- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp. and US West Communications, Inc.	))))	DOCKET NO. 99-049-41 REPORT AND ORDER

ISSUED: June 9, 2000

SHORT TITLE

Qwest/US West Merger

SYNOPSIS

The Public Service Commission of Utah approves the merger of Qwest Communications International Inc. and US West, Inc., the parent corporations of the Joint Applicants, Qwest Communications Corporation, LCI International Telecom Corp. and US West Communications, Inc., pursuant to the Agreement and Plan of Merger dated July 18, 1999, and subject to (1) certain conditions imposed by the Commission, and (2) the terms and conditions of the Stipulation of Joint Applicants and the Division of Public Utilities, as amended by the Commission. The Commission also approves the amended Stipulation which contains (1) retail service quality standards which will be in effect following closing of the merger and which the parties to the Stipulation will support in the retail service quality rulemaking, (2) the parties' agreement to support a 6.2 percent productivity factor in the proceeding to determine the price index to be applied to tariffed prices, (3) guarantees that customers will be insulated from any adverse impacts of the merger on prices or service, (4) guarantees that regulation will not be adversely affected by the merger, (5) guarantees that the merged company will continue to provide regulators with access to relevant personnel and information and (6) assurances that obligations to provide interconnection and essential services and facilities to competitors will not be affected by the merger. Given the amended Stipulation and the Commission's additional conditions to ensure that the merger will promote competition and provide net benefits to customers, we find that the merger is in the public interest.

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APPEARANCES

Mark J. Larson	for	Qwest Communications Corporation and
Steven F. Morris		LCI International Telecom Corp.
Kevin N. Anderson		
Robert Palmer Rees		
Lynn Anton Stang	"	US West Communications, Inc.
Gregory B. Monson		
David L. Mortensen		
Michael L. Ginsberg	"	Division of Public Utilities
Assistant Attorney General		
Douglas C. Tingey	"	Committee of Consumer Services
Assistant Attorney General		

Daniel M. Waggoner	"	AT&T Communications of the Mountain States, Inc.
Thomas C. Pelto		
Richard S. Wolters		
Gregory J. Kopta	"	NextLink Utah, Inc.
Mark P. Trinchero	"	McLeodUSA Telecommunications Services, Inc.
Steven Sager		
David R. Conn		
Jerold G. Oldroyd	"	Rhythms Links, Inc.
Yvonne R. Hogle		
Douglas H. Hsaio		
William J. Evans	"	Coalition of Utah Independent Internet Service Providers
Stanley K. Stoll	"	Central Utah Communications, L.C.
Jerry D. Fenn		
Jerry D. Fenn	"	Utah Rural Telecom Association
Brian W. Burnett	"	Association of US West Retirees
Phil Selander		
Betsy Wolf	"	Salt Lake Community Action Program, Crossroads Urban Center and Disability Rights Action Committee
Jeff Fox		
Gary D. Slaiman	"	Coalition To Ensure Responsible Billing
Kristine DeBry		

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On August 18, 1999, Qwest Communications Corporation and LCI International Telecom Corp. (collectively "Qwest") and US West Communications, Inc. ("US West") (Qwest and US West will be referred to collectively as "Joint Applicants") filed a Joint Application on behalf of their parent corporations Qwest Communications International Inc. ("Qwest Inc.") and US West, Inc. requesting an order of the Commission approving the proposed merger between Qwest Inc. and US West, Inc. Qwest and US West hold certificates of convenience and necessity issued by the Commission to provide telecommunications services in the state of Utah. The Agreement and Plan of Merger dated July 18, 1999, between US West, Inc. and Qwest Inc. ("Merger Agreement") was attached to the Joint Application. In addition, the Joint Application included the Form 10-K of Qwest Inc. for Fiscal Year 1998, the Form 10-K/A of US West, Inc. for Fiscal Year 1998, and direct testimony of Paul F. Gallant, Laura L. Scholl and Philip E. Grate in support of the Joint Application.

Applications seeking similar relief were filed with public utility regulatory commissions in the states of Arizona, Colorado, Iowa, Minnesota, Montana, Washington and Wyoming and with the Federal Communications Commission ("FCC"). In addition, filings were made with the Department of Justice pursuant to the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and with the Securities and Exchange Commission ("SEC").

The Commission held a scheduling conference pursuant to notice on September 15, 1999. Based on that hearing, the

Commission issued a Scheduling Order on September 21, 1999. The Scheduling Order required the Division of Public Utilities ("Division"), the Committee of Consumer Services ("Committee") and parties wishing to intervene to file a specification of issues by September 27, 1999, and noticed a hearing for October 4, 1999, at which the issues could be discussed and further scheduling considered. On September 16, 1999, the Commission issued a Protective Order based on US West's motion. The purpose of the Protective Order was to facilitate discovery, and the production and introduction of confidential information.

Issues lists were filed by the Division, the Committee, AT&T Communications of the Mountain States, Inc. ("AT&T"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), the Coalition of Utah Independent Internet Service Providers ("CUIISP"), Rhythms Links, Inc. ("Rhythms"), Central Utah Communications, L.C. ("CUC"), the Salt Lake Community Action Program ("CAP") and Crossroads Urban Center ("Crossroads"). In addition to the foregoing, Joint Applicants, NextLink Utah, Inc. ("NextLink"), the Utah Rural Telecom Association ("URTA") and the Association of US West Retirees ("AUSWR") appeared at the hearing on October 4, 1999. At the hearing, Joint Applicants argued that many of the issues raised by potential interveners were irrelevant and should be excluded. The Commission ruled that it would not exclude any issues at that time. In addition, the Commission adopted a schedule to govern further proceedings which was memorialized in a Scheduling Order issued October 7, 1999.

