

Decision 00-06-079 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Qwest Communications
Corporation, LCI International Telecom Corp.,
USLD Communications, Inc., Phoenix Network,
Inc. and U S West Long Distance, Inc., and U S
West Interprise America, Inc.

Application 99-09-039
(Filed September 20, 1999)

O P I N I O N

I. Summary

Qwest Applicants are Qwest Communications Corporation (Qwest Corp.), LCI International Telecom Corp. (LCI), USLD Communications, Inc. (USLD) and Phoenix Network, Inc. (Phoenix) acting on behalf of their ultimate parent corporation Qwest Communications International Inc. (Qwest Inc.). U S West Applicants are U S West Long Distance, Inc. (USW-LD), and U S West Interprise America, Inc. (Interprise) on behalf of their ultimate parent corporation U S West, Inc.

We approve the change of control in USW-LD and Interprise from U S West, Inc. to Qwest Inc. conditioned upon specific mitigation measures. These mitigation measures require Qwest Inc. to categorize and track complaints received as related to cramming, slamming, or other. Qwest is required to provide to the Commission's Consumer Services Division (CSD) a contact person or persons accessible by a toll free 800 number to research and resolve within 30 days after notification, informal California complaints lodged with CSD against Qwest Inc.'s subsidiaries. Qwest Inc. is also required to track all direct and indirect complaints against its subsidiaries that offer telecommunications services within California, including any forwarded by CSD. Finally, Qwest Inc. is required to submit quarterly complaint reports to CSD for a period of two years following the effective date of this order.

II. Jurisdiction

Applicants filed this application pursuant to Pub. Util. Code § 854¹ and Rule 35 of the Commission's Rules of Practice and Procedure (Rules). Section 854 precludes any person or corporation from transferring the control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission. Rule 35 sets forth the information needed to be included in an application seeking authority to merge public utility facilities.

III. Categorization

Applicants have requested that this application be categorized as a ratesetting proceeding as defined in § 1701. Applicants also recommended that no hearings are needed.

By Resolution ALJ 176-3024, dated October 7, 1999, the Commission preliminarily determined that this matter was a ratesetting proceeding and determined that no hearings were expected.

Notice of this application appeared in the Commission's Daily Calendar of September 24, 1999. Although the Commission's Office of Ratepayer Advocates (ORA) filed a protest to the application with the Docket Office on October 22, 1999, as addressed in a subsequent section of this order, ORA did not address the categorization of this proceeding as required by Rule 6(a)(2).

With no filed protest addressing the ratesetting categorization of this proceeding there is no reason to consider changing the preliminary

¹ All code section references are to the Public Utilities Code.

determination made in Resolution ALJ 176-3024. We confirm that this matter is a ratesetting proceeding.

IV. The Parties

The primary parties involved in the proposed merger before us are Qwest Inc. and U S West, Inc. Although recent newspaper articles discuss an alternative Qwest Inc. and U S West, Inc. merger,² Applicants have represented through their counsel that this proposed merger would proceed as requested with no changes. Hence, there is no reason to delay this application.

A. Qwest Inc.

Qwest Inc., a Delaware corporation headquartered in Denver, Colorado, is a facilities based multimedia communications services provider whose subsidiaries provide Internet Protocol - enabled services such as Internet access, web hosting, co-location and remote access. Its subsidiaries also provide voice, data, video and related services to businesses, government agencies and consumers. Qwest Inc.'s communications services businesses also provide high-volume voice and conventional private line services to other communications providers, as well as to Internet service providers and other data services companies.

Qwest Inc.'s construction services business recently completed construction of a nationwide fiber optic network built with the industry's advanced technology. It offers OC-192, 10 gigabit per second, transmission capability and is constructed on a "self-healing" SONET ring and OC-48, two gigabit per second, Internet Protocol architecture. This network reaches

² See for example the March 5, 2000 Wall Street Journal.

18,500 route miles and connects Los Angeles, San Diego, Sacramento and over 100 other cities across the United States.

In addition, Qwest Inc. constructs and installs fiber optic communications systems for other telecommunications companies and provides multimedia communications services to interexchange carriers and other communications entities, businesses and consumers through wholly owned subsidiaries.

Qwest Inc. offers its telecommunications services in California through its subsidiaries Qwest Corp., LCI, USLD, and Phoenix according to the application and Exhibit A to the application. Although Rule 35 requires applications such as this one to identify the character of business performed and the territory served by each applicant, the application did not contain sufficient information to determine the individual characteristic of each business and the territory served by Qwest Corp., LCI, and USLD. Decision (D.) 98-06-001³ dated June 1, 1998, supplied the necessary information on these subsidiaries.

1. Qwest Corp.

Qwest Corp. is a California certificated interexchange carrier that offers communications services to interexchange carriers and other communications entities, business and residential, using its own facilities as well as facilities leased from other carriers. Qwest Corp. also constructs and installs fiber optic communications systems for other communications companies. Applicants represent that Qwest Corp. offers its telecommunications service within California under the U-5335-C corporate identification number.

³ Qwest Communications International, Inc., LCI International, Inc., LCI International Telecom, Corp., and USLD Communications, Inc., Application 98-03-042.

2. LCI

LCI, a Delaware corporation, provides a full array of local and worldwide long distance voice and data transmission services to businesses, residential customers, and other carriers over its own nationwide network of digital fiber optic facilities, transmission facilities leased from other carriers, and resold telecommunications services. LCI has been authorized by the Federal Communications Commission (FCC) to provide interstate and international telecommunications services. It has also been authorized a certificate of public convenience and necessity (CPCN) by this Commission to provide interexchange and Competitive Local Exchange Carrier (CLC) telecommunications services. Applicants' represent that LCI offers its telecommunications service within California under the U-5270-C corporate identification number.

