that Joint

⁹ Covad Communications Company and 360networks (USA) inc. did not join with any of the parties in a response, nor did they file individual responses.

¹⁰ Joint CLECs’ Response, ¶ 2.

¹¹ *Id.*, ¶ 3.

¹² *Id.*, ¶ 4.

¹³ *Id.*, n. 2.

¹⁴ *Id.*, ¶ 4.

¹⁵ Joint Response, ¶ 1. Staff and the DoD/FEA agree with Public Counsel’s objection to the deadline for distribution of cross examination exhibits “including the request for the alternative date no earlier than December 17, 2010.” *Id.* n. 2.

Applicants' proposal would shorten hearing preparation time by a week and a half.¹⁶ They explain that this shortened period prejudices the parties' ability to prepare for hearing.¹⁷ In addition, they argue that the Joint Applicants' initial filing was "quite limited," and that Joint Applicants may use their rebuttal testimony to introduce new material into the record which the parties would need time to review.¹⁸

- 7 Public Counsel, Staff, and the DoD/FEA dismiss Joint Applicants' contention that the Commission has handled prior mergers at a quicker pace and contend that this docket "involves the largest incumbent telecommunications company in the state and involves far more exchanges in Washington than the other two mergers."¹⁹ They maintain that the dates Joint Applicants have suggested are unrealistic given the Commission's open meeting scheduled for November 10, the state holiday on November 11, and the November 12 prehearing conference before the ACC addressing the proposed merger in that jurisdiction.²⁰ Furthermore, Public Counsel, Staff, and the DoD/FEA state that Joint Applicants' own press release describing the merger provided that the target closing date would be in the first half of 2011.²¹
- 8 On June 30, 2010, Cbeyond Communications LLC (Cbeyond) and Level 3 Communications, LLC (Level 3) filed its joint response to the objections to the procedural schedule. Cbeyond and Level 3 simply state that they concur with the comments made by Joint CLECs opposing Joint Applicants' objections and supporting Public Counsel's objections.²²

¹⁶ *Id.*, ¶ 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* ¶ 3.

²⁰ *Id.* ¶ 4.

²¹ *Id.* ¶ 7.

²² Cbeyond and Level 3's Response, at 1.

- 9 **COMMISSION DECISION.** After careful consideration of all arguments, we reject Joint Applicants' request to modify both its deadline to file rebuttal testimony and the evidentiary hearing dates and accept Public Counsel's request to move the deadline to distribute cross examination exhibits. Given that the Commission has scheduled a prehearing conference to mark the exhibits, the date scheduled for this prehearing conference will also need to be revised.
- 10 Joint Applicants' suggested dates prove workable only for the Joint Applicants. The Intervenors, Staff, Public Counsel, and even the Commission would be hindered in their examinations of the proposed merger if the Commission were to accept Joint Applicants' proposal. In addition, several of the dates suggested for the evidentiary hearing are impractical given the Commission's previously scheduled open meeting on November 10, 2010, and the state holiday when governmental offices will be closed on November 11, 2010. Finally, Joint Applicants' have alleged that they will be prejudiced by the current procedural schedule, but they have failed to specify what prejudice they will suffer by adhering to the January 2011 hearing dates.
- 11 None of the parties have opposed Public Counsel's objection to the procedural schedule. Since this request will not impact the Commission's review or inconvenience the other parties, we find that Public Counsel's request to move the deadline to file cross examination exhibits to no earlier than December 17, 2010, is appropriate. That being said, the week of December 27, 2010, contains a temporary layoff day that will affect the work schedules of Commission Staff. We find that the deadline for filing of cross examination exhibits should be **Thursday, December 23, 2010**. According to WAC 480-07-145(6), the parties may electronically submit documents to the Commission provided the electronic submission is received by 3:00 p.m. on the filing deadline and the Commission receives the original and required number of copies by 12:00 p.m. on the following business day. Parties must submit documents through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov. The parties are reminded to file an original and **twelve (12) copies** of the unredacted version(s) of all pleadings, motions, briefs, and other materials as well as an original and **three (3) copies** of any redacted version(s). Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge at mfriedla@utc.wa.gov and to the parties to the proceeding.

12 Rescheduling the date for distribution of the cross examination exhibits likewise affects the prehearing conference currently scheduled for December 13, 2010. Since it would be nonsensical to hold a prehearing conference to mark exhibits before all of the exhibits have been filed, we find that the prehearing conference should be moved to **Thursday, December 30, 2010, at 1:30 p.m.**

13 **NOTICE OF PREHEARING CONFERENCE.** The Commission will convene a prehearing conference in this matter on December 30, 2010, at 1:30 p.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to mark exhibits, including exhibits on cross examination, if any, and to address any procedural matters that the parties may present. If no matters warrant attention, the conference will be cancelled.

ORDER

THE COMMISSION ORDERS:

- 14 (1) The Objection To, and Request for Review of, the Schedule Established in Prehearing Conference Order 02 filed by Joint Applicants is denied.
- 15 (2) The Objection and Motion Regarding Schedule filed by Public Counsel is granted.

Dated at Olympia, Washington, and effective July 6, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.