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July 20, 2001

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BY FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Chief Regulatory Law Judge/Secretary
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65101

FILED

JUL 23 2001

Missouri Public
Service Commission

Re: Case No. TM-2001-628

Application of Qwest Communications Corporation
LCI International Telecom Corp.,
Phoenix Network, Inc. and
USLD Communications, Inc.

Dear Mr. Roberts:

In response to inquiries from the General Counsel's Office and the Staff of the Missouri Public Service Commission (the "Commission"), in respect to the above-referenced Application, Qwest Communications Corporation ("QCC"), LCI International Telecom Corp. ("LCIT"), Phoenix Network, Inc. ("Phoenix") and USLD Communications, Inc. ("USLD") (collectively, the "Applicants") provide this clarification regarding certain aspects of the proposed internal restructuring and address issues relating to customer authorization and notification in the context of Applicants' proposed restructuring.

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A. Customers Impacted by Applicants' Internal Restructuring Steps.

The Commission inquired into the approximate number of LCIT and Phoenix customers that will be affected by the restructuring. To the nearest hundredth, the numbers are as follows:

Company	Estimated Number of Customers in Missouri	
	Residential	Business
Qwest Communications Corporation	37,000	5,800
LCI International Telecom Corp.	4,100	3,200
Phoenix Network, Inc.	---	100
USLD Communications, Inc.	74 ¹	

B. Customer Authorization and Notification of Applicants' Internal Restructuring Is Unnecessary In these Circumstances

The proposed restructuring involves a circumstance where both LCIT and Phoenix already do business under the "Qwest" brand.² For this reason, the

¹ Number reflects agent customers with addresses in Missouri billed by USLD Communications, Inc. Such agents may in turn have multiple telephone outlets available for users in locations such as hotels and hospitals.

² Specifically, customer bills include the "Qwest" logo and direct inquiries to "Qwest Services Corporation." LCIT has registered "Qwest Communications Services" as a Fictitious Name with the Secretary of State of Missouri. See

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internal restructuring will be entirely transparent to LCIT's and Phoenix's customers, and customers will not see a change in their service provider or contact or billing information on any invoice or bill. Not only will there be no identifiable change in service from a customer perspective, there will be no change in customer rates or terms of service upon consummation of the restructuring. Simply put, Applicants firmly believe (as does the Federal Communications Commission and several other state commission that have formally or informally addressed this issue), that a requirement of customer authorization and notification, in this context, will more likely result in customer confusion as opposed to well-intended clarity.³

This point is amplified by a recent order from the Federal Communications Commission ("FCC") which supports the position advocated by Applicants in this case. In that order, the FCC streamlined its process for compliance with its anti-slamming rules in situations involving carrier-to-carrier sale or transfer of subscriber bases.^{4/} In particular, the *FCC Order* determined that a corporate restructuring that does not result in changes in name, contact information, billing information and rates and terms of services --such as that proposed by Applicants herein -- is exempt from any certification or customer notification requirement under the FCC pre-subscribed carrier change

Attachment I hereto. The Commission, in Case No. TO-99-179, recognized the name change of LCIT to LCIT d/b/a Qwest Communications Services. See Attachment II hereto. Similar documentation regarding Phoenix has not been located.

³ Similarly, the restructuring will not adversely impact USLD's Missouri customers -- who will remain customers of USLD -- as there will be no change in the corporate existence or ultimate ownership or control of USLD or in the Commission's oversight of USLD's operations as a result of the restructuring. Instead, that aspect of the restructuring affecting USLD will simplify USLD's parent company structure by transforming USLD from its existence as an *indirect*, wholly-owned subsidiary of LCI International, Inc., to a *direct*, wholly-owned subsidiary.

^{4/} See *2000 Biennial Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, FCC 01-156 (released May 15, 2001) ("FCC Order").

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authorization rules.^{5/} The FCC commented that “in such cases, requiring notice of a change that is imperceptible to the affected subscribers might cause confusion where there would otherwise be none.”^{6/}

In addition to the FCC’s pronouncement, all nine state utility commissions that have so far reviewed and approved of Applicants’ proposed internal restructuring have not required customer authorization and notification despite, in most instances, their own state-specific anti-slamming rules.^{7/} Applicants request that this Commission likewise approve this transaction without imposing customer authorization and notification requirements upon Applicants through either a waiver of the requirements of 4 CSR 240-33.150 or by deeming that rule inapplicable to this restructuring.

