

**EXHIBIT BJJ-76 TO THE
RESPONSE TESTIMONY OF
BONNIE J. JOHNSON
ON BEHALF OF
INTEGRA TELECOM**

PUC ORAL ARGUMENTS - FEBRUARY 8, 2011
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA

In the Matter of the Joint Petition for Approval of
Indirect Transfer of Control of Qwest Operating Companies
to CenturyLink

PUC DOCKET NO: P421, et.al./PA-10-456

OAH DOCKET NO: 11-2500-21391-2

February 8, 2011

CD TRANSCRIBED BY: Janet Shaddix Elling,
Registered Professional Reporter

1 Judged solely by the large number of CLEC
2 intervenors and the even larger number of attorneys,
3 and very talented lawyers that represent them, my
4 initial and continuing impression in this
5 transaction is that if the CLECs are as competitive
6 in the marketplace as they are assertive in these
7 regulatory proceedings, the CLEC marketplace in
8 Minnesota is indeed very competitive, both now and
9 going forward, should this thing be approved.

10 We have, I think, before you a fully
11 developed, comprehensive record. We concur with the
12 ALJ's report, and we only have a few nits with the
13 findings, but they are largely just that. And we
14 urge this Commission to also concur with the
15 Commission -- with the ALJ's recommendations and
16 adopt them as your own.

17 Now, last Thursday we also received a
18 list of some very significant and at least in some
19 way troubling issues in which the staff is proposing
20 conditions that have both been considered and
21 rejected by the ALJ. And we'll address these issues
22 later with both Mr. Topp and Ms. Masterton.

23 At this point, I'd simply note that the
24 staff recommendations appear out of context. They
25 do not discuss the public interest test and they

1 don't provide any credit or recognition of the major
2 concessions that have already been contained in the
3 four settlement agreements that had been introduced
4 into the record and analyzed by the ALJ and all the
5 parties to this proceeding.

6 As noted by Dr. O'Grady, just yesterday
7 another settlement came in from TW Telecom, and we
8 can deal with that later, but I think that's
9 important only to know that the Joint Petitioners
10 have continued to try to listen and try to resolve
11 as many issues as we could as we've gone through
12 this process. Not only in Minnesota, but across the
13 footprint.

14 Most of the CLEC contentions, as well as
15 the contentions raised by the staff, were never
16 developed in the record. And as I think most of you
17 know, the duty of those proponents to add additional
18 conditions is on those proponents and so we think
19 you'll find the record is lacking for most, if not
20 all, of those conditions.

21 Some of these proposals weren't even
22 raised as contentions to the ALJ report. And I
23 think, most importantly, we believe that all of
24 these were considered in some great detail and
25 rejected by the ALJ.

1 couldn't reach closure with everybody, if you listen
2 to the arguments made in this proceeding and read
3 the briefs, you do come away with the impression
4 that the nonsettling CLECs before you today are the
5 last and only bastions of competition. And if we
6 don't adopt those conditions, the merged companies
7 will somehow take over the marketplace. I don't
8 believe that's the world we live in. I would urge
9 you not to let the volume, persistence and presence
10 of nonsettling CLECs here today to distort the
11 reality of the real telecom marketplace.

12 We do believe, Mr. Chair and Members of
13 the Commission, that the Department of Commerce, the
14 Integra and the 360 settlements more than adequately
15 addressed legitimate interests of the CLECs. And as
16 I've already discussed, I do think that there is
17 some significance, and it certainly doesn't trump or
18 replace the judgment of this Commission, but we do
19 think that the DOC settlement, as clarified,
20 embellished and enhanced by the Integra settlement
21 and the 360 settlement, that is the basis upon which
22 the ALJ came to the conclusion that this transaction
23 is in the public interest and meets the local
24 competition test.

25 Aside from these concessions that

1 Number one, these issues have nothing to do with the
2 merger. Pursuant to antitrust law, Qwest and
3 CenturyLink are required to make separate decisions
4 regarding -- regarding pricing. And these pricing
5 issues, particularly with QLSP, would have come up
6 because agreements expired at the end of last year,
7 or January 4th of this year, and so new agreements
8 needed to be negotiated. They were, and they've
9 been signed on and are in place for a three-year
10 time period. That's an issue that arises whether or
11 not the merger is in place.

12 Secondly, there's a very different
13 regulatory status for these commercial and wholesale
14 arrangements than interconnection agreements. The
15 FCC in the TRO and TRRO has specifically determined
16 that the CLECs are not impaired without access to
17 these particular items. In the TRRO, at paragraph
18 651, the FCC has determined that pricing for such
19 services should be market based, and that's
20 something that the ALJ pointed to in making her
21 recommendation.

22 Furthermore, she looked to the Integra
23 settlement as providing stability to which the CLECs
24 would not otherwise be entitled, and I think that's
25 a key point, we have gone a long way in giving

1 stability in these areas that CLECs would not
2 otherwise have a right to. And that concern is
3 further enhanced by the settlement with TW Telecom
4 that was filed yesterday.

