

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 DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
FINDING COMMISSION JURISDICTION
OVER THE APPLICATION; AND
REQUIRING FILING OF
AFFIDAVITS FROM JOINT APPLICANTS**

Mailed Date: September 5, 2014

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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) (collectively, Joint Applicants) 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 (Joint 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 indicated it had standing to intervene because it had 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due to transactions conducted after the Joint Application was filed warranted that the Joint Application was "outdated and incomplete" and should not be deemed complete.

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.

5. By Interim Decision No. C14-0563-I, issued May 28, 2014, the Commission deemed the Joint 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 Joint 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.

6. By Interim Decision No. R14-0623-I, issued June 10, 2014, it was found that DISH did not make the proper filing pursuant to statute and Commission rules to seek intervenor status in this matter. DISH made no subsequent filings seeking intervenor status. Because DISH did not have intervenor status, its Motion was denied. Consequently, the sole intervenor in this proceeding is CenturyLink QC.

7. Interim Decision No. R14-0623-I also set a pre-hearing conference in this proceeding for June 18, 2014. The pre-hearing conference was convened at the scheduled date and time. Appearances were entered on behalf of Joint Applicants, and on behalf of CenturyLink QC.

8. During the pre-hearing conference, CenturyLink QC stated that it intervened in this proceeding merely for the purposes of monitoring the process and did not intend to oppose the Joint Application. According to CenturyLink QC, the primary issue it intended to raise was that the Commission lacks jurisdiction over the Joint Application.

9. As a result of those representations, the ALJ ordered CenturyLink QC to file a brief in support of its position due no later than July 9, 2014. Joint Applicants, if they chose, could file a responsive brief by July 18, 2014. CenturyLink QC and Joint Applicants filed briefs.

10. On July 9, 2014, CenturyLink QC filed its Brief Regarding Commission Jurisdiction. There, in a limited statement, CenturyLink QC asserts that “recent legislation” has limited the Commission’s role in regulating any communications services in Colorado; however, Century Link QC does not identify to which legislation it refers. CenturyLink QC further argues that § 40-5-105, C.R.S., does not support the Commission’s authority to approve or place

conditions on mergers of telecommunications companies. Given those positions, CenturyLink QC argues that while the merger proceedings are important and involve significant issues for consumers and competitors at the federal level, it does not believe any further proceedings are warranted before the Commission.

11. On July 18, 2014, the Joint Applicants filed a Response to CenturyLink QC's Brief Regarding Commission Jurisdiction. Joint Applicants state that although not specifically identified in CenturyLink QC's brief, they believe the reference to "recent legislation" refers to House Bill (HB) 14-1329 which deregulated certain telecommunications associated with Voice over Internet Protocol (VoIP) and IP-enabled services with certain exceptions. In addition, certain other changes to the statute governing telecommunications services in Colorado were enacted pursuant to HB14-1329.

12. Specifically, the Joint Parties indicate that HB14-1329 placed VoIP and IP-enabled services into Part 4 deregulated services pursuant to Title 40 of Article 15 of the Colorado Revised Statutes. The Joint Parties point out that the Joint Application relates to those certificated competitive local exchange providers that provide wholesale telecommunications services and switched access, and not to the subsidiaries that provide VoIP service.

II. FINDINGS

A. Commission Jurisdiction

13. Section 40-5-105(1), C.R.S. provides as follows:

The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe ...

The Commission has generally held this statute applicable in asserting jurisdiction over a stream of merger applications at the holding company level as well as the operating company level from 2000 to 2011.¹ For example, in Decision No. C00-0041 in Proceeding No. 99A-407T issued January 20, 2000 regarding the application for approval of a merger between Qwest Communications Corporation and U S WEST Communications, Inc. (U S WEST), the Commission found that despite protests from the applicants that the Commission had no jurisdiction over the merger since it involved the companies' respective parent companies, it did indeed have jurisdiction pursuant to § 40-5-105. The Commission reasoned that since the proposed merger involved a transfer of utility assets of the subsidiary of U S WEST, the proposed merger involved a transfer of utility assets pursuant to the provisions of § 40-5-105.

14. Again, in Decision No. C11-0001 in Proceeding No. 10A-350T issued January 3, 2011, in approving the merger between Qwest Corporation, and CenturyLink, Inc., as part of its decision-making process, the Commission considered the fact that the merger in that case was

¹ See e.g., *In the Matter of the Application of Public Service Company of Colorado for Commission Authorization for New Century Energies, Inc., to Merge with Northern States Power Company, for Extension of the Current Regulatory Plan Which Includes an Earnings Sharing Mechanism, and for Such Other Relief as may be Appropriate or Necessary*, Decision No. C99-1052, issued September 29, 1999, Proceeding No. 99A-377EG; *In the Matter of the Application of Qwest Communications Corporation, LIC International Telecom Corp., USLD Communications, Inc., and U S WEST Communications, Inc., for Approval of the Merger of Their Parent Corporations, Qwest Communications International Inc. and U S WEST, Inc.*, Decision No. C00-0041, issued January 20, 2000 in Proceeding No. 99A-407T; *In the Matter of the Application of Aquila, Inc. doing business as Aquila Networks – WPC and Aquila Networks – PNG, Black Hills Corporation, Aquila Colorado, LLC, Black Hills/Colorado Utility Company, Inc. and Black Hills/Colorado Utility Company, LLC for an Order Approving the Transfer of Control and Ownership of Aquila's Public Utility Assets and Businesses in the State of Colorado*, Decision No. C08-0204, issued February 29, 2008, Proceeding No. 07A-108EG; and, *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.*, Decision No. C11-0001, issued January 3, 2011 in Proceeding No. 10A-350T.

