
In the Matter of the Merger of the Parent)
Corporations of Qwest Communications)
Corporation, LCI International Telecom Corp.,)
and U.S. West Communications, Inc.)
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DOCKET NO. 99-049-41

DOCKET NO. 99-049-65

In the Matter of the Joint Application of U.S.)
WEST COMMUNICATIONS, INC., ALL)
WEST COMMUNICATIONS, INC.,)
CARBON/EMERY TELCOM, INC., CENTRAL)
UTAH TELEPHONE, INC., HANKSVILLE)
TELCOM, INC., MANTI TELEPHONE)
COMPANY, SKYLINE TELECOM, and UBET,)
INC., for Approval of Purchase and Sale of the)
Various Exchanges and Associated Matters)

ORDER

ISSUED: June 28, 2001

SYNOPSIS

The preliminary Plan for Broadband Deployment submitted by Qwest and the Procedure for Dissemination of Information Regarding Deployment of Broadband Capability appeared to fulfill the Commission's requirements set earlier in this Docket. Therefore, subject to certain limitations and expectations explained in the Order, the Commission approves the deployment plan.

By The Commission:

PROCEDURAL HISTORY

The subject matter of this Order was initiated June 9, 2000, when the Commission issued an Order approving the merger of U.S. West and Qwest, based, in part, upon a stipulation between Qwest and the Division of Public Utilities (the Merger Stipulation). In Docket No. 99-049-41 (the Merger Proceeding), the Commission directed U.S. West/Qwest to deploy broadband capability in all of the central offices in its Utah service territory. This was based upon a separate stipulation (Exchange Sales Stipulation) entered in Docket No. 99-049-65 (the Exchange Sales Proceeding). In the Exchange Sales Stipulation, representations were made that Qwest could, through the expenditure of an incremental \$15 million, upgrade all of its Utah central offices to provide broadband capability. In the Merger Proceeding Order, we stated:

We understand the Division's view of the relationship between the Merger and the Exchange Sales Stipulations, and share its concern for the deployment of advanced services in the state. While we do not link the two Stipulations, in the sense that we do not approve them both in this order, we impose, as a condition for merger approval, a requirement that U.S. West invest up to \$15 million dollars in deploying digital subscribe line access multiplexers ("DSL AMS"), or other high bandwidth equipment capable of providing a service equivalent to DSL, and related equipment and line upgrades in all of its central office facilities in the State. This must occur in the same time period covered in the Exchange Sales Stipulation.

We direct that the goal is not whether DSL service is available from any provider; rather, the goal is for U.S. West's

standard residential and business DSL service (or other equivalent U.S. West service) to be offered in all central office areas (i.e., it is available at a similar price and provides a similar quality and functionality). We direct U.S. West to use reasonable and prudent construction and purchasing procedures to maximize the number of central offices capable of DSL that result from the expenditure of the \$15 million. Monies spent in this effort will meet, if subsequent examination proves it should, the Exchange Sales Stipulation requirement, if that Stipulation is approved in Docket No. 99-049-65. Approval of the merger is not conditioned on approval of the Exchange Sales Stipulation in Docket No. 99-049-65. (Order, page 27.)

The Commission also directed Qwest to submit a deployment plan and to develop procedures that would adequately address the concerns of intervenors in the case regarding how information about the broadband deployment plan would be disseminated to competitors and affiliates.

On February 8, 2001, Qwest and the Division of Public Utilities (the Division) submitted a stipulation that addressed the deployment plan, identifying central offices to be upgraded and the sequence in which they would be upgraded. On March 15, 2001, these two parties also submitted a report on the dissemination of information procedures, describing how public information would be disclosed concerning when particular offices will be upgraded.

DISCUSSION

I. DEPLOYMENT PLAN

We note that several times in these Dockets, Qwest representatives assured the Commission that the \$15 million was an adequate amount to provide upgrades to provision broadband capability in all of Qwest's Utah central offices. The additional \$15 million was said to be sufficient to upgrade central offices for broadband deployment that otherwise would not have been so upgraded or upgraded in the time frame provided for in the Exchange Sales Proceedings. Reliance upon the Merger Stipulation, and the Exchange Sale Stipulation, was intended to capture this incremental investment to provide, in part, the public interest and public benefit support needed to approve the applications in each of these dockets.

