

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Joint Application of Qwest)	DOCKET NO. 10-049-16
Communications International, Inc. and)	DPU Exhibit 3.0
CenturyTel, Inc. for Approval of Indirect)	Supplemental Rebuttal Testimony of
Transfer of Control of Qwest Corporation,)	Philip Powlick
Qwest Communications Company, LLC,)	
and Qwest LD Corporation)	
)	
)	
)	

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

November 2, 2010

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.**

3 A. My name is Philip Powlick. I am the Director of the Division of Public
4 Utilities (“Division”) for the State of Utah. My business address is 160 East
5 300 South Salt Lake City, UT 84114.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS DOCKET.**

7 A. No.

8 **Q. ON WHAT TOPICS OR ISSUES WILL YOU BE TESTIFYING?**

9 A. I am testifying regarding issues raised by Joint CLEC’s witness Timothy J. Gates in
10 his supplemental testimony dated October 28, 2010 concerning the process by which
11 the Division reached a settlement agreement with the Joint Applicants in this
12 docket.

13 **Q. PLEASE DESCRIBE YOUR ROLE IN THE DIVISION.**

14 A. I oversee all Division activities and formulate, with the assistance of others in the
15 Division or hired by the Division, policies adopted by the Division and implement
16 such policies.. As such, I am involved in and provide direction concerning matters
17 involving energy, primarily gas and electric utilities, water, pipeline safety, and
18 telephone.

19 **Q. WHAT HAS YOUR ROLE BEEN IN THIS DOCKET?**

20 A. I have generally overseen the Division’s telecommunications staff in the analysis of
21 this case, the development of our positions, and the preparation of the DPU’s
22 testimony in this case. Mr. William Duncan, Manager of our Telecommunications
23 and Water Section, has direct management of the telecommunications staff and was
24 more involved in the day to day supervision of this case.

25 **Q. THEN WHY ARE YOU TESTIFYING RATHER THAN MR. DUNCAN?**

26 A. As the Director of the Division, I have the ultimate responsibility for decisions that
27 are made by the DPU. Since both the Integra letter,(dated October 18, 2010. and
28 Mr. Gates' testimony are highly critical of the Division's actions in this case, it is
29 appropriate that I address their concerns. In any case, Mr. Duncan has a personal
30 commitment that prevents him from testifying at the November 4 hearing.

31 **Q. ARE YOU A TELECOMMUNICATIONS EXPERT?**

32 A. No I am not. My testimony is therefore limited to addressing the "hows and whys"
33 of the Division's decisionmaking in negotiating the settlement agreement. In
34 particular, I address the first 21 pages of the supplemental testimony of Mr. Gates
35 on behalf of the Joint CLECs. The Division's testimony as to the merits of the
36 settlement itself, as well as substantive rebuttal of Mr. Gates testimony from pages
37 21 to its conclusion, is being offered by Division witness Mr. Casey Coleman.

38 **Q. WERE YOU INVOLVED IN THE PROCESS THAT RESULTED IN THE**
39 **DPU'S SETTLEMENT WITH THE JOINT APPLICANTS?**

40 A. Yes.

41 **Q. DO YOU BELIEVE THAT THE SETTLEMENT BETWEEN THE DIVISION**
42 **AND THE JOINT APPLICANTS (THE SETTLEMENT) IS REASONABLE**
43 **AND IN THE PUBLIC INTEREST?**

44 A. Yes I do. The Division believes that its Settlement provides certainty, resolves
45 important issues, and is in the public interest. Thus, the Division urges the
46 Commission to approve the Settlement.

47 **Q. WHY DID THE DIVISION NOT INFORM OTHER PARTIES OR BRING**
48 **OTHER PARTIES IN TO SETTLEMENT DISCUSSIONS?**

49 A. Although the Division has normally involved other parties in settlement discussions,
50 or provided notice that such discussions are ongoing, the Division did not do so in
51 this case for several reasons. In hindsight, we now believe that we possibly would

52 best have served the Commission had we informed other parties of our discussions
53 with Qwest, and, absent unusual circumstances, plan to do so in any future
54 situations.

