

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0333T

IN THE MATTER OF THE JOINT APPLICATION FILED BY TIME WARNER CABLE INFORMATION SERVICES, LLC AND COMCAST CORPORATION REQUESTING APPROVAL OF MERGER TRANSACTION.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING INTERVENTION OF CENTURYLINK;
FINDING THAT DISH NETWORK IS NOT A PARTY;
AND, SETTING PRE-HEARING CONFERENCE**

Mailed Date: June 10, 2014

I. STATEMENT

1. On April 11, 2014, Time Warner Cable Inc. (Time Warner), on behalf of its wholly-owned subsidiary Time Warner Cable Information Services (Colorado), LLC (TWCIS), and Comcast Corporation (Comcast) jointly filed a Joint Application for Approval of Merger Transaction requesting approval for a transaction that will result in the transfer of control of TWCIS from Time Warner to Comcast (Application). The Application included the direct testimonies of a witness on behalf of Time Warner and a witness on behalf of TWCIS.

2. On April 14, 2014, the Colorado Public Utilities Commission (Commission) provided notice of the Application to all interested parties. The notice also provided 30 days from the date of the notice for any interested party to file a petition to intervene to participate as a party in this proceeding pursuant to the Commission's Rules of Practice and Procedure.

3. On May 14 2014, DISH Network, L.L.C. (DISH), filed a Motion for Modification of Procedural Schedule (Motion) in this proceeding. Within its Motion, DISH included a

sentence which indicates it has standing to intervene because it has a justiciable interest that may be adversely impacted by the outcome of the proceeding. DISH further indicated that the Commission, as of the date of the filing of the Motion, had not deemed the application complete pursuant to § 40-6-109.5, C.R.S., and argued that consideration of additional complexities due to transactions conducted after the Application was filed warrant that the Application is “outdated and incomplete.”

4. On May 15, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC), filed a petition to intervene and, on May 16, 2014, filed a motion requesting the Commission grant the late-filed petition to intervene. CenturyLink QC claimed it inadvertently e-filed its intervention petition after 5:00 p.m. on May 14, 2014, the current deadline for intervention; consistent with Commission rules, the filing was deemed submitted as of 8:00 a.m. May 15, 2014.

5. By Interim Decision No. C14-0563-I, issued May 28, 2014, the Commission deemed the Application complete and as a result, found DISH’s argument regarding completeness to be moot. The Commission referred this matter to an Administrative Law Judge (ALJ) for disposition, including a decision on the merits of the Application. The ALJ was also to make a determination regarding interventions and any further relief sought in the Motion. The matter was subsequently assigned to the undersigned ALJ.

A. Interventions

6. A party may seek to intervene in a Commission proceeding as an intervenor as of right or as a permissive intervenor pursuant to § 40-6-108(2)(a), C.R.S. and Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401.

Section 40-6-108(2)(a) requires that:

... any person desiring to file an objection or intervene in or participate as a party ... shall file his or her objection or petition for leave to intervene or, under such rules as the commission may prescribe, file other appropriate pleadings to become a party, within thirty days after the date of notice, or such lesser time as the commission may prescribe.

In addition, Commission Rules 4 CCR 723-1-1401(a) – (c) explicitly set out the requirements for a party to intervene in a Commission proceeding, either as of right or for permissive intervention.

7. To seek intervention as of right, Rule 1401(b) requires that a party “shall state the basis for the claimed legally protected right that may be affected by the proceeding.”

8. To seek permissive intervention, Rule 1401(c) sets out the requirements for a party to demonstrate the grounds upon which it relies for a petition to permissively intervene.

Rule 1401(c) provides as follows:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ...The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

9. Regarding the petition to intervene of CenturyLink QC, it is found that the petition comports with statutory requirements, and the requirements of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401 of the Commission's Rules of Practice and Procedure, and states good cause to grant CenturyLink QC's petition to intervene as of right. The motion to permit

late-filed petition to intervene of CenturyLink QC also states good cause and will be granted pursuant to Rule 4 CCR 723-1-1401(a).

10. Regarding the DISH Motion, it is found that the one sentence statement contained within DISH's Motion does not comport with the statutory language or Commission rules regarding the requirements necessary when seeking to intervene in a Commission proceeding. As a result, it is found that DISH failed to file the proper pleading to seek intervenor status in this matter. The intervention period in this proceeding expired on May 14, 2014 with no formal petition to intervene filed by DISH. For these reasons, DISH is not a party to this proceeding and does not therefore have standing to bring its Motion. Consequently, the Motion will not be considered.

11. The intervention period in this matter is closed. The sole intervenor is CenturyLink QC.

12. In order to facilitate the orderly resolution of the issues involved in this matter it is appropriate to schedule a pre-hearing conference for **Wednesday, June 18, 2014** in accordance with the order that follows.

13. At the pre-hearing conference the parties should be prepared to discuss all issues contemplated by 4 *Code of Colorado Regulations* 723-1-1409(a) including, without limitation, establishing a procedural schedule governing the case that address issues such as: (a) whether an evidentiary hearing in this matter is required; (b) if so, dates for the filing of answer and rebuttal testimony; (b) discovery deadlines and cut-off dates; (c) deadlines for filing prehearing motions;¹ (d) the date for a final prehearing conference, if one is necessary; (e) the date by which the

¹ This date can be no later than 14 calendar days before the first day of hearing.

Parties will file any stipulation or settlement reached;² (f) hearing dates; and, (g) whether the Parties wish to file closing statements of position at the conclusion of the evidentiary hearing.³ The ALJ strongly encourages the parties to informally discuss and attempt to reach agreement on a procedural schedule prior to the pre-hearing conference. In the event the parties reach agreement as to a procedural schedule and file a proposed schedule least 2 days prior to the pre-hearing conference, the pre-hearing conference will be vacated.

II. ORDER

A. It Is Ordered That:

1. The Petition to Intervene as of Right of Qwest Corporation, doing business as CenturyLink QC is granted.

2. Consistent with the discussion above, DISH Network L.L.C. is not a party to this proceeding and therefore its Motion for Modification of Procedural Schedule will not be considered.

3. A pre-hearing conference is scheduled as follows:

DATE: June 18, 2014

TIME: 10:00 a.m.

PLACE: Hearing Room

Colorado Public Utilities Commission

1560 Broadway, Suite 250

Denver, CO

² This date can be no later than 10 calendar days before the first day of hearing.

³ The date for filing Closing Statements of Position must be at least 94 days prior to the expiration of the statutory 210 day time limit for the Commission to issue a final Decision in this matter.

4. This Order shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director