3. USLD

USLD, a Texas corporation, has been authorized by the FCC to provide interstate and international telecommunications services. It has also been authorized by this Commission to provide interLATA and intraLATA interexchange and operator telecommunications services, resold local telecommunications services, and facilities-based CLC services. Applicants represent that USLD offers its telecommunications service within California under the U-5186-C corporate identification number.

4. Phoenix

Phoenix possesses the necessary CPCN to operate as a reseller of interLATA telecommunications services within California. Phoenix offers its telecommunications service within California under the U-5223-C corporate identification number.

5. Corporate Identification Number Discrepancies

A check of the California corporate identification numbers assigned to each of Qwest Inc.'s subsidiaries doing business in California revealed some discrepancies between the Commission's certified carrier list posted on the Commission's website, www.cpuc.ca.gov, and the list maintained by CSD. The discrepancies pertained to Qwest Corp., LCI, and USLD. Although Applicants identified one corporate identification number for Qwest Corp. and one for LCI in the application, the Commission's certified carrier list and CSD identified two corporate identification numbers for each of these subsidiaries. The corporate identification number shown for LCI in the application is assigned to Qwest Corp. No corporate identification number could be found for LCI. The following tabulation compares the corporate identification numbers listed in the application to the Commission's certified carrier list.

<u>Affiliate</u>	<u>Application</u>	<u>Commission List</u>
Qwest Corp.	U-5335-C	U-5335-C and U-5270-C
LCI	U-5270-C	NONE
USLD	U-5186-C	U-5186-C and U5485-C

The corporate identification number discrepancies have little bearing on this transfer application because none of the affected subsidiaries are being transferred and each of the affected subsidiaries were previously granted authority to provide telecommunications services within California by this Commission. However, Qwest Inc. should reconcile the above identified corporate identification number discrepancies with the Commission's Telecommunications Division Director (TDD) within the next 30 days. If the corporate identification number discrepancies cannot be resolved on an informal

basis, then the TDD should recommend to the Commission an appropriate proceeding to resolve the discrepancies.

B. U S West, Inc.

U S West, Inc., a Delaware corporation headquartered in Denver, Colorado, provides integrated communications services through wholly-owned subsidiaries to approximately 25 million customers located primarily in a 14-state mountain and western region of the United States. These products and services in some regions include local telephone services; long distance services within specified calling areas; high-speed data networking, including Internet access and digital subscriber line (DSL) services; broadband personal communications services (PCS); print and electronic directories; operator services; and video services in limited markets. U S West, Inc. offers its telecommunications services in California through its wholly owned subsidiaries USW-LD and Interprise.

1. USW-LD

USW-LD, a Colorado corporation qualified to do business in California, is headquartered in Denver Colorado. It possesses the necessary CPCN to offer non-facilities based resale of interexchange, intrastate telecommunications service within California under the U-5798-C corporate identification number.

2. Interprise

Interprise, a Colorado corporation qualified to do business in California, is headquartered in Denver, Colorado. It possesses the necessary CPCN to offer digital private line interLATA service, and both facilities-based and resold local exchange telecommunications services as a CLC under the U-5619-C corporate identification number.

V. The Transaction

Pursuant to a July 18, 1999 Merger Agreement (Agreement), attached to the Application as Exhibit C, U S West, Inc. will be merged into Qwest Inc. Qwest Inc. will issue shares of its common stock having a value of \$69.00 for each share of U S West, Inc. common stock subject to a “collar” on Qwest Inc.’s average stock price between \$28.26 and \$39.90 per share. The number of Qwest Inc. shares to be exchanged for each U S West, Inc. share will be determined by dividing \$60.00 by a fifteen day weighted average of trading prices for Qwest Inc.’s common stock over a thirty day measurement period ending three days prior to closing. However, Qwest Inc. will not issue less than 1.72932 shares⁴ or more than 2.44161 shares.⁵ The obligation under the collar may be satisfied in whole or part with cash if Qwest Inc.’s average stock price is below \$38.70 per share.

Qwest Inc. will continue as the surviving corporation, and U S West, Inc. will cease to exist as a separate corporate entity. The direct and indirect wholly owned subsidiaries of Qwest Inc. and U S West, Inc. holding operating certificates or other authorizations will survive as direct or indirect wholly-owned subsidiaries of the post-merger Qwest Inc. No changes in the names of the subsidiaries, no transfers of CPCNs, and no assignment of assets of those subsidiaries are contemplated. The surviving parent corporation, Qwest, Inc. will be headquartered at 1801 California Street, Denver, Colorado.

Upon consummation of the merger, Philip F. Anschutz, the current chairman of the Board of Qwest Inc., will become the Non-Executive Chairman

⁴ If Qwest Inc.’s average stock price exceeds \$39.90 per share.

⁵ If Qwest Inc.’s average stock price is less than \$28.26 per share.

of Qwest Inc. Joseph P. Nacchio, currently the Chairman and Chief Executive Officer of Qwest Inc. will continue as Chairman and Chief Executive Officer of Qwest Inc. At the time this application was filed, Solomon D. Trujillo, Chairman, President and Chief Executive Officer of U S West, Inc. was expected to become a Chairman of Qwest Inc. and President of the Broadband Local and Wireless division of Qwest Inc. He was also expected that the Board of Directors of Qwest Inc would consist of fourteen members including Messrs. Anschutz, Nacchio and Trujillo, with a total of seven members to be designated by each of Qwest Inc. and U S West Inc.⁶

After the effective time of the merger, it was also expected that Qwest Inc. would establish an Office of the Chairman whose members would be Messrs. Anschutz, Nacchio and Trujillo. The Office of the Chairman will act by majority vote and will have the power and authority with respect to decisions relating to enumerated corporate actions. For a period of one year following closing, the twenty most senior policy-making executives of Qwest Inc. will be drawn in substantially equal numbers from among the officers of Qwest Inc. and U S West, Inc., and each company will be proportionally represented at each level of senior management.

