

The Commission met on **Thursday, March 3, 2011**, with Chair Boyd and Commissioners Pugh, O'Brien, Reha, and Wergin present.

The following matter came before the Commission:

TELECOMMUNICATIONS AGENDA

P-421, et al./PA-10-456

P-421, et al./PA-10-1012

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

Commissioner Wergin moved to take the following actions with respect to the six settlement agreements that Qwest Communications International, Inc. and its subsidiaries (Qwest), and CenturyLink, Inc. and its subsidiaries (CenturyLink) (collectively, the Joint Petitioners) entered with the following entities:

- 360networks;
 - The Minnesota Department of Commerce (DOC);
 - The Communications Workers of America;
 - Integra Telecom of Minnesota, Inc. and Eschelon Telecom of Minnesota, Inc. (collectively, Integra);
 - tw telecom of minnesota, llc; and
 - McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; OrbitCom, Inc.; US Link, Inc.; d/b/a TDS Metrocom; POPP.com, Inc.; Velocity Telephone, Inc.; and Charter Fiberlink, CCO, LLC (collectively, the “Joint Competitive Local Exchange Carriers” or “Joint CLECs”):
1. Find that the six Settlement Agreements represent conditions that are necessary (but not necessarily sufficient) for approval of the merger subject to any specific modifications or additions to be addressed in subsequent sections.
 2. Address any concerns regarding the reconciliation of the terms of the six Agreements with the following Joint Petitioner statement:

Where any term exists in one agreement and there is no comparable provision in the other agreement, then that term should govern post-merger. Where the provisions of the DOC and Integra Settlements can be read together, the terms of both agreements should be given effect. Because the Integra Settlement contains more detailed provisions regarding wholesale issues, the Integra Agreement should govern where any conflicts exist.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Relinquishment of Rural Exemption?

Commissioner Wergin moved to make no modifications to the Findings of Fact, Conclusions of Law, and Recommendation (ALJ Report) declining to condition merger approval on relinquishment of rights arising from 47 U.S.C. § 251(f) providing for exemptions from certain duties for rural carriers.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Directory Assistance Restrictions?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on additional provisions governing directory assistance.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Implementation of an Additional Performance Assurance Plan?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on adoption of an Additional Performance Assurance Plan as proposed by the Joint CLECs.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Prohibition of Billing Dispute Leveraging?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on adoption of additional terms prohibiting any of the merged entity's Minnesota affiliates from discriminating against a competitive local exchange carrier (CLEC) when the CLEC disputes a bill issued in some other jurisdiction, or disputes a bill by one of the merged entities' other affiliates.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on a Prohibition on the Establishment of a Rural CLEC?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on adoption of additional terms barring the merged entity from operating a rural CLEC in areas now served by Qwest, or limiting the access charges assessed by the CLEC.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on a Three-Year Extension of Interconnection Agreements?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to adopt additional conditions on merger approval to require --

1. a three-year extension of all interconnection agreements or
2. the extension of CenturyLink's interconnection agreements.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Routing or Capping 8YY Traffic?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to address Level 3's allegations that CenturyLink is routing 8YY telecommunications – that is, “toll free calls” beginning with 800, 888, 877, etc. – in an inefficient manner.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Billing Dispute Deadline Provisions?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to address Level 3's allegations that Qwest makes unilateral changes to its interpretation of interconnection agreements regarding billing disputes and other matters.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Treatment of Telecommunications Bound for Internet Service Providers?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on Level 3's proposal to establish terms governing the treatment of telecommunications bound for internet service providers.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on a Reduction of Access Charges?

Commissioner Wergin moved to make no modifications to the ALJ Report declining to condition merger approval on a reduction of access charges.

The motion passed 4 – 1; Commissioner O'Brien voted no.

Should the Commission Condition Merger Approval on One-Day Number Porting?

Commissioner Wergin moved to make no modification to the ALJ's finding that the Joint Wireless Carriers had failed to prove that, to demonstrate that the proposed transaction is in the public interest, it is necessary to require the merged entity to port numbers to competitors within one day.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on Enforcement Provisions?

Commissioner Wergin moved to make no modification to the ALJ's finding that the Joint Wireless Carriers' proposed enforcement provisions are unnecessary.

The motion passed 5 – 0.

