

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
November, 2007.

In the Matter of the Application of Qwest)	
Communications Corporation for Approval of)	<u>Case No. TM-2008-0101</u>
Corporate Restructuring)	

ORDER APPROVING MERGERS

Issue Date: November 8, 2007

Effective Date: November 18, 2007

Syllabus: This order approves a proposed internal corporate restructuring plan whereby Phoenix Telecom, Inc. ("PTI") and Qwest Internet Solutions, Inc. ("QIS"), which are both wholly-owned subsidiaries of Qwest Communications Corporation ("QCC"), would be merged into QCC.

Background and Procedural History

On October 9, 2007, QCC filed a verified application with the Commission seeking the Commission's approval of two proposed internal corporate mergers whereby PTI and QIS would be merged into QCC in separate transactions, with QCC emerging as the surviving entity. According to QCC's Application for Approval of Corporate Restructuring, QCC is a Delaware corporation¹ headquartered in Colorado which is authorized to provide various forms of telecommunications services in all 50 states and has

¹ Commission Rule 4 CSR 240-2.060(C) requires any applicant that is a foreign corporation to include, in its application, a certificate from the Missouri Secretary of State that it is authorized to do business in Missouri. Although QCC's application contained no such certificate, the Commission takes official notice of its own

been certificated to provide operator and basic interexchange telecommunications services in Missouri for more than ten years.² QCC is the direct corporate parent of PTI and QIS, both of which are wholly-owned subsidiaries of QCC.³

PTI, a Delaware corporation headquartered in Colorado, was formerly a subsidiary of Phoenix Network, Inc., which merged into QCC in 2001.⁴ PTI is not a telecommunications provider or public utility, and is not certificated in Missouri. It currently has no customers, assets, tariffs, or employees, and has had no financial records, operations, or revenues for at least the past five years.⁵

QIS is also a Delaware corporation headquartered in Colorado.⁶ Like PTI, QIS is not a telecommunications provider or public utility, and is not certificated in Missouri. While it formerly provided Internet-related professional services, it no longer performs those or any other functions in Missouri and has never provided regulated telecommunications services.⁷

The end result of the proposed transactions, which QCC plans to complete on or before December 31, 2007, would be a change in the corporate structure of QCC, since

records in Case No. TA-2000-309, which show that the company is indeed authorized to do business in Missouri as a foreign corporation.

² *Application* at 2.

³ *Application* at 2; Exhibits A & B.

⁴ *Application* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

PTI and QIS would cease to exist, having been completely absorbed into QCC.⁸ QCC argues that this is not detrimental to the public interest since it will reduce the administrative burdens and costs associated with operating wholly-owned subsidiaries that no longer serve any function, thus allowing QCC and its operating affiliates and corporate parents to devote those resources to the provision of improved services to end users and enhancing QCC's ability to compete.⁹

Staff's Recommendation

Staff filed its verified recommendation and memorandum regarding the application on October 29, 2007. Staff indicates that QCC's application substantially complies with Commission Rule 4 CSR 240-3.525, which sets forth the procedural filing requirements for telecommunications company applications seeking approval of mergers or consolidations. Moreover, Staff advises that QCC has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates as described in Commission Rule 4 CSR 240-2.060(1)(K); does not have an annual report overdue, is not involved in bankruptcy proceedings and does not owe any past due PSC assessment fees as described in 4 CSR 240-2.060(1)(L); and that the proposed merger transactions will have no effect on tax revenues as described in 4 CSR 240-3.525(F).¹⁰

Staff's recommendation and supporting memorandum also demonstrate that after examining the proposed merger transactions, Staff has concluded that they are not

⁸ *Application* at 4, 6; Exhibits A & B.

⁹ *Application* at 5.

¹⁰ *Memorandum* at 2-3.

detrimental to the public interest and recommends they be approved. Specifically, Staff notes that QCC is a competitively classified company, that the transactions will be transparent to its Missouri customers, and that none of those customers will be switched to a different telecommunications services provider.¹¹ The Office of the Public Counsel, which is the other party to this case (there were no intervenors), has not filed a recommendation of its own and has not opposed Staff's recommendation.

Decision

Substantively, mergers such as this are governed by Section 392.300.1, RSMo 2000, which provides that no telecommunications company may “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system” or direct or indirectly merge or consolidate its “line or system, or franchises, or any part thereof” with any other corporation, person, or public utility without first obtaining permission from the Commission. Under that statute, “[t]he Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.”¹² Based on the information provided in the verified application, and upon the verified recommendation and memorandum of Staff, which are hereby admitted into evidence, the Commission finds that the merger transactions involving QCC, PTI and QIS are not detrimental to the public interest and that the application shall be approved.

IT IS ORDERED THAT:

¹¹ *Memorandum* at 1-2.

¹² *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 392, 400 (Mo banc 1934)).

1. Qwest Communications Corporation's Application for Approval of Corporate Restructuring is granted.

2. Upon completion of the merger transactions described in the body of this order, Qwest Communications Corporation shall file an appropriate notice with the Commission and this case shall be closed.

3. This order shall become effective on November 18, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Appling, and
Jarrett, CC., concur

Lane, Regulatory Law Judge