55 **Q. WHAT WERE THESE SEVERAL REASONS?**

56 A. Firstly, the Division believed that separate settlement talks and stipulations was
57 the expected course of business in this merger. For example, we were aware that:
58 a. The US West / Qwest merger had been settled through separate settlements that
59 led to the withdrawal of objections by the CLECs in that case. Until just a few days
60 before the first hearings last week, we thought that this might occur in this case.
61 b. We were aware that talks were ongoing between several parties. The Division
62 had neither been invited to nor formally notified of any of those separate
63 discussions.
64 c. Many of the issues involving the CLECs are regional issues. For instance
65 concerns about the future operations of CenturyLink ILECs or the desire to create
66 an APAP seem to be regional issues. We knew that these issues would require a
67 regional settlement. We thus decided that more focused approach on Utah specific
68 issues could and should be addressed by the Division and the Commission.
69 d. We were aware that the Office of Consumer Services and Salt Lake CAP were
70 also each involved in separate settlement discussions that were neither formally
71 noticed to, nor included, other parties. The Division actually sought to have a
72 single Utah-parties stipulation along with the Office and Salt Lake CAP. However,
73 as is apparent from their filings, those other parties chose to pursue separate
74 agreements.
75 e. We were also aware that settlement been reached in other states with
76 Commission staff or equivalent, for example with our counterpart Division in
77 Minnesota, but not with the CLECs. We were not at that time aware that the Joint
78 CLECs were challenging that process as well.
79 In total, these facts led to our belief that separate settlements were the norm in
80 cases such as these and therefore reinforced our belief that a separate agreement

81 was appropriate.

82

83 The Division also believed the Joint CLECs' positions were so far apart from our
84 position that reaching settlement with them was extremely unlikely. As was
85 addressed in Mr. Coleman's earlier direct testimony, we viewed the Joint CLECs list
86 of merger conditions to be unreasonably restrictive and saw no sign of any positions
87 softening in rebuttal testimony. Moreover, our talks with Qwest occurred shortly
88 before the surrebuttal deadline and scheduled hearings and it also therefore seemed
89 as if there was not sufficient time to bridge such wide gaps.

90 **Q. WERE YOU AWARE THAT INTEGRA HAD REQUESTED TO BE INCLUDED**
91 **IN ANY SETTLEMENT NEGOTIATIONS IN UTAH, AS CITED IN MR.**
92 **GATES' SUPPLEMENTAL TESTIMONY AT PAGE 5?**

93 A. I did not receive the e-mail cited by Mr. Gates and I was not aware of it until it was
94 mentioned at the October 20 procedural hearing. I have since become aware that
95 Mr. Duncan and Mr. Coleman of our staff both received this e-mail. Mr. Duncan has
96 acknowledged to me that, in retrospect and given Integra's specific request, that
97 Integra should have been invited to attend settlement discussions. We do not
98 believe, however, that the outcome would likely have been significantly different and
99 that the agreement we did reach is in the public interest.

100 **Q. WAS THE DIVISION AWARE OF THE RULE CITED IN INTEGRA'S**
101 **LETTER OF OCTOBER 18, 2010?**

102 A. The rule cited by Integra (R746-100-10 (F)(5)) reads as follows:

103 5. Settlements --

104 a.

105 b. Before accepting an offer of settlement, the Commission may require the
106 parties offering the settlement to show that each party has been notified of,
107 and allowed to participate in, settlement negotiations. Parties not adhering to
108 settlement agreements shall be entitled to oppose the agreements in a
109 manner directed by the Commission.