McLeodUSA, AT&T, NextLink, Rhythms, CUIISP, CUC, URTA, CAP, Crossroads, the Disability Rights Action Committee ("DRAC"), the Coalition To Ensure Responsible Billing ("CERB") and AUSWR filed petitions to intervene. Joint Applicants opposed intervention of all of the foregoing except CAP, Crossroads, DRAC and CERB. Responses to Joint Applicants' objections were filed by McLeodUSA, AT&T, NextLink, Rhythms, CUIISP, CUC and AUSWR. In addition, URTA appeared at the hearing on intervention on October 26, 1999. After hearing the argument of all parties, the Commission ruled that all petitions to intervene would be granted. An Order Granting Intervention to those parties whose intervention Joint Applicants had opposed was issued on November 24, 1999. An Order Granting Intervention to other parties was issued on November 30, 1999.

On November 5, 1999, Joint Applicants filed a Supplement to Joint Application. The Supplement provided a copy of Qwest's plan for divestiture of its interLATA business in the US West region in accordance with 47 U.S.C. § 271 and related comments and filings with the FCC. On November 22, 1999, Joint Applicants provided notice that they had established a web site for access to non-confidential discovery responses in all states in which applications had been filed. Substantial discovery took place.

On December 8, 1999, CERB filed a Petition To Withdraw as a Party.

On January 31, 2000, the Division, the Committee and several of the interveners filed testimony. The Division filed the testimony of Ingo Henningsen, Krystal S. Fishlock, George R. Compton, Peggy N. Egbert and Robert J. Maloney. The Committee filed the testimony of Michael L. Brosch. AT&T filed the testimony of Thomas C. Pelto. NextLink filed the testimony of Rex Knowles. McLeodUSA filed the testimony of Sarah J. Goodfriend, Bridger M. Mitchell and Stacey Stewart. CUIISP filed the testimony of Eduardo M. Ochoa. On February 10, 2000, the Division filed supplemental testimony of Mr. Maloney.

On February 15, 2000, Joint Applicants filed a motion requesting that the Commission hold a pre-hearing conference after the filing of Joint Applicants' rebuttal testimony to consider issues related to the conduct of the hearings. On February 24, 2000, the Commission gave notice of a pre-hearing conference to be held on February 29, 2000.

On February 28, 2000, Joint Applicants filed rebuttal testimony of Mr. Gallant, Ms. Scholl, Mr. Grate and Mr. Taylor. On March 2, 2000, Joint Applicants filed revised rebuttal testimony of Ms. Scholl to correct clerical errors in the rebuttal testimony filed on February 28, 2000. Joint Applicants also filed an errata sheet with the revised testimony. On March 7, 2000, Joint Applicants filed a notice that Mr. Pitchford would adopt the testimony of Mr. Gallant and appear at the hearing in lieu of Mr. Gallant. The notice provided Mr. Pitchford's qualifications.

The Commission held a pre-hearing conference February 29, 2000. At the conference, the parties agreed on the order of witnesses, marking of exhibits, handling of confidential documents and the filing of post-hearing briefs. The parties agreed that a single round of post-hearing briefs would be filed on March 27, 2000. The Division filed surrebuttal testimony of Mr. Henningsen, Ms. Fishlock, Dr. Compton, Ms. Egbert and Mr. Maloney; McLeodUSA filed surrebuttal

testimony of Mr. Stewart; and CUIISP filed surrebuttal testimony of Dr. Ochoa.

Pursuant to notice, the Commission held public hearings in this matter commencing on March 8, 2000, and continuing on March 9, 10 and 13, 2000. When the hearings were convened on March 8, 2000, Joint Applicants and the Division advised the Commission that they were in the final stages of negotiations regarding a stipulation that could resolve certain issues and avoid the cross examination of certain witnesses. The Commission, therefore, recessed the hearings and directed the petitioners to include other parties in the settlement negotiations.

The hearing was reconvened on March 9, 2000, when the Stipulation of Joint Applicants and the Division of Public Utilities ("Merger Stipulation") was filed. No other interveners or participants joined in the Merger Stipulation. The parties to the Merger Stipulation suggested that the hearing proceed with a panel in support of the Merger Stipulation and with the cross examination of other witnesses. They suggested that if other parties required additional time to cross examine the panel, it could be re-called on March 13, 2000, following public witnesses. Interveners requested that the hearings be continued to allow them additional opportunity to review the Merger Stipulation. The Commission recessed the hearing until 2:00 p.m.

The panel of witnesses supporting the Merger Stipulation testified and was cross examined on the afternoon of March 9, 2000, and the morning of March 10, 2000. The panel consisted of Mr. Pitchford for Qwest, Ms. Scholl for US West and Mr. Henningsen and Dr. Compton for the Division. After the panel was cross examined, Mr. Stewart for McLeodUSA, Mr. Pelto for AT&T and Dr. Taylor, Mr. Grate and Ms. Scholl were cross examined individually on other issues. In addition, all parties agreed to admit the testimony and waive cross examination of Mr. Henningsen, Ms. Fishlock, Dr. Compton, Ms. Egbert, Mr. Brosch, Dr. Goodfriend, Dr. Mitchell and Dr. Ochoa.

On March 13, 2000, four public witnesses appeared: Gary F. Sutherland representing the AUSWR, Claire Geddes for herself, Betsy Wolf for CAP and Jeff Fox for Crossroads. Following the appearance of public witnesses, Mr. Pitchford, Mr. Knowles and Mr. Maloney testified and were cross examined. Mr. Henningsen and Ms. Scholl joined Mr. Maloney in continuation of the panel in support of the Merger Stipulation and responded to questions. No party requested that other members of the panel be subjected to further cross examination. However, one intervener, the Coalition of Utah Independent Internet Service Providers (CUIISP) raised a point that US West had not been responsive during discovery and requested that the Commission rule that US West must answer the discovery request. The Commission determined to allow parties additional time to file post-hearing briefs in light of the Merger Stipulation, and directed CUIISP to make the case for the discovery issue in their final brief. The Commission forewarned the parties that if we agreed with CUIISP, additional time would be granted for discovery and testimony on the issue.