The deployment plan Qwest filed can be viewed as incomplete. It identifies the sequence in which the central offices will be upgraded, but there is no complete cost estimate for the upgrades which makes it unclear if the plan will meet the Order's objective of installing broadband capacity in all remaining central offices. The Commission's expectation is that Qwest will install broadband capability in all its Utah central offices.

The original Order calls for the Division to monitor the reasonableness of expenditures counted against the \$15 million sum. We expect that this monitoring will occur, that only expenditures used for the actual broadband deployment will be counted, and that any general upgrades, or work, which have a joint purpose within the central offices will be excluded. We will approve the deployment plan relative to its identification of the sequence of central offices that will receive broadband capability upgrades.

II. DISSEMINATION PROCESS

Intervenors have raised issues regarding whether the dissemination procedures outlined in the plan are adequate and legal. The argument is whether or not the procedures comply with federal law or regulations. Whatever the federal requirements of the public notification process, for information associated with central office upgrades for broadband deployment, our Order directed Qwest and the Division to address the problems that would arise from an inadequate disclosure process. Our intent was to address state law needs associated with an ultimate finding of public benefit to grant the application, *vis-a-vis* alleged public detriments raised in the original proceeding by the Coalition of Utah Independent Internet Service Providers (CUIISP).

The Commission notes that Qwest's response, to CUIISP's comments on the information procedures, does not resolve the issue of how quickly notification will occur. In explaining why CUIISP was unable to obtain information on April 30, 2001, from the websites Qwest had set up for that purpose, Qwest stated:

"CUIISP complains that Qwest has not made disclosures with respect to its plans for DSL deployment in Utah central offices at the make/buy point. CUIISP complains that when it checked the website used by Qwest for such public

disclosures on April 30, 2001, there was not a single reference to the future deployment of DSL in Utah. CUIISP Response at 3. . . . The answer to these complaints is obvious. Qwest had not reached the make/buy point with respect to DSL deployment in the 17 Utah central offices prior to April 30, 2001. Qwest did reach the make/buy point with respect to 17 of the central offices shortly thereafter. If CUIISP now checks the website, it will note that disclosure has been made with regard to these 17 central offices." (Emphasis added.)

Yet later in its response, Qwest states:

"As described above, the make/buy point is reached when Qwest makes a definite decision to proceed with a project on a specific timetable. Within Qwest, the make/buy point is reached when a document called the Common Planning Document ("CPD") is completed and approved. The CPD is completed and approved when all approvals for a project, including specific funding approval, have been received. In cases such as deployment pursuant to a Commission order, which Qwest would not otherwise undertake, CPDs are grouped for specific projects. The CPDs for the 17 central offices now disclosed were completed and approved in early May and disclosure was then promptly made." (Emphasis added.)

These two statements demonstrate how important it is to clearly identify the procedures and time periods used by Qwest. Since Qwest's response to CUIIPS' comments were filed at the end of May, we would understand the second quote's use of the past tense, for a disclosure that was "promptly made" after the Common Planning Documents were completed and approved in early May, should be for a period of time of a few weeks, certainly less than one month. The deployment procedure report does not contain this type of detail which could clearly show the CUIIPS' concerns have been adequately addressed. The Commission directs Qwest to submit a detailed time line covering the steps in the deployment dissemination process. It should specifically explain how soon after a "make/buy" decision is reached that the information is disseminated internally, to affiliates, non-affiliated entities, and to the public generally.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Preliminary Plan for Deployment of Broadband Capability is approved as to the sequence of central office upgrades for broadband deployment. Qwest may supplement the information, which supplement may be reviewed by any interested party, to establish that its plan will meet, or has met, our prior order's requirements and purpose.
2. The Division will monitor and audit the expenditures to verify that expenditures submitted by Qwest, as applying towards the \$15 million amount, are necessary for the intended broadband deployment, incremental, and for items that do not have a joint use with other parts of Qwest's network.
3. The Division will monitor the websites set up by Qwest, and will investigate Qwest's internal notification procedures to ensure that proper notification procedures are being followed with respect to the deployment of broadband capability.
4. Qwest will submit a detailed description of the deployment information procedures, including details on the period of time from when a "make/buy" decision is reached to the time public notification is made.
5. Pursuant to U.C.A. § 63-46b-13, an aggrieved party may file, within 20 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. § 54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§ 63-46b-1 et seq.).

DATED at Salt Lake City, Utah this 28th day of June, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary