# R10-1201-IDecision No. R10-1201-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

10A-350TDOCKET NO. 10A-350T

IN THE MATTER OF THE joint APPLICATION OF qwest communications international, Inc. and centurylink, inc. for approval of indirect transfer of control of qwest corporation, el paso county telephone company, qwest communications company, llc and qwest ld corp.

INTERIM ORDER OF  
HEARING COMMISSIONER  
RONALD J. BINZ  
DENYING MOTION TO COMPEL DISCOVERY

Mailed Date: November 4, 2010

## STATEMENT

1. This matter comes before the Hearing Commissioner for consideration of the Motion to Compel Discovery Responses (Motion) filed by Cbeyond Communications, LLC, (Cbeyond) on October 22, 2010. On November 1, 2010, Qwest Communications International, Inc. (Qwest) filed a response to the Motion.[[1]](#footnote-1) Being fully advised in the matter and consistent with the discussion below, the Hearing Commissioner denies the Motion.
2. In its Motion, Cbeyond generally contends that Qwest has failed to produce the documents and information in response to Request No. 3 of Cbeyond’s First Set of Discovery Requests. Cbeyond represents that it has been unable to resolve the disputes and therefore asks the Commission to rule on the matter.
3. In its Request No. 3, Cbeyond sought the documents exchanged between March 30, 2010, and September 27, 2010, between any legal representatives of Qwest, CenturyLink, Inc. (CenturyLink) and various competitive local exchange carriers (CLECs). Cbeyond argues that it is likely Qwest will propose the same or similar terms of the settlement reached by the parties in the Iowa merger proceeding in this docket. Cbeyond claims the existence of any “side deals” or concessions between the joint applicants and CLECs in Iowa is likely to lead to the discovery of admissible evidence in this docket. Cbeyond states that it seeks to determine if any concessions have been made by the joint applicants in the Iowa proceeding, which may be similarly sought and obtained in Colorado. Cbeyond represents that Qwest objected to Request No. 3 on several bases.
4. In its response to the Motion, Qwest argues that Request No. 3 is overbroad and unduly burdensome, as it goes beyond the settlement discussions in Iowa. Qwest further argues that many of the documents responsive to Request No. 3 are subject to protective agreements and confidentiality orders. Qwest contends that Request No. 3 is not reasonably calculated to lead to the discovery of admissible evidence in this docket since settlement agreements and negotiations are confidential and inadmissible. Qwest also points out that, in response to Request No. 1 of the discovery request at issue, it has already responded to Cbeyond that no “side deals” were part of the settlement in Iowa.
5. The Rules of Practice and Procedure permit any party to initiate discovery upon any other party to discover any matter, not privileged, that is relevant to the claim or defense of a party. Relevant information need not be admissible at the hearing if the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 1405 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 and Rule 26(b)(1) of the Colorado Rules of Civil Procedure. Prior to filing a motion to compel discover, Rule 1405(b) requires the movant to make a good faith effort to resolve the discovery dispute.
6. The Hearing Commissioner reviewed Request No. 3 and the pleadings submitted by Cbeyond and Qwest. The Hearing Commission finds that Request No. 3 is vague and unduly burdensome. This request goes beyond the settlement discussions that occurred in Iowa and it is not limited in terms subject matter, jurisdiction, or confidentiality designation.
7. Further, Cbeyond has not established that Request No. 3 is reasonably calculated to lead to the discovery of admissible evidence. Qwest has not offered the Iowa settlement into evidence in this docket at this time. Rule 408 of the Colorado Rules of Evidence provides that evidence of settlement or offer of settlement generally is not admissible. The purpose of this rule is two-fold. It encourages parties to reach settlements without the concern that their negotiations and positions on issues in the negotiation process will be admissible as discovery. Furthermore, the Commission does not become involved in, or facilitates settlement negotiations. Instead, the Commission evaluates any proposed settlement agreements on a case-by-case basis. Therefore, information related to settlement in another jurisdiction and of the negotiations underlying such settlement is not reasonably calculated to lead to discovery of admissible evidence.

## II. ORDER

### It Is Ordered That:

1. The Motion to Compel Discovery Responses filed by Cbeyond Communications, LLC, on October 22, 2010, is denied, consistent with the discussion above.
2. This Order is effective upon its Mailed Date.

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| (S E A L)  PUCw97seal  ATTEST: A TRUE COPY  Doug Dean,  Director | THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO   RONALD J. BINZ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Hearing Commissioner |

1. By Decision No. R10-1166-I, mailed on October 28, 2010, the Hearing Commissioner shortened response time to the Motion to two business days. [↑](#footnote-ref-1)