C. LCIT’s and Phoenix’s Certificates of Service Authority Will Be Surrendered Upon Consummation of the Restructuring and Their Tariffs Will Be Adopted and/or Consolidated into QCC’s Existing Tariff

Applicants acknowledge that, effective on the date of the closing of the restructuring, LCIT and Phoenix will surrender their certificates of service

^{5/} See *FCC Order*, at ¶ 13.

^{6/} *Id.* at n.24.

^{7/} The nine states where LCIT and/or Phoenix have customers that have approved (or provided equivalent consent) to the restructuring are: Delaware, Florida, Louisiana, Maryland, Nevada, Ohio, Rhode Island, Tennessee and West Virginia. In addition, the Oklahoma Corporation Commission, where the restructuring approval is pending, issued an order granting a waiver of its anti-slamming rule for the restructuring, wherein it held that “Applicants should not be required to provide notice to individual affected customers and that any Commission rules which require such notice should also be waived.” See *Order Granting Waivers of Commission Rules* at 5 (July 12, 2001) (copy at Attachment III hereto). Furthermore, to date, three other states where notifications have been filed (Alaska, Kansas, Maine) have indicated that no state action is required for the consummation of the restructuring.

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authority that are duplicative of those certificates now held by QCC. Also, effective as of the date of closing, QCC will adopt LCIT's and Phoenix's tariffs.⁸

CONCLUSION

Based upon the Application, and this supplement, Applicants request the Commission to grant Applicants' Request for Approval of Internal Restructuring without imposition of customer consent and authorization requirements.

Eight copies, in addition to the original, of this letter are enclosed. Please return a date-stamped copy of this letter (additional copy and self-addressed, postage pre-paid envelope provided). This supplement has been submitted to you in the form of a letter but can be converted to pleading form if you or the Commission would prefer. Please contact the undersigned if there are any questions or comments about this filing.

Respectfully submitted,

By: 
Sharis Arnold Pozen
(Missouri Bar # 0038777)
Marissa G. Repp

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⁸ USLD, as the surviving corporation of the merger of its parent into it, will not change its corporate status and will maintain after the closing its certificates and tariffs; therefore no action should be taken to cancel USLD's certificates.

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Chief Regulatory Law Judge/Secretary
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Attachments and Enclosures

cc: Office of Public Counsel
General Counsel of Missouri Public Service Commission
Robert Franson, Missouri Public Service Commission
Phil Garcia, Missouri Public Service Commission
David L. Ziegler, Regional Director, Policy and Law, Qwest Services Corporation
Wendy M. Moser, Esq., Associate General Counsel, Qwest Services Corporation

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ATTACHMENT I

**FICTITIOUS NAME REGISTRATION
OF LCI INTERNATIONAL TELECOM CORP.
D/B/A QWEST COMMUNICATIONS SERVICES**



State of Missouri

No. X 345260

Rebecca McDowell Cook, Secretary of State
Corporation Division

Registration of Fictitious Name

(Submit in duplicate with a filing fee of \$7)

This information is for the use of the public and gives no protection to the name. There is no provision in this Chapter to keep another company or corporation from adopting and using the same name. (RSMo 417)

We, the undersigned, are doing business under the following name, and at the following address:

Name to be registered: Qwest Communications Services

Missouri Business Address: 4250 N. Fairfax Drive
(P. O. Boxes not accepted)

City, State, and Zip Code: Arlington, VA 22203

The parties having an interest in the business, and the percentage they own are (if corporation is owner, indicate corporate name and percentage owned). If all parties are jointly and severally liable, percentage of ownership need not be listed:

Name of Owners, Individual or Corporate	Street and Number	City	State and Zip Code	If listed, Percentage of ownership must equal 100%
<i>F326656 AG</i> LCI International Telecom Corp.	4250 N. Fairfax Drive Arlington, VA	22203		100

(Must be typed or printed)

Return to: Secretary of State
Corporation Division
P.O. Box 778
Jefferson City, Mo. 65102

FILED

OCT 06 1998

Rebecca McDowell Cook
SECRETARY OF STATE

The undersigned, being all the parties owning interest in the above company, being duly-sworn, upon their oaths each did say that the statements and matters set forth herein are true.