Should the Commission Condition Merger Approval on AFOR Obligations?

Commissioner Wergin moved to make no modifications to the ALJ's finding that Qwest's commitment arising from its Alternative Form of Regulation plan in Docket No. P-421/AR-09-790, *In the Matter of a Petition by Qwest Corporation for Approval of its Second Revised Alternative Form of Retail Regulation (AFOR) Plan*, is unaffected by the DOC's settlement agreement.

The motion passed 5 – 0.

Should the Commission Modify Finding ¶ 110 as Argued by the Joint Petitioners?

Commissioner Wergin moved, notwithstanding the determinations above, to find that it is necessary (but not necessarily sufficient) for approval of the merger to modify the ALJ Report at Finding ¶ 110 as follows:

Replacement or Retirement of a Qwest OSS [Operations Support Systems] Interface. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by Integra to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the closing date. Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Whether there is sufficient acceptance of a replacement will be determined by a majority vote of the CMP [Change Management Process] participants (~~Qwest and Integra~~) in testing, subject to any party invoking the CMP's dispute resolution process. The

Merged Company will allow coordinated testing with Integra (including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing) for the time period in the CMP or for 120 days, whichever is longer, in order to ensure that there is sufficient acceptance of the replacement interface before replacing or retiring a Qwest OSS Interface. The Merged Company will provide wholesale carriers with training and education on any wholesale OSS implemented without charge to the wholesale carrier.

The motion passed 5 – 0.

Should the Commission Modify Finding ¶ 165 as Argued by the Joint Petitioners?

Commissioner Wergin moved to make no modifications to the ALJ Report at Finding ¶ 165.

The motion passed 5 – 0.

Should the Commission Modify Finding ¶ 169 as Argued by the Joint Petitioners?

Commissioner Wergin moved to make no modifications to the ALJ Report at Finding ¶ 169.

The motion passed 5 – 0.

Should the Commission Modify Finding ¶ 170 as Argued by the Joint Petitioners?

Commissioner Wergin moved to make no modifications to the ALJ Report at Finding ¶ 170.

The motion passed 5 – 0.

Should the Commission Modify ¶ 224 as Argued by the Joint Petitioners?

Commissioner Wergin moved to make no modifications to the ALJ Report at Finding ¶ 224.

The motion passed 5 – 0.

Should the Commission Modify Finding ¶ 195 as Recommended by the Commission's Staff?

Commissioner Wergin moved, notwithstanding the determinations above, to modify Finding ¶ 195 for approval of the merger as follows:

195. The Administrative Law Judge concludes that the Joint CLECs have not demonstrated that this proposed condition is reasonable or necessary for the transaction to be deemed to be in the public interest. As the Joint Petitioners emphasize, commercial agreements arise under 47 U.S.C. § 271 or because Qwest has made a voluntary decision to offer such agreements. Most of these agreements relate to services that formerly were within the scope of unbundled network elements under [47 U.S.C.] Section 251(c), but subsequently have been found by the FCC [Federal Communications Commission] to not meet the impairment standard. ~~Because a BOC is free to offer such elements at rates that are market based~~ Because a BOC [Bell Operating Company] is not required to offer such elements at Section 251/252 TELRIC [Total Element Long-Run Incremental Cost] rates, the Joint CLECs' attempt to compare the prices that they used to receive under Section 251 with rates they currently receive under commercial agreements or federal tariffs is not appropriate and has been rejected in prior Commission proceedings. Accordingly, providing different treatment for ICAs [interconnection agreements] and commercial agreements comports with the differing regulatory standards governing such agreements and the fact that CLECs have a choice as to whether to purchase from Qwest, purchase from another carrier, or self-provision.

The motion passed 5 – 0.

Should the Commission Approve the Proposed Merger and, if so, Under What Conditions, if Any?

Commissioner Wergin moved to do the following:

1. Adopt the ALJ Report including the ALJ's Conclusions of Law and Recommendation subject to and modified by the Commission's additional determinations above.
2. Find that the merger, as conditions upon the Commission's determinations above, is in the public interest pursuant to Minn. Stat. §§ 237.23 and 237.74, subd. 12.

The motion passed 4 – 1; Commissioner O'Brien voted no.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: April 13, 2011



Burl W. Haar, Executive Secretary