110
111 While we realize ignorance is no excuse, the Division was not aware of the existence
112 of this rule prior to Integra's motion. We accept responsibility that we should have
113 known about this provision and therefore should have at least informed the other
114 parties that discussions with Qwest were in process. I would note, however, that the
115 Rule does not require the Commission to condition its approval upon proof of
116 notification and participation of all parties . While we now believe that we might
117 have served the Commission better had we informed other parties of our discussions
118 with Qwest and generally plan to do so in any future situations, we nevertheless
119 believe that we have negotiated a just and reasonable settlement that is in the
120 public interest. We therefore request that the Commission approve the settlement.

121 **Q. HOW DO YOU RESPOND TO MR. GATES' CONTENTION ON PAGE 3 OF**
122 **HIS TESTIMONY THAT THERE IS NO EVIDENCE TO SUPPORT THE**
123 **SETTLEMENT?**

124 A. At the time that Mr. Gates filed his testimony, the DPU and the Joint Applicants
125 had not yet been provided an opportunity to provide any evidence. Mr. Coleman is
126 presenting the DPU evidence in support of the agreement.

127 **Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE PORTIONS OF MR.**
128 **GATES' TESTIMONY THAT YOU ARE ADDRESSING?**

129 A. Yes I do. Mr. Gates presents a great deal of information on events surrounding the
130 Iowa and Minnesota settlements. The majority of his testimony in this regard is
131 wholly inapposite to what has occurred here in Utah. Going into negotiations with
132 the Joint Applicants, we were aware that there had been settlements in these states
133 and our staff had reviewed testimony and documents in other jurisdictions,
134 including the Minnesota and Iowa settlement agreements. However, all of our
135 decision making in negotiation was based upon circumstances in Utah and in no way
136 did we consider any settlements in other states to be deterministic of our actions, as

137 Mr. Gates seems to imply. I will address several specific points of his testimony
138 below.

139 **Q. ON PAGE 6, MR. GATES OPINES THAT THE DPU MAY HAVE REACHED A**
140 **SETTLEMENT BECAUSE IT DID NOT WANT TO HAVE TO FILE**
141 **SURREBUTTAL TESTIMONY AND CITES TESTIMONY FROM THE**
142 **MINNESOTA HEARING TO SUPPORT HIS CONJECTURE. HOW DO YOU**
143 **RESPOND?**

144 A. Honestly, I am offended by such a suggestion. Firstly, to suggest that we would
145 enter into an agreement and represent it as being in the public interest because we
146 wanted to avoid extra work is insulting. Secondly, Mr. Gates' only "evidence"
147 supporting his conjecture is the fact that the surrebuttal deadline was near in time
148 to the filing of an agreement. In fact, the Division was considering filing no
149 surrebuttal testimony in light of the lack of new information presented in most
150 parties' rebuttal testimony. Thirdly, the Minnesota testimony cited in this regard is
151 wholly irrelevant here and should be ignored. I don't know the motives of our
152 colleagues in St. Paul, but whatever they were or were not had no bearing on
153 decisions made here in Utah.

154 **Q. ON PAGE 6 OF HIS TESTIMONY, MR. GATES GOES ON TO ARGUE THAT**
155 **AN AGREEMENT THAT DOES NOT INCLUDE ALL PARTIES IS**
156 **UNDESIRABLE BECAUSE IT "DOES NOT ALLEVIATE THE WORKLOAD**
157 **OF THE COMMISSION." WOULD YOU LIKE TO COMMENT?**

158 A. I find it curious that, on the same page that he is suggesting that the Division had
159 not fulfilled its public duty in order to avoid extra work, he then goes on to suggest
160 that the settlement should be disregarded because it fails to lighten the workload of
161 the Commission.