VI. Protests

ORA protested the application on the basis that it contained insufficient information to determine if the proposed merger is in the public interest as required by § 854 and Commission precedent. Although Applicants noted in a footnote that the utilities operating within California have operating revenues of

⁶ On February 29, 2000, Trujillo announced he would not be joining Qwest following the merger.

less than \$500 million, ORA believed that something more than a footnote is necessary for the Commission to determine if § 854(b) and (c) are applicable.

Irrespective of the applicability of § 854(b) and (c), ORA contends that § 854(a) and Commission precedent require the Commission to assess the impact of the merger on the public interest. In particular, ORA's public interest concern is the substantial number of California customer complaints that allege, among other things, abusive marketing (slamming)⁷ and unauthorized charges (cramming),⁸ and a October 5, 1999 FCC Notice of Apparent Liability for forfeiture against Qwest Inc. based in part on complaints from two California customers.

ORA concluded that Applicants should be required to amend their application to provide additional public interest information. The additional information should explain with specificity how California ratepayers' service quality will be maintained or improved, how the merger will benefit state and local economies on an overall basis, and how it will affect the Commission's jurisdiction and ability to effectively regulate and audit public utility operations. Alternatively, ORA recommended that an evidentiary hearing be held to determine whether the merger should be approved. Although ORA recommended that a hearing be held, it did not propose a hearing schedule as required by Rule 6(a)(2).

⁷ The switching of a customer's long distance carrier without the customer's knowledge or consent.

⁸ The placement of charges on a customer's telephone bill for services not requested or telephone calls not made.

VII. Applicant's Reply to Protests

Applicants represented in their November 4, 1999 response to ORA's protest that the application provides more than a sufficient basis to approve the proposed merger. Given that none of the Applicants have gross annual California revenues exceeding \$500 million, Applicants contend that there should be no question that § 854(b) and (c) are not applicable to the proposed merger. Consistent with § 854(a), Applicants presented additional information in their reply to substantiate that the proposed merger is in the public interest.

A review of this information shows that there is sufficient information available in this proceeding to assess whether the proposed merger is in the public interest. Hence, an evidentiary hearing is not necessary to address public interest.

VIII. Jurisdiction Dispute

Applicants are unclear as to whether the Commission is required or has jurisdiction to approve the merger under § 854 based on the structure of the merger transaction. Hence, Applicants reserved their right to withdraw this application at any time or to challenge the Commission's jurisdiction to approve the merger under § 854.

Although Applicants raised the § 854 jurisdictional issue, they offered no reason for us consider or conclude that we lack § 854 jurisdiction over the proposed merger. As identified in our prior Jurisdiction discussion, § 854 precludes any person or corporation from transferring the control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission.

The application before us involves a proposed transfer of US West, Inc.'s subsidiaries that possess California CPCNs to provide competitive

telecommunications services and local exchange service in California from U S West, Inc. to Qwest Inc. Hence, § 854 provides us with the necessary authority over the proposed merger as it relates to those subsidiaries offering certificated telecommunications services within California.

Applicants also represented that the additional criterion needed for authority to transfer control of a utility set forth in §§ 854(b) and (c) is not applicable in this proceeding because none of the subsidiaries that are parties to the proposed merger has gross annual California revenues exceeding \$500 million.

ORA took exception to applicants' representation that the additional criterion is not applicable because applicants' filing did not substantiate their claim that none of the parties to the proposed merger met the threshold amount. A substantiation of this threshold amount is important because §§ 854 (b) and (c) would apply in those instances where an applicant has gross California revenues above the \$500 million threshold amount. Although ORA appropriately took exception to applicants' representation that the additional criteria was not applicable, we have subsequently confirmed through a review of applicants' data response to ORA that applicants annual California gross revenues are substantially below the threshold amount. Hence, §§ 854 (b) and (c) are not applicable in this proceeding.

IX. Discussion of § 854 (a)

The primary question to be determined in a transfer of control proceeding under § 854(a) is whether the proposed transfer will be adverse to the public interest. Questions relating to public convenience and necessity usually are not

relevant to the transfer proceeding because they were determined in the proceeding in which the certificate was granted.⁹

As stated in D.97-07-060,¹⁰ our decisions over the years have laid out a number of factors that should be considered in making the determination of whether a transaction will be adverse to the public interest. Antitrust considerations are also relevant to our consideration of the public interest.¹¹ In transfer applications we require an applicant to demonstrate that the proposed utility operation will be economically and financially feasible.¹² Part of this analysis is a consideration of the price to be paid considering the value to both the seller and buyer.¹³ We have also considered efficiencies and operating costs savings that should result from the proposed merger.¹⁴ Another factor is whether a merger will produce a broader base for financing with more resultant flexibility.¹⁵ As noted in Union Water Co. of California:¹⁶

“The Commission is primarily concerned with the question of whether or not the transfer of this property from one ownership to another...will serve the best interests of the public. To determine this, consideration must be given to whether or not the proposed

⁹ M. Lee (Radio Paging Co.), 65 CPUC 635, 637 (1966).

¹⁰ MCI Communications Corporation and British Telecommunications change in control application.

¹¹ 65 CPUC at 637, n.1.

¹² R. L. Mohr (Advanced Electronics), 69 CPUC 275, 277 (1969). See also, Santa Barbara Cellular, Inc. 32 CPUC2d 478 (1989).