Individual Owners Sign Here { X _____ X _____
X _____ X _____
X _____ X _____

345260

The undersigned corporation has caused this application to be executed in its name by its President or Vice-President and its Secretary or Assistant Secretary, this 1st day of September, 19 98

If Corporation is Owner, Corporate Officers Execute Here

LCI International Telecom Corp. (Exact Corporate Title)
By: [Signature] Its President or Vice-President
By: [Signature] Its Secretary or Assistant Secretary

(Corporate Seal) If no seal, state "none".

State of ~~Missouri~~ Colorado } ss.
County of Denver

I, Kamelia Davidson, A Notary Public, do hereby certify that on the 1st day of September, 19 98, personally appeared before me Jeff VonDeylen, Vice President and being first duly sworn by me, acknowledged that he signed as his own free act and deed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

(Notarial Seal)

[Signature] Notary Public

My commission expires 12/15/99

HOGAN & HARTSON L.L.P.

ATTACHMENT II

**PUBLIC SERVICE COMMISSION OF MISSOURI
ORDER APPROVING ADOPTION NOTICE AND TARIFF
OF LCI INTERNATIONAL TELECOM CORP.
D/B/A QWEST COMMUNICATIONS SERVICES**



Sample Full Hit Highlighting Form

Query **TO-99-179** against document </orders/11199179.htm>

You can navigate between the hits using the "<<" and ">>" tags around a hit. Clicking "<<" takes you to the previous hit, clicking ">>" takes you to the next hit.

Click to go to the first hit in the document.

[New Query](#)

STATE OF MISSOURI
STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Session of the Public Service

Commission held at its office in Jefferson City on the 19th day of November, 1998.

In the Matter of the Adoption Notice and) Case No. << TO-99-179 >>

Tariff Revision of LCI International) Tariff File 9900329

Telecom Corn.. d/b/a Owest Communications)

Services.)

ORDER APPROVING ADOPTION NOTICE AND TARIFF

On October 23, 1998, LCI International Telecom Corp. (LCI), filed a notice with the Commission, which indicated that LCI has been acquired by Qwest Communications International effective June 5, 1998. LCI has obtained permission from the Missouri Secretary of State to do business as Qwest Communications Services. LCI d/b/a Qwest Communications Services will continue to operate as a separate, wholly-owned subsidiary of Qwest Communications International. Attached to the October 23 notice were revisions to LCI's P.S.C. No. 2 tariff with an effective date of November 22. The proposed tariff revisions reflect the change in the company name.

The Commission's Staff reviewed the tariff sheet and filed a memorandum on November 12 indicating that Staff has no objection to the proposed adoption notice and recommending that the tariff changes be approved to become effective on November 22.

The Commission has reviewed the tariff sheets and Staff's recommendation and finds that the tariff sheets should be approved to become effective on November 22 and that the name change of LCI International Telecom Corp. to LCI International Telecom Corp. d/b/a Qwest Communications Services should be recognized.

IT IS THEREFORE ORDERED:

1. That the tariff filed by LCI International Telecom Corp. on October 23, 1998, Tariff File Number 9900329, is approved to become effective on November 22, 1998. The tariff approved is:

LCI International Telecom Corp. d/b/a Qwest Communications Services P.S.C. Missouri No. 2 First Revised Title
Page

2. That the name change of LCI International Telecom Corp. to LCI International Telecom Corp. d/b/a Qwest Communications Services is recognized in all Commission records.
3. That the Adoption Notice filed by LCI International Telecom Corp. d/b/a Qwest Communications Services is approved.
4. That this order shall become effective on November 22, 1998.
5. That this file shall be closed on November 23, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray

and Drainer, CC., concur.

Schemenauer, C., absent.

Woodruff, Regulatory Law Judge

HOGAN & HARTSON L.L.P.

ATTACHMENT III

**OKLAHOMA CORPORATION COMMISSION
ORDER GRANTING WAIVERS OF COMMISSION RULES**

BEFORE THE OKLAHOMA CORPORATION COMMISSION

In the Matter of)	
)	
Qwest Communications Corporation,)	Cause No. PUD 200100266
LCI International Telecom Corp., Phoenix)	
Network, Inc and USLD Communications,)	Order No. <u>453999</u>
Inc. For Approval of Internal Corporate)	
Restructuring)	

HEARING: June 28, 2001
Before Robert E. Goldfield, Administrative Law Judge

APPEARANCES: Dallas E. Ferguson
Qwest Communications Corporation, LCI International
Telecom Corp., Phoenix Network, Inc. and USLD
Communications, Inc.
Robert D. Allen, Assistant General Counsel
Public Utility Division,
Oklahoma Corporation Commission

