

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
QWEST COMMUNICATIONS CORPORATION )  
For Approval of Conversion from a )  
Delaware Corporation to a Delaware )  
Limited Liability Company. )  

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DOCKET NO. 2008-0260

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

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Docket No. 2008-0260

DECISION AND ORDER

By this Decision and Order, the commission grants QWEST COMMUNICATIONS CORPORATION's ("QCC") request for approval of its conversion from a Delaware corporation to a Delaware limited liability company (the "Proposed Transaction") as set forth in QCC's application filed on October 9, 2008 ("Application"),<sup>1</sup> subject to certain regulatory requirements.

I.

Background

QCC, a Delaware corporation, is currently authorized by the commission to provide local and interexchange services in the State of Hawaii ("State") on a facilities-based and resold basis.<sup>2</sup>

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<sup>1</sup>QCC served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62. QCC and the Consumer Advocate are the sole parties to this proceeding.

<sup>2</sup>See In re Qwest Communications Corporation and Certain of Its Affiliates, Docket No. 01-0130, Decision and Order No. 18975, filed on October 25, 2001; In re Qwest Communications

Qwest Services Corporation is QCC's sole shareholder and a direct subsidiary of Qwest Communications International Inc., the ultimate corporate parent and a Delaware corporation whose stock is publicly traded on the New York Stock Exchange under the symbol "Q."<sup>3</sup> By Decision and Order No. 23464, filed on May 30, 2007, the commission approved QCC's current tariff rules and regulations governing the provision of its telecommunications services in the State.

A.

QCC's Requests

On October 9, 2008, QCC filed its Application seeking commission approval of the Proposed Transaction and to change its name to Qwest Communications Company, LLC ("Qwest LLC"), effective December 30, 2008.<sup>4</sup> QCC is seeking to convert from a corporation to a limited liability company to "maximize tax efficiencies."<sup>5</sup>

In compliance with Delaware statutes, QCC will first seek approval of the conversion from its board of directors and shareholders and then file a Certificate of Conversion to Limited Liability Company and a Certificate of Formation of Limited Liability Company with the Delaware Secretary of State.

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<sup>3</sup>See Application at 3 n.3.

<sup>4</sup>Due to this timeline, QCC seeks expedited review of the Application and specifically requests that the commission issue its decision on QCC's Application "no later than December 10, 2008" to enable QCC to meet this conversion deadline. See Application at 4-5.

<sup>5</sup>Id. at 3.

Upon acceptance of these certificates, QCC states that "Qwest LLC will be able to obtain issuance of a certificate of good standing from the Delaware Secretary of State, evidencing that Qwest LLC is a limited liability company, duly organized and in good standing under the laws of the State of Delaware[.]"<sup>6</sup> Upon the conversion, QCC represents that Qwest LLC will take the appropriate steps to register as a foreign limited liability company with the State Department of Commerce and Consumer Affairs ("DCCA") and obtain a certificate of authority to transact business in the State. QCC further represents that Qwest LLC will submit copies of the documents described above with the commission within fourteen days following the effective date of the conversion.

Moreover, QCC contends that Qwest LLC will adopt all of QCC's rules, regulations, and rates and asserts that "there would be no change in the operation of the company once the Proposed Transaction has occurred."<sup>7</sup> According to QCC, "Qwest LLC's financial fitness, willingness, and ability will be the same as QCC's."<sup>8</sup> QCC notes that the Proposed Transaction is only a change in corporate structure with no change to its operations. In addition, QCC states that in accordance with Delaware law "the new entity, Qwest LLC, will be deemed the same entity as, and will remain vested in the rights, privileges, powers,

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<sup>6</sup>Id.

<sup>7</sup>Id. at 4.

<sup>8</sup>Id.

properties, assets, duties, liabilities, and obligations of, QCC."<sup>9</sup> Furthermore, QCC states that the Proposed Transaction will be seamless and transparent to its customers.

B.

Consumer Advocate's Position

On October 28, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") stating that it does not object to commission approval of the Proposed Transaction. The Consumer Advocate's position is based on various factors. First, the Consumer Advocate maintains that the Proposed Transaction will not result in a change of ownership since Qwest Services Corporation will remain as the sole shareholder and parent of Qwest LLC once the change in business form is completed. Second, the Consumer Advocate recognizes that QCC's rules, regulations, and rates will not be affected as a result of the Proposed Transaction since Qwest LLC will be adopting all of QCC's rules, regulations, and rates previously approved by the commission. Third, the Consumer Advocate asserts that the Proposed Transaction could be beneficial to QCC and its customers since the conversion would permit QCC to maximize tax efficiencies. On this matter, the Consumer Advocate presumes that Qwest LLC "will flow any benefits from the aforementioned tax efficiencies to its Hawaii customers."<sup>10</sup> Lastly, from a customer point of view, the Consumer Advocate states nothing

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<sup>9</sup>Id.