¹³ Union Water Co. of California, 19 CRC 199, 202 (1920).

¹⁴ Southern Counties Gas Co. of California, 70 CPUC 836, 837 (1970).

¹⁵ Southern California Gas Co. of California, 74 CPUC 30, 50, modified on other grounds, 74 CPUC 259 (1972).

¹⁶ 19 CRC at, 202.

transfer will better service conditions, effect economies in expenditures and efficiencies in operation.”¹⁷

We have also ascertained whether the new owner is experienced, financially responsible, and adequately equipped to continue the business sought to be acquired.¹⁸ We also look to the technical and managerial competence of the acquiring entity to assure customers of the continuance of the kind and quality of service they have experienced in the past.¹⁹

A. Assessment of Public Interest Factors

As we did in D.97-07-060, we assess the relevant factors under § 854(c) in our analysis of the public interest.²⁰ However, outside the mandates of that statute, consideration of public interest factors must have some nexus to areas that are properly our concern as regulators in order to pass muster under the doctrine which limits this Commission’s ability to meddle in the management of a utility’s business affairs.²¹ After our public interest assessment has been made,

¹⁷ *Id.*

¹⁸ City Transfer and Storage Co., 46 CRC 5, 7 (1945).

¹⁹ Communications Industries, Inc. 13 CPUC2d 595, 598 (1993).

²⁰ Public interest factors enumerated under this code section are whether the merger will” (1) maintain or improve the financial condition of the resulting public utility doing business in California; (2) maintain or improve the quality of service to California ratepayers; (3) maintain or improve the quality of management of the resulting utility doing business in California; (4) be fair and reasonable to the affected utility employees; (5) be fair and reasonable to a majority of the utility shareholders; (6) be beneficial on an overall basis to state and local economies and communities in the area served by the resulting public utility; and (7) preserve the jurisdiction of the Commission and our capacity to effectively regulate and audit public utility operations in California.”

²¹ See, Stepak v. AT&T, 186 Cal.App.3rd 633, 641-645 (1986) and Pacific Telephone & Telegraph Co. v. Public Utilities Commission, 34 Cal.2d 822, (1950).

we may impose conditions on the transfer pursuant to the statutory power contained in § 853(b).²²

1. Maintain or Improve the Financial Condition

A review of Applicants' financial data discloses that the transfer of control is economically and financially feasible. This transaction does not involve the issuance of any new debt. As shown in their respective annual reports and 10-Ks attached to the application, both entities are healthy financially. With Qwest Inc. acquiring control of US West, Inc.'s California CLC and IEC operations, Qwest Inc.'s telecommunications entities under our jurisdiction will have available additional financing options for improving infrastructure and technology in an increasingly competitive market.

2. Maintain or Improve the Quality of Service

One of ORA's objections to the proposed merger was Applicants' failure to identify the quality of service currently being provided to their customers and the effect that the merger will have on the quality of service. Of specific concern to ORA was the number of slamming and cramming complaints against Qwest Inc.'s subsidiaries and a FCC Notice of Apparent Liability for Forfeiture against Qwest Inc. for slamming. Although ORA identified two California customers as being a part of the FCC complaint against Qwest Inc., those complaints are within the FCC's, not this Commission's, jurisdiction.

²² Outingdale Water Co., 70 CPUC 639, 640-641, (1970).

A review of complaints filed with CSD supports ORA's quality of service concern. For the time period from September 1, 1999, a few weeks prior to the filing of this application, to March 6, 2000, CSD had not received any informal complaints against the U S West subsidiaries that offer telecommunications services within California. However, during the same time period, CSD received a substantial number of complaints, averaging more than one a day, against Qwest Inc.'s affiliates that offer telecommunications services within California.

Informal complaints against Qwest Inc.'s subsidiaries operating within California indicated that a service problem existed. Any approval of the proposed merger that did not examine the source of the service problem would run the risk of exposing this quality of service problem customers of the U S West, Inc. subsidiaries offering telecommunications services within California.

Qwest Inc. recently has taken actions to reduce complaints by implementing a comprehensive set of policies and procedures aimed at reducing slamming incidents. All telemarketing orders for Qwest Inc.'s 1+ services are currently submitted for verification by an independent third-party verifier and processed or submitted to a local exchange carrier only upon a successful verification. In-person sales of Qwest Inc.'s 1+ services require a Letter of Authorization (LOA). The LOA is scanned into an electronic database for review by several individuals to ensure that it has been signed and appears to have a valid signature prior to being processed or submitted to a local exchange carrier.

Qwest Inc. now also provides training to its employees and third-party distributors that explains its policies and procedures for the sale of Qwest Inc.'s long distance services. Agreements with third-party distributors forbid slamming and explicitly authorize Qwest Inc. to take any action necessary

to protect against slamming, including the termination of the distributor sales agent relationship. Further, Qwest Inc. requires third-party distributors to certify that all of their employees have reviewed and acknowledge the existence of Qwest Inc.'s anti-slamming policies.

Applicants maintained that approval of the merger would not undermine this Commission's or the FCC's authority to address slamming or cramming complaints. Rather, applicants argue that the merger will advance a multitude of public interest competitive service offerings that will lead to substantial benefits for the combined companies' current and future California customers, including the bringing together of Qwest Inc.'s advanced network, offering broadband Internet communications with U S West, Inc.'s technological expertise in advanced services.