On April 7, 2000, Joint Applicants, the Division, the Committee, AT&T, McLeodUSA, NextLink, and CUIISP filed post-hearing briefs. On April 20, 2000, Rhythms, on the basis of a stipulation with US West regarding wholesale and collocation issues, filed a letter with the Commission withdrawing as a party and stating that it no longer opposed the merger. On April 25, 2000, AT&T filed a notice of withdrawal on the basis of a confidential settlement agreement with Joint Applicants. On April 28, 2000, McLeodUSA filed a notice of withdrawal on the basis of a confidential settlement agreement. On May 12, 2000, NextLink filed a letter with the Commission notifying the Commission that it was withdrawing as a party and that it no longer opposed approval of the merger based on resolution of competitive and business issues with US West.

II. DESCRIPTION OF MERGER PARTIES AND PROPOSED MERGER

A. Qwest Inc.

Qwest Inc. is a Delaware corporation with its principal office and place of business in Denver, Colorado. Its common stock is publicly traded on the New York Stock Exchange. Approximately 39 percent of its common stock is owned by the Anschutz Company, a Delaware corporation, all of whose stock is owned and personally voted by Philip F. Anschutz, who is also Chairman of the Board of Qwest Inc.

Qwest Inc. is a facilities-based multimedia communications service provider. Its subsidiaries provide Internet Protocol-enabled services such as Internet access, web hosting, co-location and remote access. They also provide a full range of voice, data, video and related services to businesses, government agencies and residential customers. Qwest Inc.'s

communications services businesses also provide high-volume voice and conventional private line services to other communications providers, as well as to Internet service providers and other data services companies.

Qwest Inc. has a nationwide fiber-optic network offering 10 gigabit, OC-192 speed and constructed on a "self-healing" SONET ring and 2.4 gigabit, OC-48 Internet Protocol architecture. The Qwest Network reaches 25,500 route miles and connects over 150 cities across the United States. Also, Qwest Inc., directly and indirectly through wholly-owned subsidiaries, constructs and installs fiber-optic communications systems for other telecommunications companies and provides multimedia communications services to interexchange carriers and other communications entities, businesses and consumers.

The two Qwest Inc. subsidiaries that are Joint Applicants in this Docket are certificated to provide telecommunications services in Utah, as well as other states. They and another Qwest Inc. subsidiary, USLD Communications Inc., are also authorized by the FCC to provide telecommunications services, including interstate interexchange and international telecommunications services, as non-dominant carriers. Qwest is the fourth largest interexchange carrier in the United States.

B. US West, Inc.

US West, Inc. is a Delaware corporation with its principal office and place of business in Denver, Colorado. Its common stock is publicly traded on the New York Stock Exchange. Through wholly-owned subsidiaries, US West, Inc. provides integrated communications services to approximately 25 million customers nationally, including Utah and 13 other western and mid-western states. The company's primary products and services include local telephone services, long distance services within specified calling areas, high-speed data networking, including Internet access and digital subscriber line ("DSL") services, broadband personal communications services ("PCS"), print and electronic directories, operator services and video services in limited markets.

The US West, Inc. subsidiary that is a Joint Applicant in this Docket is US West. US West is authorized to provide telecommunications services in Utah and currently serves over 1 million access lines in the state. US West's physical facilities in the state include outside plant, central office switches, and interoffice facilities. US West is the largest incumbent local exchange carrier ("ILEC") in Utah serving approximately 91 percent of all phone lines in the state.

C. Description of the Merger

On July 18, 1999, Qwest Inc. and US West, Inc. entered into the Merger Agreement providing for the merger of the two companies. The boards of directors and shareholders of Qwest Inc. and US West, Inc. have approved the Merger Agreement. The proposed merger remains subject to the meeting of a number of conditions as specified in the Merger Agreement and the receipt of all requisite regulatory approvals.

Under the terms of the Merger Agreement, upon closing US West, Inc. will be merged into Qwest Inc., with Qwest Inc. continuing as the surviving corporation, and the separate corporate existence of US West, Inc. will cease. The direct and indirect wholly-owned subsidiaries of Qwest Inc. and US West, Inc. that hold operating certificates or other authorizations will survive as direct or indirect wholly-owned subsidiaries of the post-merger Qwest Inc. Additionally, no transfers of certificates of convenience and necessity and no assignments or transfers of assets of those certificated subsidiaries are contemplated. Following the merger, Qwest Inc. will be headquartered at US West's office in Denver, Colorado.

Upon consummation of the merger, Mr. Anschutz will become the Non-Executive Chairman of Qwest Inc. Joseph P. Nacchio, currently the Chairman and Chief Executive Officer of Qwest Inc., will continue as Chairman and Chief Executive Officer of Qwest Inc. The Board of Directors of Qwest Inc., following consummation of the merger, will consist of 14 members, including Messrs. Anschutz and Nacchio, with a total of seven members to be designated by each of Qwest Inc. and US West Inc. Additionally, Qwest Inc. and US West, Inc. designees on the Board of Directors will be represented equally on all Board committees. For a period of one year

following closing, the twenty most senior policy-making executives of Qwest Inc. will be drawn in substantially equal numbers from among the officers of Qwest Inc. and US West, Inc., and each company will be proportionally

represented at each level of senior management.

The merger does not involve any assignment or transfer of authorizations, licenses or assets held by the Utah regulated operating subsidiaries of Qwest Inc. and US West, Inc. or any change in those subsidiaries. To the extent allowed by law the same companies will continue to provide service to the public following the merger. The major exception will be the long distance customers of Qwest Inc. residing in the former US West territory. These customers will no longer be served by Qwest Inc. Until such time as Qwest Inc. completes the federally mandated "Section 271" process, Qwest Inc. will be barred from offering long distance services within the former US West 14-state region. The respective remaining customers of these Qwest Inc. and US West, Inc. subsidiaries will continue to be served and billed pursuant to existing tariffs, price lists and operating authorities, as those may be amended from time to time in the ordinary course of business. Administratively, the merger will be transparent to the remaining Qwest and US West customers.