<sup>10</sup>See CA's SOP at 4.

about QCC would be different except that QCC would now be a Delaware limited liability company instead of a corporation for legal purposes.

Nonetheless, the Consumer Advocate recommends that:

- (1) QCC re-file its tariff reflecting the name change from Qwest Communications Corporation to Qwest Communications Company, LLC;
- and (2) as a courtesy and to avoid any confusion, QCC "may want" to inform its customers of its conversion from a Delaware corporation to a Delaware limited liability company (collectively, "Tariff and Notice Recommendations").

In addition, the Consumer Advocate recommends that QCC provide a copy of the authorization received from the State DCCA to conduct business as a foreign limited liability company once such authority is received.

## II.

### Discussion

State law confers the supervision and regulation of "all public utilities" and the administration of HRS chapter 269 on the commission.<sup>11</sup> In particular, under HRS § 269-7, the commission is vested with broad powers to review and examine the condition and the manner in which a public utility is operated. HRS § 269-7(a) states, in relevant part:

The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with reference . . . the issuance by it of stocks and

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<sup>11</sup>See HRS § 269-6.

bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

Upon review, the commission finds the Proposed Transaction described in QCC's Application to be reasonable and in the public interest. The Proposed Transaction should not adversely affect QCC's customers since Qwest LLC will be adopting all of QCC's previously approved rules, regulations, and rates for service.<sup>12</sup> Additionally, as the Consumer Advocate stated, the Proposed Transaction would not result in a change in ownership since upon effectuation of the conversion Qwest Services Corporation will remain as the sole shareholder and parent of Qwest LLC. Furthermore, the conversion is for the purpose of maximizing tax efficiencies which could ultimately benefit customers of Qwest LLC's services.

In addition, the Consumer Advocate's Tariff and Notice Recommendations appear to be reasonable. The Proposed Transaction will result in a name change for the utility; thus, requiring QCC to re-file its tariff to reflect the change would be appropriate. QCC should also notify its customers of

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<sup>12</sup>See Application at 4.

the change to forestall any confusion that may result due to the conversion. Accordingly, the commission finds it reasonable to adopt the Consumer Advocate's Tariff and Notice Recommendations. Moreover, the commission will hold QCC to its representation that, within fourteen days following the effective date of the conversion, it will file copies of the Certificate of Conversion to Limited Liability Company, the Certificate of Formation of Limited Liability Company, the certificate of good standing issued by the Delaware Secretary of State, and the certificate of authority to transact business in the State issued by the DCCA with the commission (collectively, the "Certification Documents").<sup>13</sup>

Based on the foregoing, the commission concludes that QCC's request for commission approval of the Proposed Transaction should be granted. The commission also concludes that the Consumer Advocate's Tariff and Notice Recommendations should be adopted and that the Certification Documents should be filed with the commission and Consumer Advocate within fourteen days following the effective date of the conversion, as represented by QCC.

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<sup>13</sup>Id. at 3-4.



### III.

#### Orders

##### THE COMMISSION ORDERS:

1. QCC's request for commission approval of its conversion from a Delaware corporation to a Delaware limited liability company is granted.

2. Within fourteen days from the effective date of the conversion, QCC shall re-file its tariff reflecting the name change from Qwest Communications Corporation to Qwest Communications Company, LLC with the commission and serve appropriate copies of the same on the Consumer Advocate.

3. Within thirty days from the effective date of the conversion, Qwest LLC shall provide notice of the Proposed Transaction to its customers and provide documentation of such notice to the commission and the Consumer Advocate.

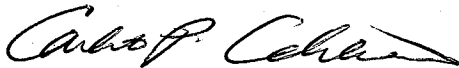
4. Within fourteen days from the effective date of the conversion, Qwest LLC shall file copies of the Certification Documents with the commission and the Consumer Advocate.

5. Failure to comply with the requirements noted above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

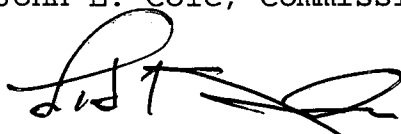
6. Upon compliance with Ordering Paragraphs 2-4, above, this docket shall be closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii NOV 13 2008.

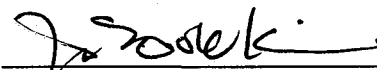
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

2008-0260.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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