proposed at the holding company level rather than at the operating company level. Nonetheless, the Commission asserted jurisdiction in approving the proposed merger with conditions.²

15. TWCIS is a regulated utility by this Commission. It was granted a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications services, and a letter of registration (LOR) to provide emerging competitive telecommunications services by Decision No. R08-1131 in Proceeding No. 08A-285T, issued October 27, 2008. Pursuant to its CPCN, TWCIS is authorized to provide basic local exchange telecommunications service throughout Colorado. Pursuant to its LOR, TWCIS is authorized to provide advanced features, switched access service, premium services, intraLATA toll service, jurisdictional private line services, and non-optional operator services throughout Colorado.

16. TWCIS provides local exchange services in Colorado pursuant to its PUC No. 1 Tariff on file at the Commission that includes local offerings. In addition, TWCIS has an Intrastate switched access tariff (PUC No. 2) on file with the Commission.

17. According to its *2013 Colorado Public Utilities Commission Competitive Carrier Annual Report* filed with the Commission on May 5, 2014, TWCIS identifies itself as a competitive local exchange carrier, facilities based interexchange carrier, transport provider, and an interconnected VoIP provider.

² While CenturyLink cites to Decision No. C05-0501 in Proceeding No. 05A-084T issued April 28, 2014, *In the Matter of the Joint Application of SBC Communications, Inc., and AT&T Corp. (On Behalf of AT&T Communications of the Mountain States, Inc. and TCG Colorado) for Approval of Merger* - which found that the Commission did not have jurisdiction over that application since the proposed merger was at the holding company level - that Decision, was inconsistent with previous (and subsequent) Commission precedent. In addition, that Decision did not provide a rationale or analysis for its deviation from Commission precedent other than the conclusory statement that because no public utility was involved in the merger at the holding company level, there was no transfer of assets of a public utility. As such, that Decision is not considered as part of this analysis.

18. Based on the above analysis, it is therefore found that the Commission possesses jurisdiction over this Joint Application.

B. Public Interest Standard

19. In determining whether a proposed transfer should be granted, the Commission is required to evaluate whether the transfer is “not contrary to the public interest.” *Mountain States Tel. & Tel. Co. v. Pub Utils. Comm’n*, 763 P.2d 1020, 1029 (Colo. 1988); *Buckingham v. Pub. Utils. Comm’n*, 504 P.2d 677, 679 (Colo. 1972).

20. In reviewing past Commission Decisions regarding the public interest standard, the Commission, while acknowledging that the standard “arrogates significant latitude to the Commission in its review of merger applications,” has established that the public interest standard is met when the joint applicants meet their burden to show that the merger will advance the public interest by producing consumer and producer welfare gains for the citizens of Colorado. (See, e.g., Decision No. C99-1052, p. 4, ¶ 6, Proceeding No. 99A-377EG).

21. The only intervenor in this proceeding, CenturyLink QC, does not oppose the Joint Application. Consequently, a determination as to whether the Joint Application is not contrary to the public interest and should be granted can be made on the filings of Joint Applicants, including the information provided in the application itself and the attached testimony. Reviewing the pre-filed testimony of Joint Applicants’ witnesses Ms. Beth Choroser on behalf of Comcast, and Ms. Julie Laine on behalf of TWCIS, it appears that the testimony of both witnesses contains sufficient information to make a determination as to whether Joint Applicants have met their burden of proof regarding the public interest standard. However, as the testimony was pre-filed with the Joint Application, the testimony does not contain affidavits

whereby the witnesses each avow that the statements contained in such testimony are true and accurate. A ruling on the public interest standard cannot be made without sworn testimony.

22. In order to make a determination as to whether the public interest standard has been met and whether to approve the Joint Application, the Joint Applicants will be required to submit affidavits from both witnesses avowing that the information and statements contained in each witness's written testimony is true and accurate. Only when those affidavits are received will a determination on the merits of the Joint Application and the public interest standard be made.

23. Joint Applicants will therefore be ordered to submit affidavits as described above from Ms. Choroser and Ms. Laine no later than ten days from the effective date of this Decision.

III. ORDER

A. It Is Ordered That:

1. The Commission possesses jurisdiction over the Joint Application for Approval of Merger Transaction filed by Time Warner Cable Inc., on behalf of its wholly-owned subsidiary Time Warner Cable Information Services (Colorado), LLC (TWCIS), and Comcast Corporation (Comcast) (collectively, Joint Applicants) pursuant to § 40-5-101(1), C.R.S.

2. Joint Applicants shall submit the affidavits of Ms. Beth Choroser on behalf of Comcast, and Ms. Julie Laine on behalf of TWCIS, consistent with the discussion above, no later than ten days after the effective date of this Decision.

3. This Decision 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