III. JURISDICTION AND LEGAL STANDARD

A. Necessity for Commission Approval

In the Joint Application, Joint Applicants state that they "seek an Order from the Utah Public Service Commission . . . approving the proposed merger of Qwest Inc. and US West, Inc. to the extent that such approval is necessary and legally appropriate under Utah Code Ann. §§ 54-4-28, 54-4-29 or 54-4-30." Joint Applicants state that based on the structure of the merger transaction, the Commission may not be required or have jurisdiction to approve the merger. In the rebuttal testimony of Ms. Scholl and in their post-hearing brief, Joint Applicants reiterated this position and stated that they were not waiving their rights on this issue.

The basis for this position is Joint Applicants' view that they are the public utilities which are subject to the requirements of Title 54 of the Utah Code. Sections 54-4-28, 54-4-29 and 54-4-30 provide that Commission approval is required if (1) one public utility combines, merges, or consolidates "with another public utility engaged in the same general line of business in this state," (2) a public utility purchases or otherwise acquires "the voting securities or the secured obligations of any other public utility engaged in the same general line of business" or (3) a public utility acquires "the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state." Joint Applicants contend that the merger of their parents is not a transaction that fits under these statutes because their parent corporations are not the companies that hold certificates or other authorizations for public utility service in Utah. They contend that Joint Applicants, the certificated companies, are not combining, merging or consolidating, acquiring voting securities or acquiring or transferring assets or authorities in the merger and that they will continue to exist and operate as they did prior to the merger.

The Division and the Committee disagree with Joint Applicants' position. Other parties have not expressed a position on this issue. The Division and the Committee argue that the law contemplates that when firms merge, it affects how the utility functions and makes decisions. The parent/subsidiary status is not a distinction that warrants looser Commission review. Both assert that the Commission has jurisdiction in this case.

Since the statute charges the Commission with ensuring that the conditions which merited granting the certificates in the first instance remain intact, the issue of whether the Commission has jurisdiction over the merger or just over the determination that the resulting corporate structure meets the conditions required to hold certificates renders the discussion moot. Either the Commission can approve or disapprove the merger, or it can evaluate the ongoing validity of the subsidiaries' separate certificates post merger. In one case or the other, the Commission has the authority to examine the effect of the resulting corporate structure on utility operations under the certificates held by the subsidiaries of the merging parent corporations.

B. Legal Standard

In reviewing the proposed merger, the Commission must determine if it is in the public interest. Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30. In the context of mergers involving monopoly electric providers, we have interpreted the public interest standard to require that the applicants show that the transaction provides a net positive benefit to the public. *See In the Matter of the Application of PacifiCorp and ScottishPower plc for an Order Approving the Issuance of PacifiCorp Common Stock*, Docket No. 98-2035-04, Report and Order at 26-27 (Utah PSC November 23, 1999)

("*ScottishPower/PacifiCorp Merger Order*"); *In the Matter of the Application of Utah Power & Light Company and PC/UP&L Merging Corp. (to be renamed PacifiCorp) for an Order Authorizing the Merger of Utah Power & Light Company and PacifiCorp into PC/UP&L Merging Corp., Authorizing the Issuance of Securities, Adoption of Tariffs and Transfer of Certificates of Public Convenience and Necessity and Authorities in Connection Therewith*, Docket No. 87-035-27, Order (Utah PSC November 20, 1987); *In the Matter of the Application of CP National Corporation and Utah Power & Light Company for the Sale and Purchase of the Public Utility Electrical Business of CP National for Service in Washington, Iron and Kane Counties*, Case Nos. 80-023-01 and 80-035-02, Report and Order at 12-18 (Utah PSC June 4, 1981). In the recent *ScottishPower/PacifiCorp Merger Order*, we quoted language from the Utah Power & Light PacifiCorp Merger Order on the application of this standard: "Our task is to consider them all [positive benefits and negative impacts], giving each its proper weight, and determine whether on balance the merger is beneficial or detrimental to the public." *ScottishPower/PacifiCorp Merger Order* at 27. Most of the parties in this Docket have urged the Commission to apply that standard here.

Joint Applicants cite Commission orders in eight telecommunications proceedings involving mergers, acquisitions or reorganizations since the passage of the Utah Telecommunications Reform Act, L. Utah 1995, ch. 269, and the federal Telecommunications Act of 1996, P.L. 104, 110 Stat. 57 (1996), in support of their argument that the net positive benefit standard does not apply in the new telecommunications environment. Joint Applicants note that the Commission found the public interest satisfied by a showing that a transaction would result in a more effective competitor and increased competition, would not cause harm to the public or customers, and would not change the manner in which service was provided to the public. Joint Applicants point out that none of these orders mentions a net positive benefit standard.

Earlier in this proceeding, the Commission explained that this matter is different from the telecommunications transactions covered by the orders cited by Joint Applicants. Although some of those matters involved very large telecommunications companies, none of them had the local service presence of US West in this state. In fact many of them had no local exchange customers at all. They were potential competitors. The present case is clearly different from the cases cited by the applicants. In addition, unlike US West, none of the companies in the cited cases served customers who were "captive", i.e., customers who have no competitive alternatives.

The Commission finds that in order for this merger to be in the public interest there must be a definable net benefit. We will continue to apply the net benefit standard in this Docket.

IV. WITHDRAWALS OF CLEC INTERVENERS

As noted previously, AT&T, McLeodUSA, NextLink and Rhythms have withdrawn from the case. NextLink's and Rhythms' withdrawals specifically state that they no longer oppose the merger. AT&T and McLeodUSA simply indicate that they are withdrawing from participation and intervention in the Docket based on confidential settlement agreements. Thus, they no longer assert the positions they originally did in this Docket and no longer oppose the merger.

Following the introduction of the Merger Stipulation, much of the major opposition to the merger was from the four CLEC interveners that have now withdrawn. The Division, the Committee and the CUIISP filed testimony, conducted cross examination and filed post-hearing briefs. Prior to the CLECs' withdrawal, the CLECs raised issues regarding the Merger Stipulation and its impact on our retail service quality rulemaking later this year. They argued that the merger should not be approved unless significant conditions were imposed, including structural separation of wholesale and retail activities, minimum investment obligations, stringent wholesale reporting requirements, increased monitoring of wholesale service quality, high wholesale performance standards and automatic penalties for failure to comply with those standards. Joint Applicants responded to these positions.