162 **Q. ON PAGE 8, MR. GATES TALKS ABOUT TESTIMONY IN MINNESOTA TO**
163 **THE EFFECT THAT THE MINNESOTA DEPARTMENT OF COMMERCE**

164 **(DOC) WAS TOLD BY THE JOINT APPLICANTS THAT THE JOINT CLECS**
165 **WERE “BEING DIFFICULT.” PLEASE COMMENT ON THIS.**

166 A. Mr. Gates states that he “expect[s] that the Joint Applicants were telling the
167 Division the same story...” Once again, Mr. Gates conjecture about what happened
168 here based upon what took place in Minnesota is irrelevant. While the Division
169 knew that the CLECs were having discussions with the Joint Applicants, at no time
170 did any representative of Qwest or CenturyLink characterize these talks to us in any
171 way, aside from simply confirming that such talks were taking place. Our
172 reading, based upon the filed positions of the parties, of the rigidity of the CLECs
173 positions – and the estimation that reaching a settlement with them was unlikely -
174 was based upon the written record in this case.

175 **Q. AGAIN CITING TESTIMONY IN MINNESOTA, ON PAGE 12, MR. GATES**
176 **RECITES TESTIMONY THAT THE DOC THERE BELIEVED THAT THE**
177 **CLECS WERE SATISFIED WITH THE IOWA SETTLEMENT AND**
178 **THEREFORE FELT THAT ITS OWN SIMILAR AGREEMENT WOULD ALSO**
179 **BE SATISFACTORY TO THE CLECS. PLEASE COMMENT.**

180 A. One of the few things that I agree with Mr. Gates about is the following exchange in
181 his testimony at the top of page 13:

182 **Q. IS IT REASONABLE TO RELY ON IOWA OR MINNESOTA**
183 **SETTLEMENTS FOR PURPOSES OF CRAFTING A SETTLEMENT**
184 **IN UTAH?**

185 A. No. Settlements of other parties in other states with different laws
186 and standards should never be the sole basis for a settlement in
187 another state with different intervenors, laws, and standards.

188 While I completely agree with Mr. Gates’ answer above, I do take issue, however,
189 with the implication of his question, i.e., that the DPU relied “solely” or even largely
190 upon the Iowa and Minnesota settlements in agreeing to its own settlement with
191 Qwest/CenturyLink. It is apparent that the Minnesota settlement provided
192 template language to the Utah agreement; however, we never simply accepted any

193 section simply because it had been agreed to in other states. The fact that agencies
194 in other states agreed to similar language was irrelevant to us and it should be
195 irrelevant to the Commission. The lack of CenturyLink ILEC presence in Utah, by
196 itself, makes any reliance upon other states' settlement inappropriate.

197 **Q. MR. GATES POINTS OUT THAT THE IOWA AGREEMENT TERMS STATE**
198 **THAT IT SHOULD NOT BE CITED AS EVIDENCE IN ANY PROCEEDING**
199 **IN ANY OTHER STATES. HAS OR DOES THE DPU INTEND TO CITE THE**
200 **IOWA AGREEMENT AS SUPPORT OF ITS AGREEMENT IN UTAH?**

201 A. The Division has not cited and has no intention to cite the Iowa agreement as
202 supportive of its Settlement agreement in Utah. We believe that the Utah
203 agreement stands on its own as being in the public interest for Utah.

204 **Q. WOULD YOU PLEASE SUMMARIZE AND CONCLUDE YOUR TESTIMONY?**

205 A. Mr. Baker's conjectures as to the motives behind the Division's decisions are ill-
206 founded and his recitations of evidence from other states are inapposite. The
207 Division based its decision to negotiate singly with Qwest/CenturyLink after
208 evaluating the facts that there were ongoing separate negotiations being conducted
209 with other Utah parties, the existence of separate regional talks, and an assessment
210 of the likelihood of completing an agreement with the Joint CLECs. However, in
211 retrospect, perhaps the DPU would have better served the Commission by formally
212 informing other parties of its settlement negotiations and inviting their
213 participation, even if, in the long term, it might not have changed the outcome.
214 Nevertheless, the Division believes that the agreement is just, reasonable, and in
215 the public interest and requests that the Commission approve it as part of an
216 approval of the Qwest/CenturyLink merger.

217 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

218 A. Yes.

219