The Agreement is structured to be a seamless transaction transparent to telephone customers. Such customers will not face unexpected changes with respect to charges, services provided, provider of telecommunications services or quality of service. After the proposed transaction is completed, those subsidiaries offering telecommunications services within California will continue to offer their local exchange service customers a choice of long distance carriers. The transaction will also enable Qwest Inc. to bring facilities-based local exchange competition to customers who have limited facilities-based alternatives to their incumbent local telephone provider and to expand its provision of local exchange service in California.

There are several positive quality of service aspects to this proposed merger beginning with Qwest Inc.'s undertaking of remedial measures to slamming issues. In addition, Qwest Inc.'s subsidiaries offering telecommunications services within California will continue to operate independently of each other, thereby limiting the spread of any potential

negative customer service practices of one affiliate to another affiliate. This independence of subsidiaries demonstrates the entities' ability to maintain their individual quality of service. The merger will further bring to Qwest Inc.'s subsidiaries the benefit of U S West, Inc.'s service experience through the sharing of Board of Director responsibilities between Qwest and U.S. West, as addressed in the prior transaction discussion.

This merger application will also provide an opportune time to alleviate, if not to eradicate, Qwest Inc.'s subsidiaries' complaints and enhance the quality of customer telecommunications services within California. Further, approval will provide a solid foundation for quality of service improvements. However, prior to the approval of any merger, specific mitigation measures over and above those already implemented by Qwest need to be required of the Applicants to ensure against any future adverse service consequences. We rely upon §§ 853(b) and 854(c)(8) for the necessary authority to require Applicants to implement mitigation measures to improve the subsidiaries overall reliability of service within California. These mitigation measures are addressed in our subsequent public interest factors discussion.²³ Consistent with the FCC's recent order designating primary responsibility for administering slamming rules to the State Commissions, we direct CSD to closely monitor any future complaints. To assist CSD in their monitoring efforts we are requiring applicants to submit quarterly reports detailing complaints, as set forth in the mitigation measures being adopted in this order. We further request CSD to investigate the prior complaints and to report the results of their analysis to the Commission. We

²³ Considered in the context of the operational changes Qwest has already undertaken, we have every reason to expect Qwest's service quality to improve.

conclude that this proposed transaction, with mitigation measures, would have no adverse impact on the quality of service.

3. Maintain or Improve the Quality of Management of the Resulting Utility Doing Business in California

The proposed transfer of control will have no immediate impact on management of the California telephone utilities. The Form 10-K for both Qwest Inc. and U S West, Inc., which were attached to the application as Exhibit D and E, respectively, provided an update regarding the qualifications and telecommunications experience of their officers and managers.

Following the proposed transfer of control, the subsidiaries offering telecommunications services within California will continue to be led by a team of qualified telecommunications managers. The combining of experienced managers of both entities will enable Qwest Inc. to maintain and improve the quality of its management of all the California telecommunications subsidiaries. In addition, the Board of Directors, following consummation of the merger, will consist of representatives from both Qwest Inc. and U S West, Inc. Designees on the Board of Directors will be represented equally on all Board committees. Hence, the quality of management of the resulting utility doing business in California criterion has been satisfied.

4. Fair & Reasonable to the Affected Utility Employees

The impact, if any, of the merger on the Applicants' employees in California has not yet been determined. However, Applicants represent that as with the WorldCom, Inc. and MCI Communications Corporation merger approved by D.98-08-068, the synergistic efficiencies and strengthened competitive position of the merged companies have the potential to foster better

employment opportunities. Applicants agree that unless otherwise mutually agreed, the surviving corporation and its subsidiaries may, but shall have no obligation to, maintain both the U S West, Inc. and Qwest Inc. benefit plans as separate plans with respect to employees covered by such plans immediately prior to the “Effective Time.” The parties further agree that benefits provided pursuant to U S West, Inc.’s severance and retention programs and agreements will be provided in accordance with the terms of those programs and agreements. For these reasons, we conclude that the proposed transaction is fair and reasonable to the affected utility employees.

5. Fair & Reasonable to a Majority of Utility Stockholders

The ultimate stockholders of the affected California telecommunications entities are the parent companies. Qwest Inc. and U S West, Inc. have sophisticated and experienced financial managers who have determined the proposed transaction is fair and reasonable. This judgement determination has been affirmed by the opinions of investment bankers for the principals rendered in connection with the transaction.

Under the Agreement, U S West, Inc.’s shareholders will receive \$69.00 in cash for each share of U S West, Inc. subject to a collar as explained in our prior discussion of the transaction. The Board of Directors of both Qwest Inc. and U S West, Inc. have unanimously determined that the transactions before us are in the best interest of their stockholders and have resolved to recommend to their stockholders that they vote in favor thereof.

We do not make any finding of the value of the rights and property being transferred. However, based on a review of Qwest Inc.’s and U S West, Inc.’s 1998 Form 10K and the Agreement, stockholders are receiving a fair price for the California utilities’ operations.

6. Beneficial on an Overall Basis

Qwest Inc.'s proposed acquisition of the California telecommunications utilities will enable Qwest, Inc. to expand and accelerate its ability to compete with local exchange carriers in residential local exchange markets where USW-LD and Interprise does business. It also has the potential to provide increased competition in the California market for fiber optic telecommunications services.

The coordination of financial resources, complementary managerial skills, network facilities and market capabilities of Qwest Inc. and U S West, Inc. would also enhance Qwest, Inc.'s ability to provide telecommunications services to a broad range of customers in California.

7. Preserve the Jurisdiction of the Commission

Approval of this change in control will have no adverse impact on the Commission's jurisdiction over Qwest Inc.'s current telecommunications companies or over U S West-LD and Interprise being acquired from U S West, Inc. The subsidiaries offering telecommunications services within California are all nondominant carriers. Each of these subsidiaries currently under our jurisdiction will continue to be under our jurisdiction. Hence, the proposed transaction will not affect the Commission's ability to effectively regulate and audit the California operations of Qwest Inc.'s subsidiaries.