While these issues concern the Commission, the proponents of them have withdrawn. In light of the withdrawal of the CLECs, we do not find it necessary to decide these issues. To the extent that they are not addressed in this order several of these issues are dealt with in the Commission's Intercarrier Service Quality Rule (R746-365).

V. STIPULATIONS

Two stipulations were introduced into evidence in this case. The Merger Stipulation filed in this Docket will be in effect if US West, Qwest Inc. and the Division, the parties to it, accept the additional conditions we impose. A second stipulation in Docket No. 99-049-65 was also introduced as an exhibit in this Docket by the Division (hereafter referred to as the Exchange Sales Stipulation). Although the Exchange Sales Stipulation is not dependent on merger approval, Mr. Henningsen testified that the Division would not have signed the Merger Stipulation if the conditions negotiated in the Exchange Sales Stipulation had not been accepted by US West. Therefore, we consider both stipulations.

A. Merger Stipulation of Joint Applicants and the Division

In the Merger Stipulation, the Joint Applicants and the Division agree that the Commission should approve the merger of Qwest Inc. and US West, Inc. subject to the agreements, provisions and conditions in the Merger Stipulation. A copy of the Merger Stipulation is attached to this Order and is incorporated herein.

1. Summary of the Merger Stipulation

The following summary of the Merger Stipulation explains our understanding of its terms, and adds modifications to it we find necessary. Our finding that the merger confers a net public interest benefit is dependent both on our understanding of the Merger Stipulation and on the additional conditions we impose.

The Merger Stipulation contains 26 paragraphs. Paragraph 1 deals with possible modifications in jurisdiction or role of the Commission, the Division and the Committee by stating that if any such modification affects any condition of the Merger Stipulation, the condition will be applied consistent with the change in jurisdiction or role. Paragraphs 2 and 3 provide that the merger will not affect the applicability of regulations of the Commission or obligations of US West to provide notice and obtain approval before disposing of integral Utah public utility functions. Paragraphs 4 through 6 address the Division's concern that the merger might be used to avoid US West's obligations with regard to interconnection and provision of essential facilities and its commitment to regional operational support system (OSS) testing. We note that with respect to Paragraphs 3 and 4 there was considerable disagreement among the parties to the Merger Stipulation as to which subsidiaries of US West the Merger Stipulation's terms would bind. We intend the Merger Stipulation to be interpreted broadly, so that it will have the maximum applicability. Paragraphs 7 through 10 require US West and the merged company to continue to provide Utah regulators with reasonable access to relevant personnel and information. We view the requirements of these Paragraphs to apply equally to any successor agencies that may be formed should the regulatory structure of the State change. Further, interveners in future dockets who comply with appropriate protective orders will be guaranteed reasonable access to the same or similar materials, records and employees as mentioned in Paragraphs 7 through 10.

Paragraph 11 is an agreement by the parties to support a 6.2 percent productivity factor in determining the price index pursuant to Utah Code Ann. § 54-8b-2.4(5) for the first year the index is in effect. This paragraph also limits the ability of the Division to advocate factoring in the synergistic effects of the merger when calculating the price index. This removes a potential benefit that consumers may have received, making it more difficult for the merger to pass the net benefit standard. With this provision in place, the primary benefits cited by the Joint Applicants will not flow through to consumers in rates subject to price index regulation, and hence can not be counted in the net benefit test. We therefore reject the last sentence of Paragraph 11; it is not in the public interest.

Since the Legislature passed HB 338 in the 2000 session amending Utah Code Ann. §54-8b-2.4, however, the likelihood that residential customers will see a benefit from the 6.2 percent productivity factor is reduced because of HB 338's price floor limitation. Further, if pricing flexibility is granted for business services, the prices for these services will not be subject to a price index. Given these realities, the benefit to customers of the 6.2 percent productivity index is likely to be small.

Paragraph 12 requires the merged company to provide quarterly reports to the Commission on regulated operations of US West. US West and the Division agree to cooperate in devising a format for this report.

Paragraphs 13 through 16 generally provide that US West's credit and financial integrity will not be compromised by the merged company or any affiliate, that Utah customers of regulated services will be insulated from adverse impacts on rates or service resulting from the merger, that US West's cost of capital will not be increased as a result of the merger,

and that merger-related costs will not be charged to above-the-line regulatory accounts. Paragraph 13, sub-section j, states that the provisions of Paragraph 13 expire by December 31, 2001. The Commission finds this unacceptable and will determine when these restrictions will end upon a finding that they are no longer required to protect the public interest. We intend the language of Paragraph 15 to include all analyses of proxy costs for unbundled network elements and the Universal Service Support Fund. We will not permit the use of higher rates of return in the proxy models if they occur simply as a result of the change in corporate structure occasioned by this merger.

Paragraph 17 provides exceptions to the application of the service quality standards stated in subsequent paragraphs for events beyond the control of US West. Paragraphs 18 through 21 address retail service quality. In Paragraph 18, the parties agree to support retail service quality rules consistent with the standards in the Merger Stipulation in areas found to be noncompetitive by the Commission. With respect to the third sentence in Paragraph 18, we delete the phrases "less stringent" and ", if any,". Paragraph 19 limits the rights of the parties to propose changes to the retail service quality standards for two years, but nothing in this Merger Stipulation can prevent the Commission from deciding to initiate a rulemaking proceeding to deal with these issues if it deems that to be required by the public interest. Moreover, nothing in this Merger Stipulation can prevent the Division (or a successor agency) from acting in its normal capacity before the Commission in such a proceeding. Regarding the limitations imposed by the Merger Stipulation on future quality of service rules and possible penalties we feel it instructive to reference §54-8b-3.3-6 (a) and (b):

(6) (a) In order to promote continued investment in the public telecommunications network by incumbent telephone corporations and to improve the quality of service for end users in areas where competition has not developed, by September 30, 2000, the commission shall adopt rules governing service quality standards to end users for all tariffed public telecommunications services.

