

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

| | | |
|---|---|---|
| In the Matter of the Joint Application of |) | DOCKET UT-100820 |
| |) | |
| QWEST COMMUNICATIONS |) | ORDER 02 |
| INTERNATIONAL INC. AND |) | |
| CENTURYTEL, INC. |) | PREHEARING CONFERENCE |
| |) | ORDER |
| For Approval of Indirect Transfer of |) | |
| Control of Qwest Corporation, Qwest |) | NOTICE OF PREHEARING |
| Communications Company LLC, and |) | CONFERENCE |
| Qwest LD Corp. |) | (Set for December 8, 2010, 1:30 p.m.) |
| |) | |
| |) | NOTICE OF HEARING |
| |) | (Set for January 5-7, 2011, 9:30 a.m.) |
| |) | |

1 **PROCEEDING.** On May 13, 2010, Qwest Communications International Inc. (QCII) and CenturyTel, Inc. (CenturyLink) 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 **PREHEARING CONFERENCE.** The Commission convened a prehearing conference in this proceeding at Olympia, Washington on June 1, 2010, before Administrative Law Judge Marguerite E. Friedlander.

3 **PARTY REPRESENTATIVES.** Lisa Anderl, in-house counsel, Seattle, Washington, represents Qwest. Calvin K. Simshaw, in-house counsel, Vancouver, Washington, represents CenturyLink.

4 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Simon

¹In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do

ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General (Public Counsel).

5 Gregory J. Kopta, Davis, Wright, Tremaine, LLP, Seattle, Washington, represents Pac-West Telecomm, Inc. (Pac-West); tw telecom of Washington, LLC (tw telecom); McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (PAETEC); XO Communications Services, Inc. (XO Communications); Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., and United Communications, Inc., d/b/a Unicom (collectively, Integra); Comcast Phone of Washington, LLC (Comcast);² and Charter Fiberlink WA-CCVII, LLC (Charter). Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents Level 3 Communications, LLC (Level 3). Katherine K. Mudge, in-house counsel, Austin, Texas, represents Covad Communications Company (Covad). Michel Singer-Nelson, in-house counsel, Broomfield, Colorado, represents 360networks (USA) inc. (360networks). Stephen S. Melnikoff, General Attorney, Arlington, Virginia, represents The Department of Defense and All Other Federal Executive Agencies (DOD/FEA).

6 **PETITION TO INTERVENE.** On May 20, 2010, Integra filed a petition to intervene. Covad, DOD/FEA, tw telecom, and XO Communications filed petitions to intervene on May 24, 2010. On May 25, 2010, Level 3 sought intervention. On May 26, 2010, 360networks, Comcast, and Pac-West filed petitions to intervene. PAETEC sought intervention on May 27, 2010. On June 1, 2010, Charter filed a petition to intervene and orally sought intervention at the prehearing conference.

7 At the conference, counsel for Comcast stated that Comcast sought to withdraw its petition for intervention. Following the conference, Comcast filed a motion for leave to withdraw its petition. The motion is under review and will be addressed in a separate order. The remaining petitioners each demonstrated their substantial interest in this proceeding and that their participation will be in the public interest. There

not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See, RCW 34.05.455.*

² Comcast indicated at the prehearing conference that it would be withdrawing its petition to intervene. While the Commission has received a motion for leave to withdraw the petition from Comcast, the Commission issued a bench request on June 9, 2010, seeking additional information from Comcast before rendering a decision on the motion for leave to withdraw the petition.

were no objections to the remaining petitions to intervene. The petitions filed by Integra, Covad, the DOD, tw telecom, XO Communications, Level 3, 360networks, Pac-West, PAETEC, and Charter are granted. Giving these petitioners party status is subject to the caveat that they will not be permitted to broaden the issues beyond those appropriate to consideration in this case under RCW 80.12, WAC 480-143.

8 **PROTECTIVE ORDER.** The Commission entered Order 01, a protective order in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423, on June 2, 2010, to facilitate discovery.