ORDER GRANTING WAIVERS OF COMMISSION RULES

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma (Commission) being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the Motion for Waiver of Commission Rules filed herein by Qwest Communications Corporation (QCC) and three of its subsidiaries, LCI International Telecom Corp (LCI), Phoenix Network, Inc. (Phoenix) and USLD Communications, Inc. (USLD) (collectively referred to hereinafter as Applicants). The Applicants commenced this proceeding on May 29, 2001, by filing a Notification of Transaction (Notification) pursuant to OAC 165:55-15-1, OAC 165:56-14-1 and OAC 165:57-12-1. In the Notification, the Applicants informed the Commission of several transactions, described therein, which are being undertaken in order to effectuate an internal corporate restructuring and requested such Commission approval of those transactions as may be required. Simultaneously, Applicants filed a Motion for Waiver of Commission Rules (Motion) in which it requested that the Commission issue an Order either

deeming inapplicable or waiving the provisions of OAC 165:55-19-1 and OAC 165:56-11-1, that the Commission waive any rules which may require Applicants to provide notice of the transactions to individual affected customers in Oklahoma, and that the Commission also waive the publication requirements of OAC 165:55-15-1(c), OAC 165:56-14-1(c) and OAC 165:57-12-1(c), insofar as such rules pertain to the transactions.

In support of the Motion, Applicants state that LCI and Phoenix, which will be merging into QCC, already provide service under the "Qwest" name brand and, consequently, customers of LCI and Phoenix who are transferred to QCC will not see a change in the name of the service provider or contact or billing information on their bills as a result of the transactions. Applicants further state that the transactions will not result in any change in the services provided to, or the rates or terms of service for, the transferred customers. None of the customers of USLD are to be transferred to a different company as a result of the reported transaction.

Applicants also state in their Motion that in an Order issued on May 15, 2001, the Federal Communications Commission (FCC) modified its rules, effective June 21, 2001, to provide a streamlined process for compliance with federal anti-slamming requirements in situations involving the carrier-to-carrier sale or transfer of subscriber bases. See *2000 Bi-Ennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, FCC 01-156 (released May 15, 2001) (referred to hereinafter as "the FCC Order"). Applicants state that the FCC's modified procedures replace the agency's former waiver requirements and allow carriers, instead, to "self-certify" that they will comply with specified customer notification requirements in advance of customer transfers. See 47 C.F.R. § 64.1120(e). The FCC's Order also states that "a change in corporate structure that is invisible to the affected subscribers" – *i.e.* one which will not result in changes in name, contact or billing information, and rates and terms of service – is exempt from any customer notification

requirement under the FCC's revised rules. *See* FCC Order at ¶13. Applicants further point out that the Commission has indicated that it will administer the FCC's slamming rules in regulating telecommunications companies operating in Oklahoma. Based on these statements concerning the FCC's rules, and the description of the transactions as set forth in the Notification and Motion, Applicants request that the Commission issue an Order stating that the Commission rules which require prior authorization and verification for changes in carriers are inapplicable to the reported transactions or, alternatively, that the Oklahoma anti-slamming rules are waived with respect to the reported transactions. Applicants further request that the Commission waive any rules which may require that notice be provided to individual customers who may be transferred as a result of the transactions and those rules requiring that notice of the transactions be published in appropriate newspapers. In support of this request, Applicants state that the transactions involve only an internal restructuring which will not result in any change in the ultimate ownership and control of QCC and its subsidiaries involved in the reported transactions. As stated above, Applicants also state in both the Notification and Motion that the transactions will not result in any changes in name, contact or billing information, and rates and terms of service of any Oklahoma customers who are affected by the transactions. For these reasons, Applicants assert that providing notice of the transactions to individual customers would create the possibility of confusion and that there is no reasonable purpose for requiring that notice of the transactions be published. Counsel for Applicants stated at the hearing on the Motion that Applicants had agreed to provide the Commission's Public Utility Division (PUD) Staff with a sample of the bills which affected customers currently receive and a sample of the bill which they will receive after the transaction is completed.