(b) The commission shall have the authority to enforce the rules adopted under this Subsection (6) by granting billing credits to the affected end user where the noncompliance is for reasons within the incumbent telephone corporation's control.

Nothing in the Merger Stipulation is to be interpreted as usurping the authority of the Commission to adopt whatever combination of quality of service rules and attendant penalties are in the public interest as outlined in §54-8b-3.3-6-b. Paragraph 20 deals with reports and procedures related to monitoring and dealing with retail service quality issues. Paragraph 20 makes the "cellular loaner" program a mandatory component of US West's response to held orders. Until the Commission determines otherwise, this program is mandatory.

Paragraph 21 provides specific service quality measures, many of which are to be applied on a wire center basis. We are concerned with the length of the period during which US West may be out of compliance with them, and note that we expect to deal with this in the aforementioned quality-of-service docket. Further, we expect US West to meet with Utah regulators in the near future to work out the testing procedures required by sub-section g of this Paragraph.

Paragraphs 22 through 26 contain the legal limitations and conditions common to stipulations presented to the Commission. They provide that the Merger Stipulation will not be effective until the Commission enters a final order approving the Merger Stipulation and the merger has closed. They allow the parties to withdraw from the Merger Stipulation if any part of the Merger Stipulation is rejected or if the Commission imposes additional conditions. Paragraphs 22 through 26 also provide that the Merger Stipulation does not create precedent or bind the parties in future proceedings.

2. Evidence on the Merger Stipulation

Joint Applicants and the Division presented evidence that the Merger Stipulation is in the public interest. For example, Mr. Henningsen testified that the Merger Stipulation, combined with the additional benefits in the Exchange Sales Stipulation (see the discussion of Docket Number 99-049-65 beginning on page 27), addressed all of the concerns the Division had raised regarding the merger. Accordingly, it is the Division's position that the merger is in the public interest. Mr. Henningsen further testified that the first portion of the Merger Stipulation provided assurances that the merger would not be used to impair regulation. In addition, he testified that the Division believes Paragraphs 4 through 7 of the Merger Stipulation address some of the competitive concerns raised in this Docket.

With regard to the price-index productivity factor, Dr. Compton testified that 6.2 percent is the amount the Division would have recommended in the proceeding to determine the index and that it is higher than productivity factors adopted in other states. The parties to the Merger Stipulation agreed that the value of the factor would likely have been a contentious issue in a price index proceeding. Mr. Henningsen and Dr. Compton testified that adoption of the 6.2 percent value for this factor would benefit Utah customers.

The parties to the Merger Stipulation testified that Paragraphs 13 through 16 were added to the Merger Stipulation at the request of the Committee. Based upon the addition of these terms, the Committee agreed not to oppose the merger. The parties testified that although some aspects of these Paragraphs may not be applicable to US West, because the Company is no longer regulated on the basis of traditional rate base, rate-of-return regulation, they do assure that US West's credit will not be impaired by actions of the merged company. In addition, these Paragraphs assure customers taking regulated public telecommunications services that increased rates or decreased service quality will not result from the merger.

Mr. Henningsen testified that retail service quality is the most critical issue in the merger, and that the terms and conditions of the Merger Stipulation adequately address this subject. Mr. Maloney testified that the package of service quality standards may be better than those in place in any other US West state. Messrs. Henningsen, and Maloney, and Ms. Scholl testified that the standards contained in these Paragraphs assure US West's Utah customers high quality service. In addition, the Merger Stipulation eliminates contention between these parties in the retail service quality rulemaking scheduled later this year. Mr. Henningsen testified that the standards in the Merger Stipulation are those the Division would have recommended in that proceeding.

CUIISP raised issues with respect to the Merger Stipulation. For example, cross examination indicated potential differences of opinion on the application of certain provisions of the Merger Stipulation. We find, however, that parties to the Merger Stipulation are bound by its language, the interpretation of which is solely a Commission responsibility.

3. Findings and Conclusions on Merger Stipulation

Settlement of matters before the Commission is encouraged at any stage of the proceedings. Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Commission*, 658 P.2d 601, 613-14 (Utah 1983). The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds a stipulation or settlement in the public interest. *Id.* Parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose them in a manner directed by the Commission. Utah Admin. Code R746-100-10.F.4 & 5.

Interveners cross examined the parties to the Merger Stipulation on March 9, 10, and 13. Interveners did not request further cross examination. At the conclusion of the hearings, interveners requested additional time for briefing based upon the Merger Stipulation. The Commission granted 11 additional days to complete post-hearing briefs.

None of the interveners argued in their post-hearing briefs that they were deprived of a reasonable opportunity to deal with the Merger Stipulation. The Commission finds and concludes that interveners had adequate time to present their positions on the Merger Stipulation and to cross examine the stipulating parties regarding it.

CUIISP objects to the Merger Stipulation because issues it regards as important are not addressed. We will not reject the Merger Stipulation because it does not address issues raised by CUIISP in this case. Such a policy would provide negative incentives for stipulations or settlements in general. Further, we believe that the issues not addressed in the Merger Stipulation are addressed elsewhere in this order, or can be addressed in another forum. Therefore we will consider the issues raised by interveners regarding the merger later in this Order.

The Commission is aware that differences of opinion about the meaning of the Merger Stipulation as later applied to actual or hypothetical situations, may occur. This is not sufficient reason to reject it. Parties to the Merger Stipulation have agreed to be bound by the words of the Merger Stipulation, as interpreted by the Commission.

We find that one of the benefits of the Merger Stipulation is the retail service quality standards it establishes for US West. The Division believes these to be among the best in any of US West's states. The longstanding attempt to adopt

such standards is resolved by the Merger Stipulation. The Merger Stipulation does not foreclose the Division from seeking standards or remedies for issues the Merger Stipulation does not address. Nor is the Commission precluded from directing the Division to investigate remedies for issues the Commission wants addressed. The Division is not foreclosed from seeking penalties if US West does not comply with the standards, and other parties are free to advocate any service quality rules they wish to seek.