8. Antitrust Considerations

Consistent with the requirement that we take into account the antitrust aspects of the application before us,²⁴ the final aspect of the public

²⁴ Northern California Power Agency v. Public Utilities Commission, 5 Cal.3d 370, 379, (1971).

interest determination we must make under § 854(a) is whether the proposed transaction raises any antitrust concerns.

“By considering antitrust issues, the Commission merely carries out its legislative mandate to determine whether the public convenience and necessity require a proposed development. That task does not impinge upon the jurisdiction of the federal courts in federal antitrust cases. The Commission may approve projects even though they would otherwise violate the antitrust laws; it may also disprove projects that do not violate such laws. Its consideration of antitrust problems is for purposes quite different from those of the courts; it does not usurp their function.”²⁵

Applicants only seek approval for a change in control of USW-LD and Interprise. Hence, our task in this application is to balance whether the benefits of Qwest Inc.’s acquisition of USW-LD and outweigh any public interest concerns.²⁶ In so doing, we are not strictly bound by the dictates of the antitrust laws. We can approve actions that violate antitrust policies when other economic, social, or political considerations are found to be of overriding importance.²⁷ We need not choose another course of action if our proposed course has anti-competitive effects, as long as our course of action is in the public interest.²⁸

No anti-trust issue has been raised about Qwest Inc.’s acquisition of USW-LD and Interprise. We conclude that the proposed merger does not raise

²⁵ *Id.*, at 378.

²⁶ *Pacific Southwest Airlines*, 75 CPUC 1, 19 (1973).

²⁷ *SCEcorp*, 40 CPUC2d at 179 (1991).

²⁸ *Pacific Gas & Electric Co.* D.93-02-018, 48 CPUC2d 162 (1993).

any antitrust or anticompetitive issues needing our intervention and that the proposed merger is in the public interest for the reasons identified above.

9. Mitigation Measures

Consistent with § 853 (b) and § 854 (c)(8) and as addressed in our public interest quality of service discussion, mitigation measures are needed to ensure that the quality of service is maintained and improved. The following mitigation measures should be implemented as a condition to our approval of this merger.

- Qwest Inc. should categorize each complaint against itself or any of its affiliates as either slamming, cramming, or other.
- Complaints identified as slamming, which involves the switching of a customer's long distance carrier without the customer's knowledge or consent, should be identified and tracked by the number of Personal Identification Code (PIC) disputes involving California consumers made with all local exchange carriers (LECs) and ultimately attributable to Qwest Inc. or its affiliates. Qwest Inc. will take all necessary action to obtain this information including those PIC disputes reported by the LEC as a dispute against the underlying carrier but determined by the underlying carrier to be a dispute involving Qwest Inc. or its affiliates. Qwest Inc. should also work with the underlying carriers to track this information if it is not currently tracked.
- Complaints identified as cramming should be identified and tracked by the product or service that was billed but not ordered by Qwest Inc. or its affiliates' California customers.
- Complaints involving California customers and identified as other should be identified and tracked by a general description that briefly explains what each complaint in this category is about.

- Qwest Inc. should provide to CSD a contact person or persons accessible by a toll free 800 number to research and resolve informal complaints lodged with CSD against its subsidiaries offering telecommunications service in California in 30 days upon being notified of the complaint.
- Qwest Inc. should track all direct and indirect complaints submitted to its subsidiaries offering telecommunications services within California, including any forwarded by CSD.
- Qwest Inc. should submit to CSD and ORA copies of all California customers' complaints which are received at the Federal Communications Commission and which are served on the merged company or otherwise are made known to the merged company.
- Qwest Inc. should submit quarterly reports to CSD summarizing the number of California complaints. The quarterly report should identify by subsidiary, the date of each complaint, brief description of actual complaint, action taken to resolve the complaint, and the date the complaint was resolved, if resolved, and status of complaint if not resolved. For slamming complaints, the quarterly complaint report also should identify the PIC disputes by month, the Automatic Number Identification (ANI) associated with each PIC dispute, the Carrier Identification Code (CIC) the dispute was recorded against, and by the Local Exchange Company (LEC).
- Qwest Inc. should submit additional information relating to complaints upon request by CSD or ORA.
- Qwest Inc. should report to ORA and the Commission, subject to confidential treatment under General Order No. 66-CI, on an annual basis, the number of customers it has in California for both residential and business services.

- Quarterly complaint reports should be submitted to CSD and ORA within 60 days after the end of each quarter (May 30th, August 29th, November 29th, and March 1st). These quarterly complaint reports should be submitted to CSD for five years following the effective date of this order.
- CSD should review each of the quarterly complaint reports and promptly recommend to the Commission further action, if deemed necessary, to resolve complaints related to Qwest Inc. subsidiaries offering telecommunications services within California.
- Qwest Inc. should, if it becomes necessary in connection with any proceeding before the Commission, make any officer, director, or other employee of the merged company available for deposition at the Commission's office in San Francisco, regardless of where that person lives or works.

X. Environmental Assessment Discussion

The application involves only a proposed change in the underlying ownership of facilities. Accordingly, there is no possibility that the transaction contemplated herein may have a significant effect on the environment. This application should be approved. Our approval of this application should not be construed to be a finding of the value of the rights and property to be transferred.

XI. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.7 of the Rules of Practice and Procedure. Public Utilities Code, and our Rules, generally require that proposed decisions be circulated to the public

for comment, and the Commission not issue its decision any sooner than 30 days following the filing and service of the draft decision.²⁹ However, the time period for circulating a proposed decision and issuance of a Commission decision may be reduced or waived by the Commission upon the stipulation of all parties to the proceeding.³⁰

Applicants and ORA, the only parties to this proceeding, stipulated that the comment period be reduced from 20 days to 5 days, that the 5-day reply comment period be waived, and that the 30-day time period from the issuance of a draft decision to the issuance of a Commission decision is waived. The comments filed by the parties to this proceeding have been carefully reviewed and considered. To the extent that such comments required discussion or changes to the proposed decision, the discussion or changes have been incorporated into the body of this order.

Findings of Fact

1. This application was filed pursuant to § 854.
2. Applicants request approval of a change of control in USW-LD and Interprise from U S West, Inc. to Qwest Inc.
3. Applicants have requested that this application be categorized as a ratesetting proceeding.
4. The Commission preliminarily determined that this matter was a ratesetting proceeding and determined that no hearings were expected.
5. Notice of this application appeared in the Commission's Daily Calendar of September 24, 1999.

²⁹ See Pub. Util. Code § 311(g), and Rule 77.

³⁰ Pub. Util. Code § 311(d) and Rule 77.7(g).

6. ORA protested the application on the basis that the application did not provide sufficient information to enable the Commission to make the findings required by the Public Utilities Code.

7. ORA did not address the categorization of this proceeding as required by Rule 6(a)(2).

8. Applicants filed a response to ORA's protest on November 4, 1999 pursuant to Rule 44.

9. Pursuant to Rule 44.4, a decision on whether an evidentiary hearing should be held is based on the content of the protest.

10. Qwest Corp. is a California certificated interexchange carrier that offers communications services to interexchange carriers and other communications entities, business and residential, using its own facilities as well as facilities leased from other carriers.

11. LCI has been authorized a CPCN to provide interexchange and CLC telecommunications services.

12. USLD has been authorized to provide interLATA, intraLATA, interexchange, operator, resold local telecommunications, and facilities-based CLC telecommunications services.

13. Phoenix possesses the necessary CPCN to operate as a reseller of interLATA telecommunications services within California.

14. Applicants identified a corporate identification number for Qwest Corp., one for LCI, and one for USLD.

15. USW-LD possesses the necessary CPCN to offer non-facilities based resale of interexchange, intrastate telecommunications service within California.

16. Interprise possesses the necessary CPCN to offer digital private line interLATA and both facilities-based and resold local exchange telecommunications services as a CLC.

17. Applicants reserved their right to withdraw this application at any time or to challenge the Commission's jurisdiction to approve the merger under § 854.

18. Section 854 precludes any person or corporation from transferring control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission.

19. Sections 854(b) and (c) are applicable if the utilities that are parties to the proposed merger have gross annual California revenues of \$500 million or more.

20. The parties to the proposed merger do not have gross annual California revenues exceeding \$500 million.

21. The primary question to be determined in a transfer of control proceeding under § 854(a) is whether the proposed transfer will be adverse to the public interest.

22. Our decisions over the years have laid out a number of factors that should be considered in making the determination of whether a transaction will be adverse to the public interest.

23. The annual reports and 10-Ks attached to the application show that both entities are healthy financially.

24. Qwest Inc. has implemented a comprehensive set of policies and procedures aimed at reducing slamming incidents.

25. Qwest Inc. provides training to its employees and third-party distributors that explains its policies and procedures for the sale of Qwest Inc.'s long distance services.

26. Qwest Inc. requires third-party distributors to certify that all of their employees have reviewed and acknowledged the existence of Qwest Inc.'s anti-slamming policies.

27. The Agreement is structured to be a seamless transaction transparent to the telephone customers.

28. After the proposed transaction is completed, those subsidiaries offering telecommunications services within California will continue to offer their local exchange service customers a choice of long distance carriers.

29. Sections 853(b) and 854(c)(8) provides us with the necessary authority to require Applicants to implement mitigation measures to improve the subsidiaries' overall reliability of service within California.

30. The proposed transfer of control will have no immediate impact on the management of the subsidiaries offering telecommunications services within California.

31. The Board of Directors following the consummation of the merger will consist of both Qwest Inc. and U S West, Inc. representatives.

32. Financial managers and investment bankers for the principals have determined that the proposed transaction is fair and reasonable.

33. The merger will provide increased competition in the California market for fiber optic telecommunications services.

34. Each of the subsidiaries currently under the Commission's jurisdiction will continue to be under the Commission's jurisdiction.

35. No anti-trust issue has been raised about Qwest Inc.'s acquisition of USW-LD and Interprise.

Conclusions of Law

1. This proceeding is a ratesetting proceeding.
2. The proposed transaction is subject to the scrutiny under Pub. Util. Code § 854(a).
3. The application can be adequately addressed without the holding of an evidentiary hearing.

4. The corporate identification numbers listed in the application should be reconciled to the Commission's certificated carrier list.

5. Section 854 provides us with the authority over the proposed merger as it relates to those subsidiaries offering certificated telecommunications services within California.

6. Informal complaints on Qwest Inc.'s subsidiaries offering telecommunications services within California averaging more than one a day from September 1, 1999 to March 6, 2000 indicate that a service problem existed.

7. A grant of this application should be conditioned upon the imposition of specific mitigation measures to prevent future adverse service consequences.

8. The efficiencies and strengthened competitive position of the merged companies have the potential to foster better employment opportunities.

9. The proposed merger does not have any antitrust or anticompetitive issues needing our intervention.

10. Because the application involves only a proposed change in the underlying ownership of facilities it can be seen with certainty that the merger between Qwest Inc. and U S West, Inc. will not have a significant effect on the environment.

11. To permit prompt consummation of the proposed change of control, the approval of the application should become effective immediately.

12. The application should be granted to the extent provided in the following order.

O R D E R

IT IS ORDERED that:

1. Qwest Communications Inc. (Qwest Inc.) is authorized to acquire control of U S West Long Distance, Inc. and U S West Interprise America, Inc. in accordance with the terms of the merger agreement discussed in the body of this order. This authority is conditioned upon Qwest Inc. complying with the mitigation measures set forth in Ordering Paragraph 2 of this order.

2. Qwest Inc. shall:

a. Categorize each complaint against itself or any of its affiliates as either a slamming, cramming, or other complaint.

1. Complaints identified as slamming, which involves the switching of a customer's long distance carrier without the customer's knowledge or consent, shall be identified and tracked by the number of Personal Identification Code (PIC) disputes involving California consumers made with all local exchange carriers (LECs) and ultimately attributable to Qwest Inc. or its affiliates. Qwest Inc. shall take all necessary action to obtain this information including those PIC disputes reported by the ILEC as a dispute against the underlying carrier but determined by the underlying carrier to be a dispute involving Qwest Inc. or its affiliates. Qwest Inc. shall also work with the underlying carriers to track this information if it is not currently tracked.
2. Complaints identified as cramming shall be identified and tracked by the product or service that was billed but not ordered by Qwest Inc. or its affiliates' California customers.
3. Complainants involving California customers and identified as other shall be identified and tracked by a general description that briefly explains what each complaint in this category is about.

- b. Provide to the Commission's Consumer Services Division (CSD) a contact person or persons accessible by a toll free 800 number to research and resolve informal complaints lodged with CSD within 30 days upon being notified of the informal complaint.
- c. Track all California complaints submitted to its subsidiaries that offer telecommunications services within California, including any forwarded by CSD.
- d. Submit to CSD and ORA copies of all California customers' complaints which are received at the Federal Communications Commission and which are served on the merged company or otherwise are made known to the merged company.
- e. Submit quarterly reports to CSD and ORA summarizing the number of California complaints. The quarterly report shall identify by subsidiary, the date of each complaint, brief description of actual complaint, action taken to resolve the complaint, and the date the complaint was resolved, if resolved, and status of complaint if not resolved. For slamming complaints, the quarterly complaint report shall identify the PIC disputes by month, the Automatic Number Identification (ANI) associated with each PIC dispute, the Carrier Identification Code (CIC) that the dispute was recorded against, and by the Local Exchange Company (LEC).
- f. Submit additional information relating to complaints upon request by CSD or the Office of Ratepayer Advocates (ORA).
- g. Report to ORA and the Commission, subject to confidential treatment under General Order No. 66-Cl, on an annual basis, the number of customers it has in California for both residential and business services.
- h. Submit quarterly complaint reports to CSD and ORA within 60 days after the end of each quarter (May 30th, August 29th, November 29th, and March 1st). These quarterly complaint reports shall be submitted to CSD for five years following the effective date of this order.

- i. If it becomes necessary in connection with any proceeding before the Commission, make any officer, director, or other employee of the merged company available for deposition at the Commission's office in San Francisco, regardless of where that person lives or works.
3. CSD shall review each of the quarterly compliance reports and recommend to the Commission further action, if deemed necessary, to resolve complaints related to Qwest Inc. subsidiaries offering telecommunications services within California.
4. The Executive Director shall cause a copy of this order to be served on the Commission's CSD.
5. Qwest Inc. shall reconcile with the Commission's Telecommunications Division Director (TDD) Qwest Inc.'s subsidiaries' corporate identification numbers listed in the applications to the Commission's certificated carrier list within 30 days after the effective date of this order. If the corporate identification number discrepancies cannot be resolved on an informal basis, then the TDD shall recommend to the Commission an appropriate proceeding to resolve the discrepancies.
6. Within 30 days after the change of control authorized herein has taken place, Qwest Inc. shall file with the Commission's Docket Office, for inclusion in the formal file of Application (A.) 99-09-039, written notice that said change of control has taken place.
7. In the event that the books of the Applicants or any subsidiaries are required for inspection by the Commission or its staff, Applicants shall either produce such records at the Commission's offices, or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to any of Applicants' offices.

8. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

9. Application 99-09-039 is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

President Loretta M. Lynch, being necessarily absent, did not participate.

I dissent.

/s/ CARL WOOD
Commissioner

We will file a concurrence.

/s/ HENRY M. DUQUE
Commissioner

/s/ JOSIAH L. NEEPER
Commissioner

APPENDIX A

TABLE OF ACRONYMS AND ABBREVIATIONS

§	Pub. Util. Code Section
Agreement	Merger Agreement
ANI	Automatic Number Identification
CIC	Carrier Identification Code
CLC	Competitive Local Exchange Carrier
CPCN	Certificate of Public Convenience and Necessity
Cramming	Unauthorized Charges
CSD	Consumer Services Division
D.	Decision
FCC	Federal Communications Commission
Interprise	U S West Interprise America, Inc.
LCI	LCI International Telecom Corp.
LEC	Local Exchange Carrier
LOA	Letter of Authorization
ORA	Office of Ratepayer Advocates
PIC	Personal Identification Code
Phoenix	Phoenix Network, Inc.
Qwest	Qwest Corp., LCI, USLD, and Phoenix
Qwest Corp.	Qwest Communications Corporation
Qwest Inc.	Qwest Communications International Inc.
Rules	Rules of Practice and Procedure
Slamming	Abusive Marketing
TDD	Telecommunications Division Director
USLD	USLD Communications, Inc.
U S West	USW-LD and Interprise
USW-LD	U S West Long Distance, Inc.

(END OF APPENDIX A)

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