9 **DISCOVERY.** The parties are required to follow the Commission's discovery rules to the extent any formal discovery is required.

10 **PROCEDURAL SCHEDULE.** The parties were unable to agree on a procedural schedule. On June 1, 2010, Joint Applicants filed a proposed procedural schedule and presented the schedule at the prehearing conference. The remaining parties disagreed markedly with the Joint Applicants' proposed schedule and indicated that extensive discovery would need to be conducted. In particular, Staff stated that there are many additional issues raised with this proposed merger that may not have been brought before the Commission in other merger cases and that it would require further information and time to develop its case. Staff suggested dates that were, on average, four months later than those suggested by Joint Applicants. The parties, with the exception of Joint Applicants, support the dates proposed by Staff.

11 After careful consideration of both suggestions, the Commission finds that Joint Applicants' proposed procedural schedule is far too compressed for the level of complexity involved in this matter. Likewise, we find that Staff's proposed schedule, which allows Commission Staff, Public Counsel, and the other parties more than five months to put on their cases, is unreasonable. Thus, in an effort to balance the needs of the parties to conduct discovery and formulate arguments and the need to efficiently resolve this docket, the Commission adopts the procedural schedule detailed in Appendix B to this order.

12 Public Counsel is required to submit a copy of the public notice Qwest is required to issue in connection with this proceeding, or at the very least, an explanation of why consensus was not reached with Staff and the Joint Applicants on the content and

format of the public notice. The status report must be filed no later than July 1, 2010, by 3:00 p.m. If consensus is not reached at that time, the content and format of the public notice will be determined by the Commission.

- 13 Commission Staff and Public Counsel have jointly requested two public comment hearings in Qwest's service territory to allow consumers to provide input on the transaction. We take the request under advisement pending a determination that there is sufficient public interest in this matter to warrant the expense of holding one or more public comment hearings apart from the scheduled evidentiary hearings in Olympia.
- 14 *Cross-Examination Exhibits.* According to WAC 480-07-460(1), the Commission may require the parties to predistribute their cross-examination exhibits. It has been the Commission's practice to require the predistribution of cross-examination exhibits and to establish a deadline for that predistribution. In recent cases, the predistribution of cross-examination exhibits after the deadline established by the Commission has presented problems for both the Commission and other parties to the proceeding. To ensure that the parties and the Commission have adequate time to prepare for hearing and review proposed cross-examination exhibits, the Commission will enforce WAC 480-07-460(1)(c) and may exclude cross-examination exhibits distributed after the deadline absent a showing of good cause for the delay in timely pre-distributing such proposed exhibits. The deadline for filing cross-examination exhibits is **December 6, 2010.**
- 15 **NOTICE OF PREHEARING CONFERENCE.** The Commission will convene a prehearing conference in this matter on **December 8, 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.
- 16 **NOTICE OF HEARING.** The Commission schedules a hearing in this matter, to commence on Wednesday, **January 5, 2011, at 9:30 a.m.**, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing shall continue, if necessary, and conclude on Friday, January 7, 2011, in the same location.

- 17 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the original plus **twelve (12) copies** of the **unredacted** versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and **three (3) copies** of any **redacted** version(s). These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 18 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 19 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 20 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Electronic versions of all documents must be filed in accordance with WAC 480-07-140(6). Specifically, all documents must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc (MS Word), .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format.
- 21 A copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a

separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

22 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 pm on the filing deadline and the Commission receives the original and required number of copies by 12:00 pm 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 and file an original plus **twelve (12)** unredacted paper copies and an original plus **three (3)** redacted paper copies, of the documents with the Commission by the following business day. 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.

23 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1144.