The parties' agreement to support a 6.2 percent productivity factor in the price index proceeding later this year may benefit US West's customers because the record shows it is higher than the factors adopted in other states. If adopted by the Commission, this factor will apply to services subject to the price-index. However, as we explained above, this factor may be of limited value.

Based upon the foregoing, we find and conclude that the Merger Stipulation, as amended by the Commission, is in the public interest and should be approved.

B. Exchange Sales Stipulation in Docket No. 99-049-65

US West has agreed to sell certain rural exchanges to members of URTA. Docket No. 99-049-65 is the Docket in which we are considering approval of those agreements. A significant issue in other exchange sale dockets has been the regulatory treatment of the gain on the sale. In the Exchange Sales Stipulation, US West has agreed to invest $15 million in the deployment of incremental broadband capability, such as digital subscribe line service (DSL), including supporting infrastructure, if the exchange sales are approved and consummated. US West and the Division (the parties to the Exchange Sales Stipulation) have agreed to cooperate in determining priority of deployment. While the Exchange Sales Stipulation does not depend in any way upon whether the merger is approved or consummated, and parties other than the Division and US West are free to challenge it in Docket No. 99-049-65, the Division testified that the Exchange Sales Stipulation is critical to its decision to enter into the Merger Stipulation. The Exchange Sales Stipulation, states the Division, addresses its concerns about the availability of advanced services, such as DSL, to customers in rural Utah.

We understand the Division's view of the relationship between the Merger and the Exchange Sales Stipulations, and share its concern for the deployment of advanced services in the state. While we do not link the two Stipulations, in the sense that we do not approve them both in this order, we impose, as a condition for merger approval, a requirement that US West invest up to $15 million dollars in deploying digital subscribe line access multiplexers ("DSL AMS"), or other high bandwidth equipment capable of providing a service equivalent to DSL, and related equipment and line upgrades in all of its central office facilities in the State. This must occur in the same time period covered in the Exchange Sales Stipulation.

We direct that the goal is not whether DSL service is available from any provider; rather, the goal is for US West's standard residential and business DSL service (or other equivalent US West service) to be offered in all central office areas (i.e., it is available at a similar price and provides a similar quality and functionality). We direct US West to use reasonable and prudent construction and purchasing procedures to maximize the number of central offices capable of DSL that result from the expenditure of the $15 million. Monies spent in this effort will meet, if subsequent examination proves it should, the Exchange Sales Stipulation requirement, if that Stipulation is approved in Docket number 99-049-65. Approval of the merger is not conditioned on approval of the Exchange Sales Stipulation in Docket No. 99-049-65

CUIISP argues that the merger should be disapproved or conditioned because of certain competitive problems the Exchange Sales Stipulation in Docket No. 99-049-65 allegedly creates for its members. The Exchange Sales Stipulation in Docket No. 99-049-65 is not before us for approval in this Docket. Whether or not it is approved is unrelated to the merger at issue in the present Docket. Nevertheless, we direct the Division and US West to address the CUIISP concerns related to the DSL-roll out we herein order.

VI. OTHER ISSUES RELATING TO THE MERGER

A. Benefits

Joint Applicants have provided evidence that the proposed merger of Qwest Inc. and US West, Inc. is a vertical merger between two companies in different segments of the telecommunications business, and is therefore unlike other recent

Regional Bell Holding Companies mergers. They testify that the merger of their complementary assets, resources and expertise will allow the merged company to be a strong and effective competitor in the emerging telecommunications environment. They cite the restructuring that is taking place in the communications industry as evidence that the most effective competitors in the industry will be those that can offer a complete array of products and services unbounded by geographic limitations.

Joint Applicants emphasize two benefits of the merger. First, they testify that the merger will increase the incentive and the ability of the companies to meet the needs of Utah customers by increasing service quality and by offering new products and services more rapidly. Second, they testify that the merger will increase the incentives of the merged company to obtain approval under 47 U.S.C. § 271 ("Section 271") to offer interLATA long distance services in the US West region. Because Qwest is required to divest its interLATA business in the US West region as a condition of obtaining FCC approval of the merger, it will have a significant hole in its market and will have a substantial investment in unused facilities. These problems can only be remedied by meeting the requirements of Section 271 and reentering the interLATA market. In order to meet the Section 271 requirements, US West will be required to demonstrate that its local exchange markets are open to competition. They argue increased competition in the local exchange market together with the merged company's competition in the interLATA market following Section 271 approval has the potential to benefit Utah customers.

Although the Division originally challenged some aspects of these positions in its testimony, it testified at hearing that the agreements and conditions in the Merger Stipulation, which have been reviewed and amended above, ensure that the merger would provide net positive benefits to the state of Utah. The Committee also questioned certain of the Joint Applicants' positions in its testimony. Ultimately, in its post-hearing brief, the Committee stated that it remains neutral with respect to merger approval.

Increased competition in local and long distance markets is a "structural" benefit of the merger. As amended the Merger Stipulation and the additional conditions we herein impose will also benefit customers. The service quality standards, the testing procedures to identify blockage (capacity) problems, and the increased rate at which broadband (DSL) capabilities will be offered to the citizens of Utah mean that both the quality of service and the types of services available to customers in US West's territory will improve.

The interveners have challenged the Joint Applicants' contentions regarding the expected benefits of the new company's increased market presence. Their challenges, to the extent they are still before us in light of the withdrawals of the four CLECs discussed above, will be dealt with below.

B. Remaining Issues

Remaining interveners raise three issues. CUIISP presented testimony and argument that the merger will increase the incentive and opportunity for US West to discriminate against CUIISP's members. AUSWR presented testimony through a public witness regarding concerns about retirement benefits. CAP and Crossroads presented testimony through public witnesses that basic local exchange customers will not receive sufficient benefits from the merger. Interveners recommended that the Commission condition approval of the merger on adoption of requirements which they state will ameliorate these concerns.

