

ORIGINAL



0000081498

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN MAYES
Commissioner
GARY PIERCE
Commissioner

RECEIVED

2008 FEB -4 P 3:41

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB -4 2008

DOCKETED BY	nr
-------------	----

02

IN THE MATTER OF THE MERGER
OF QWEST CORPORATION AND
QWEST LD CORP., CANCELLATION
OF QWEST LD CORP.'S
CERTIFICATE OF CONVENIENCE
AND NECESSITY, AND
APPLICATION FOR APPROVAL OF A
LIMITED WAIVER FROM A.A.C. R14-
2-1901 ET SEQ.

DOCKET NO. T-01051B-07-0527
T-04190A-07-0527

**AMENDED JOINT NOTICE AND
APPLICATION**

**AMENDED JOINT NOTICE OF MERGER AND APPLICATION
FOR A LIMITED WAIVER FROM SLAMMING RULES**

Qwest Corporation ("QC") and Qwest LD Corp. ("QLDC") (together
"Applicants") hereby submit this Amended Joint Notice of Merger and for Waiver from
the requirements of A.A.C. R14-2-1901 *et seq.* ("Application"). Applicants are amending
the Application filed in the above-captioned docket on September 14, 2007, by
withdrawing the request to cancel QLDC's certificate of convenience and necessity
("CC&N"). After several discussions with Staff, it was determined that the cancellation
of QLDC's CC&N was not required at this time. By withdrawing the application for the
cancellation of QLDC's CC&N, Applicants request that Docket Control also amend the
above-captioned heading by removing the phrase "Cancellation of Qwest LD Corp.'s
Certificate of Convenience and Necessity". QC and QLDC now seek an order from the
Arizona Corporation Commission ("Commission") which approves the merger pursuant
to A.R.S. § 40-285(D), and grants a waiver from certain authorization and notice
provisions of A.A.C. R14-2-1901 *et seq.*

1 **I. THE PARTIES**

2 QC provides local exchange telephone services in many parts of Arizona, and is the
3 incumbent local exchange carrier under the federal Communications Act of 1934, as
4 amended by the Telecommunications Act of 1996. QC is an indirect subsidiary of Qwest
5 Communications International, Inc. ("QCII"), a publicly traded corporation, which is a
6 public utility holding company under the meaning of the Commission's affiliated interest
7 rules.

8 QLDC was created as a QC affiliate in order to satisfy the legal requirements of
9 sections 271 and 272 of the federal Telecommunications Act of 1996. QLDC serves its
10 customers by reselling services it purchases from Qwest Communications Corporation
11 ("QCC"), another Qwest affiliate and certificated interexchange carrier. QLDC's
12 customer base is "mass market" – consumer residential and small business. QLDC does
13 not sell any local services. QLDC provides services only in the service territory where
14 QC provides local exchange services as an incumbent in fourteen western states, including
15 Arizona. As of August 31, 2007, QLDC provided interexchange services to
16 approximately 770,000 customers in Arizona. The Commission approved the long
17 distance reseller CC&N for QLDC in Decision No. 66613 (December 9, 2003).

18 Both QC and QLDC are affiliates within the overall Qwest corporate structure. At
19 the top of Qwest's corporate structure is the parent holding company, Qwest
20 Communications International Inc., or "QCII." Directly below QCII is Qwest Services
21 Corporation, or "QSC". QSC is also the sole shareholder of QC, QLDC, and other Qwest
22 entities.

23 **II. THE TRANSACTION**

24 The consolidation of QLDC into QC will be accomplished by a merger with QC as
25 the surviving entity, and the outstanding QLDC stock being cancelled.

26 **III. STANDARD OF REVIEW**

27 The statutory requirement for approval by the Commission of the transaction is
28 A.R.S. § 40-285(D). Because QLDC and QC are both public service corporations

1 existing under the laws of Arizona, A.R.S. § 40-285(D) requires that the Commission
2 authorize the merger. The law states that “A public service corporation shall not
3 purchase, acquire, take or hold any part of the capital stock of any other public service
4 corporation organized or existing under the laws of this state without a permit from the
5 commission.”

6 As a Class “A” investor-owned utility subject to Commission jurisdiction, the
7 merger constitutes a reorganization under the Commission’s affiliated interest rule A.A.C.
8 R14-2-803. However, QC and its affiliates have been granted a limited waiver from the
9 requirements of A.A.C. R14-2-803, and must file a notice of intent to reorganize in
10 instances where the reorganization is likely to: (1) result in increased capital costs to QC;
11 (2) result in additional costs allocated to the Arizona jurisdiction; or (3) result in a
12 reduction of QC’s net operating income. Decision No. 64654 (March 25, 2002). None of
13 these factors is likely to result from the merger.

14 Under A.R.S. § 40-285(D), the Commission must determine whether the merger
15 will serve the public interest.

16 **IV. THE MERGER IS IN THE PUBLIC INTEREST**

17 QC’s acquisition of QLDC will serve the public interest, and the transaction should
18 be approved accordingly. The merger will not impair QC’s financial status, otherwise
19 prevent it from attracting capital on fair and reasonable terms, nor impair QC’s ability to
20 provide safe, reasonable and adequate service to existing customers. The following
21 information is provided in support of the merger.

22 *1. Benefit to Customers.*

23 Combining QLDC and QC should be invisible to customers and not result in any
24 immediate material impact. QLDC customers will see no changes in their offerings or
25 rates, and they will continue to receive services under the “Qwest” brand. Currently,
26 QLDC customers see the charges for QLDC services as charges for “Qwest Long
27 Distance” on their bills. The merger will not change these bill descriptions. Moreover, all
28 services and rates that are available to customers of QLDC and QC shall continue to be

1 available post-merger.¹ The QLDC tariffs, in their entirety, will be added as QC tariff
2 filings once the merger is finalized.

3 From a practical perspective, all customers will see little if any immediate
4 difference in service other than the simplification of dealing with one corporate entity.
5 QC currently performs billing functions for all QLDC customers such that QLDC charges
6 are presently reflected in QC bills. This will not change. In the future, the merger will
7 allow QC to package local and long distance service in a similar fashion to that which is
8 currently being done by Cox and other QC competitors. This consolidation also will
9 simplify the legal relationships because customers will be subscribing from a single legal
10 entity where before there were two.

11 2. Benefits to the Companies.

12 The merger of QC and QLDC is driven by the sunset of Qwest's obligations under
13 Section 272 of the Telecommunications Act. Section 272 required that a separate
14 corporate affiliate be maintained to provide interLATA services after Qwest obtained the
15 authority under Section 271 to provide interLATA services. With the recent sunset of
16 several of QC's obligations under Section 272, the applicants desire to move the long
17 distance affiliate QLDC into QC, thereby simplifying and unifying local and long distance
18 voice services for mass market customers into a single provider.

19 The elimination of an affiliate will reduce administrative burden, record-keeping,
20 and the number of affiliate transactions.

21 3. The Merger Will Have No Impact on the Method of Financing or the Capital
22 Structure of the Holding Company QCII.

23 The merger will have no impact on the method of financing or the capital structure
24 of the holding company QCII.

25
26
27
28

¹ Any subsequent post merger tariff changes affecting these services would be subject to and filed in accordance with Commission rules.

1 4. The Merger Will Have A Positive Equity Impact on QC's Capital Structure.

2 QC estimates that the equity component of QC's capital structure will increase by
3 approximately \$50M on total corporate basis as a result of the QLDC-QC merger. The
4 debt component of QC's capital structure is unchanged by this transaction.

5 5. The Merger Will Not Alter the Method of Allocating Income Taxes.

6 The method of allocating federal and state income taxes to the subsidiaries of QCII
7 will remain the same.

8 6. The Merger Will Not Change QC's Cost of Service and Cost of Capital.

9 QC does not anticipate that there will be a change to its cost of capital or an
10 increase in its cost of service attributable to the merger. The post-merger company
11 anticipates that it will be able to continue to attract capital on terms no less favorable than
12 prior to the merger, and that adequate capital will be available for construction of
13 necessary new utility plant and for improvements in existing utility plant at no greater cost
14 than today. QC and its affiliates will continue to make investments in the ordinary course
15 of their businesses. These investments will not increase the risks of investment in QC or
16 its cost of capital.

17 7. The Merger Is Not Part of Any Diversification Plan.

18 QC and its affiliates have no current plans to diversify beyond the fields in which
19 they are currently engaged.

20 8. The Merger Does Not Depend Upon Approval By Any Other Government
21 Agencies.

22 Neither Applicant contemplates the need for any approvals from the Securities and
23 Exchange Commission, or any other federal or state agencies in connection with this
24 transaction. However, should any such filings for approval be made, copies of the filings
25 will be provided to the Commission.

26
27
28

1 9. *The Merger Will Not Result in a Reduction In the Current Number of Employees In*
2 *Arizona.*

3 QLDC does not have any employees in Arizona. The merger will not affect the
4 number of Qwest employees in Arizona.

5 **V. A LIMITED WAIVER FROM THE COMMISSION'S ANTI-SLAMMING**
6 **RULES IS IN THE PUBLIC INTEREST**

7 The purpose and scope of the Commission's anti-slamming rules is to protect
8 consumers from an unauthorized change in their intraLATA or interLATA long-distance
9 telecommunications company. A.A.C. R14-2-1902. In order to protect consumers from
10 the effects of "slamming", telecommunication carriers are required to go through a list of
11 verification and notification procedures designed to ensure that long-distance customers
12 are aware, and consent to, the switch of long-distance providers. A.A.C. R14-2-1905,
13 1906 and 1908. Qwest asserts that a limited waiver from the Commission's anti-
14 slamming rules is warranted specifically in connection with the transaction.

15 Combining QLDC and QC should be invisible to customers and not result in any
16 material impact in service. QLDC customers will see no changes in their offerings or
17 rates, and they will continue to receive services under the "Qwest" brand. Currently,
18 QLDC customers see the charges for QLDC services as charges for "Qwest Long
19 Distance" on their bills. The merger will not change these bill descriptions. Moreover, all
20 services and rates that are available to customers of QLDC and QC shall continue to be
21 available post-merger. The QLDC tariffs, in their entirety, would be added as QC tariff
22 filings.

23 From a practical perspective, customers will see little if any difference, other than
24 the simplification of dealing with one corporate entity. For all of QLDC customers, QC
25 currently performs billing functions such that QLDC charges are presently reflected in QC
26 bills. This will not change. This consolidation will also simplify consumer relationships.
27 QLDC customers will no longer have to deal with separate corporate entities for local and
28

1 long distance services. If a consumer buys "Qwest" local or long distance service after
2 the merger, only one entity is involved.

3 Requiring QC to obtain individual authorization and verification for each customer
4 migrating from QLDC, as is currently required under the Commission's anti-slamming
5 rules, would be unduly burdensome, uneconomic and may cause confusion for customers.
6 As noted by the Federal Communications Commission in its First Report and Order in CC
7 Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129² (May 15,
8 2001)("Order"), "a change in corporate structure that is invisible to the affected
9 subscribers does not constitute a sale or transfer for purposes of section 258 that
10 implicates this streamlined process. FN – Indeed, in such cases, requiring notice of a
11 change that is imperceptible to the affected subscriber might cause confusion where there
12 would otherwise be none." Order at ¶ 13, FN 24.

13 QC asserts that the effects of the merger will be imperceptible to QLDC's
14 customers since the transfer involves what can be termed a 'pro-forma' transfer of control
15 between QLDC and QC. The need to provide notice to QLDC's customers is outweighed
16 in this very limited instance by the potential confusion caused by such a notice.
17 Moreover, the 'pro-forma' nature of the transfer of customers does not implicate the
18 potential for fraud and misrepresentation the Commission's anti-slamming rules are
19 designed to prevent. As such, following the authorization and verification procedures in
20 this instance would be unduly burdensome and time consuming, and represents an
21 economic burden that in QC's determination, would not serve the public interest.

22 RELIEF REQUESTED

23 Applicants respectfully request the following relief:

24 A. That the Commission proceed to consider and act upon the Application as
25 timely as possible without a hearing;

26
27

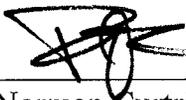
28 ² 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumer Long
Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the
Telecommunications Act of 1996.

1 B. That upon completion of review and recommendations made by
2 Commission Staff, or if a hearing is required then upon completion of such hearing, that
3 the Commission enter an Order authorizing: (1) the merger of QLDC and QC in
4 accordance with A.R.S. § 40-285(D); and (2) a limited waiver from the requirements of
5 A.A.C. R14-2-1901 *et seq.*; and

6 C. That the Commission grant such other and further relief to the Applicants as
7 may be appropriate under the circumstances herein.

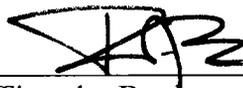
8 RESPECTFULLY SUBMITTED this 4th day of February, 2008.

9 QWEST CORPORATION

10
11
12 By  (Patrick Black on behalf of)
13 Norman Curtright
14 20 E. Thomas Road, 16th Floor
15 Phoenix, AZ 85012
16 (602) 630-2187

17 -and-

18 FENNEMORE CRAIG, P.C.

19
20 By 
21 Timothy Berg
22 Theresa Dwyer
23 Patrick J. Black
24 3003 N. Central Ave, Suite 2600
25 Phoenix, Arizona 85012
26 (602) 916-5421

27 Attorneys for Qwest Corporation
28

1 **ORIGINAL** and 15 copies hand-delivered for
filing this 4th day of February, 2008, to:

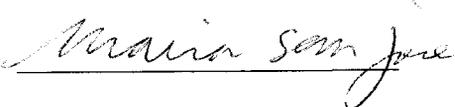
2
3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, Arizona 85007

7 **COPY** hand-delivered
8 this 4th day of February, 2008, to:

9 Ernest Johnson
10 Utilities Director
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Terri Ford, Chief of Telecom & Energy
15 Utilities Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Chris Kempley
20 Chief, Legal Division
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24
25
26
27
28


PHX/PBLACK/2027547.1/67817.411