Counsel for the PUD Staff stated that the PUD has no objection to the granting of the requested waivers provided that the Applicants agree to provide notice of the transactions

directly to the affected Oklahoma customers. Staff counsel referred to the FCC's new policy regarding the application of its prior authorization and verification rule to transfers of customer bases and noted that the FCC's action will require the Staff to review a procedure in place since July, 2000, under which the FCC's conditional grants of waivers of its anti-slamming rule for transfers of customer bases between carriers have been relied on by the Staff in recommending waivers of the OCC's anti-slamming rules. Staff counsel stated that the FCC's order usually required notice of the transactions be provided to the affected customers before, at, or shortly after the customer bases were transferred and the same requirements were made conditions to the waivers granted for the Oklahoma prior authorization and verification rule. Staff counsel stated that the giving of the notice of the transaction to the affected customers would not be a burdensome process, it could be by bill insert, if desired. In support of his arguments, Staff counsel requested that judicial notice be taken of a customer notice which had been provided in Cause No. PUD 2001000225, which involved a Notification of Transaction filed pursuant to OAC 165:56-14-1, and suggested that a similar notice be required to be given by the Applicants. Staff's counsel noted that the new FCC policy, and rule, which became effective on June 21, 2001, generally requires that notice be given to the affected customers at least thirty days before the transfer of a customer bases is implemented. He conceded that the new FCC policy and rule recognized something called a "pro forma" transaction involving the movement of customer bases with respect to which no notice in the change in carriers would be necessary because the transaction would be invisible and there would be no adverse impact on the affected customers. He also noted that the term "pro forma" had not been defined by the FCC and that he did not know what the term really means and that he doubted that the FCC knows. Staff's counsel stated that there would be a change in the company providing service to the LCI and Phoenix customers, and that those would probably see a new name on their bills, although the Applicants

disputed that suggestion and had agreed to provide Staff with samples of the presently used and prospective bill forms..

The Administrative Law Judge (ALJ) determined that the facts set forth in Applicants' Notification and Motion establish that good cause exists to grant waivers of the Commission's slamming rules and those rules which require that notice of certain transactions be provided in appropriate newspapers. The ALJ also determined, based on the correctness of Applicants' statements that the transactions would be imperceptible to affected customers and their agreement to provide the PUD Staff with a sample of the billing forms which are currently provided to those customers and of the form of bill to be used after the transfer of the customers to QCC, that Applicants should not be required to provide notice to individual affected customers and that any Commission rules which require such notice should also be waived. Based on these determinations, the ALJ recommended that the Commission should grant Applicants' request for waivers of the provisions of OAC 165:55-19-1, OAC 165:56-11-1, OAC 165:55-15-1(c), OAC 165:56-14-1(c) and OAC 165:57-12-1(c) and any Commission rules which may require that Applicants provide notice to individual affected customers, insofar as such rules pertain to the transactions described in the Notification. Samples of the billing forms described herein have been provided to Staff and filed in this cause. The ALJ finds that such forms validate Applicants' assertions that the transactions will be transparent to the affected Oklahoma customers, insofar as the name of the serving carrier and the billings for services are concerned.

The Commission is in agreement with the ALJ's recommendation and enters this Order accordingly.

IT IS, THEREFORE, THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that a waiver of the provisions of OAC 165:55-19-1 and OAC 165:56-11-1 is granted to Applicants insofar as such rules require that non-customer initiated

changes in the telecommunications companies which provide service to Oklahoma customers as a result of the transactions described in the Notification filed by Applicants must be verified in accordance with the provisions of such rules.

IT IS FURTHER ORDERED BY THE COMMISSION that a waiver of the provisions of OAC 165:55-15-1(c), OAC 165:56-14-1(c) and OAC 165:57-12-1(c) is granted to Applicants insofar as such rules require that notice of the transactions described in the Notification be published in appropriate newspapers.

IT IS FURTHER ORDERED BY THE COMMISSION that a waiver is granted to Applicants with respect to the provisions of any Commission rule which may require that notice of the transactions described in the Notification be provided to individual customers in Oklahoma who may be affected by such transactions.

CORPORATION COMMISSION OF OKLAHOMA

Denise A. Bode

DENISE BODE, Chairman

Bob Anthony

BOB ANTHONY, Vice-Chairman

Ed Apple

ED APPLE, Commissioner

DONE AND PERFORMED this 12 day of July, 2001.

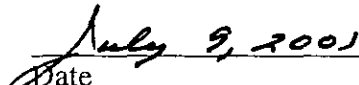
BY ORDER OF THE COMMISSION.

Peggy Mitchell
PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing Findings and Order are the Report and Recommendations of the Administrative Law Judge.


ROBERT E. GOLDFIELD
Administrative Law Judge


Date