24 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective June 10, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET UT-100820**

| PARTY | REPRESENTATIVE | PHONE | FACSIMILE | E-MAIL |
|---|--|--------------|------------------|--|
| Qwest | Lisa Anderl Qwest Corporation 1600 7 th Avenue, Room 1506 Seattle, WA 98191 | 206-345-1574 | 206-343-4040 | Lisa.Anderl@qwest.com |
| CenturyLink | Calvin Simshaw CenturyLink 805 Broadway Vancouver, WA 98660 | 360-905-5958 | 360-905-5953 | Calvin.simshaw@centurylink.com |
| Commission Staff | Jennifer Cameron-Rulkowski 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128 | 360-664-1186 | 360-586-5522 | JCameron@utc.wa.gov |
| | Regulatory Analyst Tim Zawislak | | | Tim@utc.wa.gov |
| Public Counsel | Simon J. ffitc Public Counsel Section Office of Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 | 206-389-2055 | 206-464-6451 | simonf@atg.wa.gov |
| | Regulatory Analysts Stefanie Johnson Lea Daeschel | | | stefaniej@atg.wa.gov lead@atg.wa.gov |
| | Legal Assistants Mary Harper Carol Williams | | | carolw@atg.wa.gov maryh2@atg.wa.gov |
| Pac-West; tw telecom; PAETEC; XO Communications; Integra; Charter; and Comcast | Gregory J. Kopta Davis Wright Tremaine LLP 1201 Third Avenue Suite 2200 Seattle, WA 98101 | 206-757-8079 | 206-757-7079 | gregkopta@dwt.com |

| PARTY | REPRESENTATIVE | PHONE | FACSIMILE | E-MAIL |
|-------------------------------------|--|--------------|--------------|--|
| Level 3 | Arthur A. Butler Ater Wynne LLP 601 Union Street, Suite 1501 Seattle, WA 98101-3981 | 206-623-4711 | 206-467-8406 | aab@aterwynne.com |
| 360networks | Michel Singer-Nelson 360networks (USA) inc. 370 Interlocken Blvd. Suite 600 Broomfield, CO 80021 | 303-854-5513 | 303-854-5100 | Mnelson@360.net |
| | Legal Assistant Penny Stanley | | | Penny.Stanley@360.net |
| Covad | Katherine K. Mudge Director, State Affairs & ILEC Relations Covad Communications Company 7000 N. Mopac Expressway, 2 nd Floor Austin, TX 78731 | 512-514-6380 | 512-514-6520 | Kmudge@covad.com |
| The DOD | Stephen S. Melnikoff U.S. Army Litigation Center 901 N. Stuart Street, Suite 700 Arlington, VA 22203-1837 | 703-696-1643 | 703-696-2960 | Stephen.Melnikoff@hqda.army.mil |
| | Regulatory Consultants Charles W. King Harry Gildea Robert Spangler | | | charlieking@snavely-king.com hgildea@snavely-king.com rwspong@centurytel.net |
| Administrative Law Judge | Marguerite E. Friedlander 1300 S. Evergreen Park Dr. SW P.O. Box 47250 Olympia, WA 98504-7250 | 360-664-1285 | N/A | mfriedla@utc.wa.gov |

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UT-100820

| EVENT | DATE |
|--|-------------------------------------|
| Company Direct Testimony and Exhibits | N/A |
| Technical Conference (parties only) | Wednesday, June 30, 2010 |
| Public Comment Hearing in Spokane, Washington | Friday, August 20, 2010 (Tentative) |
| Public Comment Hearing in Olympia, Washington | Monday, August 23, 2010 (Tentative) |
| Settlement Conference (parties only) | Tuesday, August 31, 2010 |
| Staff, Public Counsel and Intervenor Responsive Testimony and Exhibits | Monday, September 27, 2010 |
| Company Rebuttal Testimony and Exhibits; Staff, Public Counsel and Intervenor Cross-Answering Testimony and Exhibits | Monday, November 1, 2010 |
| Distribution of Cross Examination Exhibits | Monday, December 6, 2010 |
| Prehearing Conference to Mark Exhibits | Wednesday, December 8, 2010 |
| Evidentiary Hearing | January 5-7, 2011; as needed |
| Simultaneous Post-Hearing Briefs | Monday, February 7, 2011 |