5 An ALJ decision, like all of the others
6 that we're going to be discussing today related to
7 these specific issues, is consistent with every
8 state order that has been issued to this point, has
9 rejected this condition. Furthermore, there have
10 been settlements with the appropriate staff in every
11 state that is reviewing this merger. And, you know,
12 it's either Commission staff, it can be a state
13 agency in Nebraska, there isn't an appropriate
14 agency so there's not a settlement there, but in
15 each of those, you know, these bodies charged with
16 looking at the public interest have concluded that
17 this is not something that needs to be included to
18 resolve this merger from their perspective.

19 Furthermore, there are a number of
20 settlements with the DOC, Integra, 360 Networks,
21 TW Telecom, none of those require the types of
22 changes of prices and extensions of time periods
23 that are being advocated today.

24 So, one of the things I thought I'd look
25 at in evaluating this exception is, you know, what

1 reverse scenario, where if the CLEC says the system
2 does not work, but the third-party says that it
3 does, you know, CLECs are going to carry a lot of
4 credibility on that front. And the process that is
5 in place gives them input, gives them a vote, gives
6 them, you know, is going to create a very high
7 threshold in order to achieve the OSS changes
8 that -- that, you know, may happen down the road.

9 I would suggest that the Integra
10 settlement represents, as the ALJ found, sort of a
11 reasonable compromise between, you know, ideally
12 from our position we'd like to have, you know, not
13 have these sorts of time restrictions, we'd like to
14 get rid of duplicate systems as quickly as is
15 prudent. But on the other hand, you know, the CLECs
16 have an interest in stability and certainty and to
17 have any new system that would be -- that would be
18 in place.

19 I mean, the ALJ concluded that, you know,
20 the settlement agreement, you know, addresses the
21 issues identified by the Joint CLECs by ensuring
22 that Qwest's OSS will not be prematurely or abruptly
23 discontinued, that testing opportunities will be
24 available to CLECs, and the post-merger service
25 quality will not be materially less than pre-merger

1 quality.

2 We think that conclusion is dead on the
3 money, it makes more sense than imposing a
4 third-party testing requirement, which, in our view,
5 that sort of requirement is almost tantamount to
6 making it impossible to change out an OSS system.

7 You know, our proposal coming in was that
8 there not be restrictions other than what exists in
9 CMP. The Integra settlement sets a difficult bar
10 and reasonable process for making this sort of
11 change and therefore we think that the ALJ should be
12 affirmed on this point.

13 A second issue associated with OSS that I
14 don't want to lose sight of is the 36 months versus
15 24 months in the Integra process. We would view,
16 you know, the ALJ, in choosing the 24 months, struck
17 a balance between the hardship of carrying two
18 systems versus certainty for the CLEC. As I
19 indicated, OSS changes over time, we would suggest
20 in this sort of marketplace, trying to freeze
21 certain systems in place for three years is an
22 unreasonable restriction.

23 The final issue I have is issue 8, which
24 is wire center reclassification petitions. That
25 appears -- the decision options are on page 12 of

1 know, I can't verify one way or another these costs,
2 but essentially said it's worth it. That they've
3 said that there aren't any standards that have been
4 set up with a third-party testing procedure and that
5 those would need to be set up. And so that only
6 adds to the complications and the expense of that
7 project. And noticeably absent was really any real,
8 demonstrated benefit as to why a third-party test is
9 better than the CLECs themselves.

10 There was some discussion by
11 Mr. Lipschultz, and this is really a concern, at
12 least the way he describes it on behalf of PAETEC,
13 one of his clients, that his clients might be
14 overridden by other CLECs in a majority vote with
15 respect to whether the OSS system is acceptable or
16 not as a part of the Integra process that has been
17 set up.

18 I would respectfully suggest that
19 diminishes the difficulty of getting a majority of
20 CLECs to agree with Qwest on anything and would
21 suggest that that hurdle is a very high hurdle that
22 has been set as a part of the Integra settlement
23 agreement and therefore we think that the
24 protections are, you know, very significant.

25 Mr. Pugh asked a question about whether

1 OSS changes without the merger, whether there would
2 be these sorts of protections, and I wasn't quite
3 sure of the answer that Mr. Lipschultz gave. I
4 think the answer is there's a CMP process that sets
5 out how you would go about making those changes.
6 The Integra settlement agreement adds to and
7 clarifies that process.

8 There have been many changes in OSS
9 interfaces since the time there has been 271 testing
10 that has taken place, those have happened through
11 CMP and they have worked. And so this system that
12 is lauded as a part of this proceeding is not the
13 same system that went through 271 testing. 271
14 testing was done at a time when competition was at a
15 very early stage, there were not commercial volumes
16 yet for handling these sorts of orders and that this
17 was put in as a substitute. If at some point a
18 system is substituted in this case, it's going to be
19 a system that's handling a million orders a year.
20 It's a system that does have significant history,
21 and we do have a significant process in place for
22 ensuring that it is acceptable.

23 Another point that was brought up
24 repeatedly related to synergies and the purported
25 importance of synergies as a driving force and that