1. Impact of the Merger on Discrimination Against CUIISP

CUIISP presented testimony and argument that US West has discriminated against its members in providing information regarding deployment of DSL facilities and loop qualification. It claims that US West improperly favors its affiliate, US West Interprise America, Inc. ("Interprise"), which provides Internet services in competition with CUIISP's members. In its post-hearing brief, CUIISP argued that this occurs in part because US West provides support services to Interprise through a Master Services Agreement. CUIISP testified that US West would have increased incentives and capacity to continue to engage in discriminatory conduct following the merger. Based on these concerns, CUIISP requested that the merger be conditioned on four requirements: (1) that in implementing the Exchange Sales Stipulation in Docket No. 99-049-65, the Division and US West conduct the planning of broadband deployment in a manner that allows all Internet service providers ("ISPs") to fully participate; (2) that information about deployment of DSL provided to the Division and the Commission be provided to any interested party at the same time and on the same

conditions; (3) that US West be required to verify that it is not providing preferential treatment to itself or Interprise in the ordering or provisioning of services or in the quality of service provided; and (4) that US West submit to the jurisdiction of the Commission to oversee a variety of issues with regard to DSL deployment and provisioning.

Joint Applicants' testimony on this issue was that CUIISP's complaints have nothing to do with the merger and have been raised in other forums. They testified that the federal Department of Justice's decision not to take action on the merger after its review was an indication that the merger would not be anti-competitive in any market, including the market for DSL services. Joint Applicants also testified that all DSL services provided by US West in Utah are purchased under the FCC tariff. They argued in their post-hearing brief that issues related to provision of DSL and support services are not subject to the Commission's jurisdiction and that US West's MegaBit service is subject to a variety of FCC regulatory safeguards, including safeguards regarding discrimination. They argued that the unregulated services provided by US West to Interprise under the Master Services Agreement are not subject to regulation by either the Commission or the FCC except that US West must comply with affiliate transaction rules and accounting safeguards. The Division testified that CUIISP should provide input in the processes contemplated by the Exchange Sales Stipulation in Docket No. 99-049-65 to the extent possible.

We are persuaded that the concerns raised by CUIISP are significant, and that if realized in fact, could substantially decrease the expected benefits from competition, negating a potential benefit claimed by the Joint Applicants. We expect these issues to be fully addressed and resolved in the DSL investment information process that we have ordered US West and the Division to jointly design.

2. Impact of the Merger on AUSWR Pensions

Mr. Sutherland testified on public witness day that AUSWR members did not oppose the merger, but were concerned that the merged company might not honor all existing retirement benefits or adopt a cost-of-living increase in benefits. He requested the Commission to require some commitment on these points as a condition to approval of the merger. In their post-hearing brief, the Joint Applicants argued that the relief sought by AUSWR is both inappropriate and beyond the Commission's jurisdiction. We conclude that AUSWR has presented no evidence that the merged company will take a different position on issues of concern to it than would US West, Inc. absent the merger. This does not mean we surrender jurisdiction, particularly if it can be shown that, as a result of rate regulation, US West, and therefore a predecessor company, has continuing obligations with respect to the deployment of retirement funds. We observe that the funds for the Utah benefits came in the first instance from Utah rate payers and hence the company may be obligated to use the funds in certain ways. If a specific action is taken by Qwest Inc. in the future that the AUSWR feels violates Utah public utility regulatory law, it may petition the Commission at that time for a decision. For these reasons, we will not condition merger approval in the manner AUSWR seeks.

3. Sharing of Merger Benefits with Customers of US West's Basic Local Exchange Service

Salt Lake CAP and Crossroad testified that US West's customers had invested in its facilities through payment of rates over a number of years and that they should be assured of positive benefits from the merger through service quality guarantees and sharing of merger benefits. They testified that the Merger Stipulation fails to provide benefits to residential customers because the applicability of the price-index has been limited by the Utah Legislature through Utah Code Ann. § 54-8b-2.4(5)(c).

We are not inclined to require specific reductions in rates or penalties beyond those discussed in the amended Merger Stipulation. We find however, that the potential for harm exists as investment priorities of the merged company change, and are specifically concerned with held orders, blockage (capacity), and advanced services. As we stated above, we find the merger will directly benefit basic local exchange customers through quality-of-service standards, and that the $15 million investment in DSL capacity will increase system reliability throughout the state as well. On this basis we expect the merger to improve basic local exchange service. In addition, the Merger Stipulation provides assurances that these customers will be insulated from adverse impacts, if any, of the merger on basic service.

The Legislature has placed a price floor in Utah Code Ann. § 54-8b-2.4 that limits price reductions which would otherwise be required. Because of this legislation residential customers may not ultimately benefit from the productivity

factor. This limitation is not a product of the Merger Stipulation.

VII. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Merger Stipulation as clarified and modified by the Commission above is

approved and incorporated by reference in this Order.

2. US West will invest $15 million in the deployment of its own standard offering of

residential and business broadband (primarily DSL) services in all of its Utah central offices. If 100% of the Utah central offices can be upgraded to provide US West broadband services for less than $15 million, US West may expend less than $15 million.

- The Division and US West will design a procedure for the dissemination of

information to all interested parties relating to the roll out of the broadband services. The Division and US West will submit the proposed procedure to the Commission for approval.

- The Division and US West will jointly determine a schedule of testing blockage

(capacity) throughout the State on a regular and timely basis. Further, we direct them to recommend procedures whereby a given central office's facilities can be tested by request. The Division and US West will submit the proposed schedules and procedures to the Commission for approval.

5. The Joint Application is granted subject to the terms and conditions of the

amended Merger Stipulation, and the requirements herein imposed.

6. The Division and US West will jointly submit a description of the procedures and

rules governing the cellular loaner program to the Commission for approval.

7. The merger of Qwest Inc. and US West, Inc. is approved.

8. Joint Applicants shall provide notice to the Commission of the closing of the

merger.

9. Pursuant to U.C.A. §63-46b-13, an aggrieved party may file, within 20 days after

the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 et seq.).

DATED at Salt Lake City, Utah this 6th day of June, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary