



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE MERGER OF)
THE PARENT CORPORATIONS OF)
QWEST COMMUNICATIONS CORP., LCI)
INTERNATIONAL TELECOM CORP.,)
USLD COMMUNICATIONS, INC.,)
PHOENIX NETWORK, INC. AND US WEST)
LONG DISTANCE, INC. AND US WEST)
INTERPRISE AMERICA, INC.)

ORDER

DOCKET NO. TM99090680

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 22, 1999, a Joint Petition was filed with the Board of Public Utilities ("Board") by Qwest Communications Corporation ("Qwest Corp"), LCI International Telecom Corp. (d/b/a Qwest Communications Services) ("LCI"), USLD Communications, Inc. ("USLD"), and Phoenix Network, Inc. ("Phoenix") (Qwest Corp., LCI, USLD and Phoenix, are collectively referred to as "Qwest"), on behalf of their ultimate parent corporation Qwest Communications International Inc. ("Qwest Inc.") and by US WEST Long Distance, Inc. ("USW-LD") and US WEST Interprise America, Inc. ("Interprise") (USW LD and Interprise, are collectively referred to as "US WEST") on behalf of their ultimate parent corporation US WEST, Inc. The Joint Petition seeks an order, to the extent necessary pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, and N.J.S.A. 48:3-10, approving the merger of Qwest Inc. and US WEST (collectively "Petitioners") in accordance with a certain Agreement and Plan of Merger dated as of July 18, 1999, entered by Qwest Inc. and US WEST, Inc. By motion filed on January 14, 2000, Petitioners sought proprietary treatment of certain information provided during the review of the filing, but subsequently withdrew that request.

Qwest Inc. is a Delaware corporation with its principal office and place of business located at 555 Seventeenth Street, Denver, Colorado 80202. Qwest Inc. is a facilities-based communications services provider whose subsidiaries provide Internet Protocol-enabled services such as Internet access, web hosting, co-location and remote access. They also provide a full range of 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.

In New Jersey, Qwest Corp. has been offering resold interexchange telecommunications services since 1993 and has filed to become an authorized competitive local exchange carrier. (Docket No. TE98121421). LCI has been a reseller in New Jersey since 1991 and was authorized to provide local exchange services in September of 1997. USLD and Phoenix are resellers.

US WEST, Inc., a Delaware corporation with its principal office and place of business at 1801 California Street, Denver, Colorado, indirectly through wholly-owned subsidiaries, provides integrated communications services to approximately 25 million customers nationally. 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. In New Jersey, Interprise is authorized to provide local exchange services with an approved tariff offering Frame Relay Service and Private Line Data Interconnect Service. USW-LD is a corporation organized under the laws of the State of Colorado and also is wholly-owned by U S WEST, Inc. In New Jersey, USW-LD is a non-facilities based reseller of interexchange, intrastate telecommunications services.

On July 18, 1999, Qwest Inc. and US WEST, Inc. entered into a Merger Agreement providing for the merger of the two companies. The respective Boards of Directors and the majority of the shareholders of Qwest Inc. and US WEST, Inc. have approved the Merger Agreement. Qwest Inc. and US WEST, Inc. jointly filed applications for Federal Communications Commission ("FCC") consent to the transfer of control of the respective licenses and lines of their subsidiaries on August 19, 1999. On March 8, 2000, the FCC concluded that approval of the applications to transfer control of FCC licenses and lines would serve the public interest, but made that approval contingent upon its approval of Qwest's plan for divestiture of in-region long distance customers in US West's territory prior to merger completion¹.

Under the terms of the Agreement and Plan of Merger, upon closing, US WEST, Inc. will be merged into Qwest Inc., with Qwest Inc. continuing as the surviving corporation, and the separate corporate existence of US WEST, Inc. will then cease. The direct and indirect wholly-owned subsidiaries of Qwest Inc. and US WEST, Inc. that hold operating certificates or other authorizations will survive as direct or indirect wholly-owned subsidiaries of the post-merger Qwest Inc. The Joint Petition indicates that no changes in the names of the certificated subsidiaries, no transfers of certificates of public convenience and necessity and no assignments of assets of those certificated subsidiaries are contemplated at this juncture. Following the merger, Qwest Inc. will be headquartered at 1801 California Street, Denver, Colorado.

The respective customers of Qwest Inc.'s and US WEST, Inc.'s subsidiaries will continue to be served and billed pursuant to existing tariffs and operating authorities, as those may be amended from time to time in the ordinary course of business. Therefore, according to the Joint Petition, administratively, the merger will be transparent to Qwest's and US WEST's respective customers. Qwest and US West contend that the combined resources of Qwest Inc. and US WEST, Inc. will facilitate the delivery of advanced services to both existing and new customers of the operating subsidiaries. According to the Joint Petitioners, the proposed merger of Qwest Inc. and US WEST, Inc. also will bring together Qwest Inc.'s advanced, broadband fiber-optic network and US WEST, Inc.'s competitive telecommunications facilities and technological expertise in advanced services. Qwest and US West also state that since Qwest Inc. and US WEST, Inc. offer different services and have different core capabilities, and because overlaps between the services of the two companies are incidental and limited in scope, the merger will have no negative impact on competition. Rather, according to the Joint Petitioners, the merger

¹ On September 2, 1999, the United States Department of Justice and Federal Trade Commission unconditionally granted early termination of the waiting period applicable to the merger under the Hart-Scott-Rodino Pre-Merger Notification Act, 15 U.S.C. §18(a)(b)(2).

will create a new company with a significantly increased ability to meet the rapidly evolving needs of business and residential telecommunications customers, and the proposed merger will cause no adverse impact upon the continuity and quality of services provided to Qwest's and US WEST's New Jersey customers.

Consistent with the Board's statutory authority under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-7, the Board reviews proposed transfers of control of New Jersey public utilities to ascertain that they will not adversely impact upon the financial integrity of the New Jersey operating public utilities, and to insure that said utilities will remain in a position to provide safe, adequate and proper service to customers. In keeping with the specific requirements of N.J.S.A. 48:2-51.1, the Board has reviewed and evaluated the proposed merger of Petitioners to assess its impact in New Jersey on competition, on Petitioner's ability to provide safe and adequate services at just and reasonable rates, and on the employees of the affected New Jersey utilities.

The Board FINDS that Qwest Inc. and US WEST offer different services and have different core capabilities, and because overlaps between the services of each are incidental and limited in scope, the merger will have no negative impact on competition in New Jersey. We also note that the Department of Justice (DOJ) and Federal Trade Commission have previously approved the early termination of their Hart – Scott – Rodino review of this transaction, and have thus allowed Qwest Inc. to proceed with the acquisition of US West with no further action on their part. We also note that the Board has previously relied upon the expertise of federal agencies such as the FCC and DOJ in evaluating the impact of a proposed merger on competition. In this matter, the FCC has already stated that approval of Petitioner's request to transfer the licenses and lines under FCC supervision is in the public interest "provided that the Applicant's proposed divestiture results in a merger that complies with [47 U.S.C.] section 271," that the Applicants must file a full report regarding the divestiture which the FCC will post for notice and comments prior to final approval of the transfer of licenses and lines. On or about April 14, 2000, Qwest Inc. filed its long distance divestiture report with the FCC. As of June 23, 2000, final approval of the transfers was pending at the FCC. See, Memorandum Opinion and Order, I/M/O Qwest Communications International, Inc. and US West, Inc., cc Docket No. 99-272, FCC 00-91 (March 10, 2000). With specific regard to the public interest benefits of the merger, the FCC has stated that the merger "creates powerful new incentives for US West to honor the obligations set forth in section 251 of the Communications Act, including the interconnection obligations with local competitors" and that the merger will "encourage the deployment of advanced telecommunications services." Memorandum Opinion and Order at ¶ 2². Therefore, the Board FINDS that the proposed transaction will not have an adverse impact on competition in the marketplace.

The Petitioners have analyzed staffing requirements and the merger's impact on its New Jersey employees. Petitioners have no plans to reduce the combined company's staffing in New Jersey. Based upon material submitted by the Petitioners, the Board FINDS that the merger will not have a negative impact on New Jersey employees.

The Board also FINDS that there will be no adverse impact on the rates and other terms and conditions of services available to New Jersey customers. Petitioners state that they will continue to offer the same high-quality services at just and reasonable rates. Given the

² Subsequent to the Board's agenda meeting on June 23, 2000, the FCC released an Order in which it concluded that the proposed divestiture of Qwest Inc.'s interLATA in region services, customers and assets in the 14-state US West region is consistent with the requirements of 47 U.S.C. §271. The FCC further advised that once Qwest Inc.'s divestiture was complete, it may proceed with its merger with US West. See Memorandum Opinion and Order, I/M/O Qwest Communications International Inc. and US West, Inc., cc Docket No. 99-272, FCC 00-231 (June 26, 2000).

numerous facilities-based and resale interexchange carriers currently offering services throughout the State and the presence of the incumbent local exchange carrier and in some instances new competitive local exchange carriers, the combined company will have a significant incentive to ensure that safe and adequate service is provided and that its rates are competitive.

In view of the foregoing, the Board FINDS that the proposed transaction which has been approved or permitted to proceed in all fifty states, is in accordance with law and is not contrary to the public interest. Accordingly, the Board HEREBY APPROVES and AUTHORIZES the merger of Qwest Inc. and US WEST. Petitioners are HEREBY ORDERED to promptly notify the Board following the closing of the proposed transaction.

DATED: 6/28/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
EDWARD D. BESLOW
ACTING SECRETARY