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February 22, 2011

Annette Taylor  
Filing Center  
Public Utility Commission of Oregon  
550 Capitol Street NE  
Suite 215  
Salem, OR 97308-2148

Re: *In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.*  
**Oregon PUC Docket UM 1484**

Dear Ms. Taylor:

Enclosed for filing in the above referenced proceeding as supplemental authority in support of the post-hearing briefs previously filed by the Joint CLECs are: 1) Request for Comments/Status Report and Notice of Commission Meeting in Minnesota Public Utilities Commission Docket No. PA-421, et al./PA-10-456, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*; and 2) an excerpt of the transcript of "PUC Deliberations –February 2, 2010" before the Minnesota Public Utilities Commission in Minnesota Public Utilities Commission Docket No. PA-421, et al./PA-10-456, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*. The deliberations of the Commissioners commence on page 67 of the transcript and continue through page 105. Pages 91 through 94 of the transcript is particularly pertinent to the proposed additional conditions relating to wholesale service issues addressed in the post-hearing briefs of the Joint CLECs.

The original plus 1 copy of this letter will be sent via UPS overnight.

Very truly yours,

Davis Wright Tremaine LLP

Mark Trinchero

Enclosure

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STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

February 14, 2011

To: **Interested Parties**

Docket No. **P-421, et al./PA-10-456**

**In the Matter of the Joint Petition of for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink**

From: Burl W. Haar *by M.E.O.*  
Executive Secretary

Subject: (i) **Request for Comments/Status Report**  
(ii) **Notice of Commission Meeting**

**Background**

On February 10, 2011, the Commission met to deliberate issues regarding the Qwest-CenturyLink merger. At that meeting the Commission decided to table the matter until March to allow the interveners and petitioners an opportunity to engage in negotiations and to allow the Commissioner of the Minnesota Department of Commerce an opportunity to comment on the proposed merger.

**(i) Request for Comments/Status Report**

The Commission seeks comments from the parties regarding the status of negotiations, the result of any negotiations, and the status of merger proceedings in other states in Qwest's service area. The Commission also seeks comments from the Commissioner of Commerce regarding the Commissioner's position as to whether the merger is in the public interest. Parties should file their comments and/or status reports by February 25, 2011.

**(ii) Notice of Commission Meeting**

All interested parties are notified that the Commission will meet at **9:30 a.m., on Thursday, March 3, 2011**, in the Commission's Large Hearing Room, 3<sup>rd</sup> Floor, 121 7<sup>th</sup> Place East, St. Paul, Minnesota for further consideration of this matter.

If you have any questions regarding this matter, please call Kevin O'Grady at (651) 201-2218 or Marc Fournier at (651) 201-2214.

**This document can be made available in alternative formats (i.e., large print or audio tape) by calling us at (651) 201-2202 (voice) or through the Minnesota Relay Service at 1-800-627-3529 (TTY relay service) or 7-1-1 for those with hearing and/or speech disabilities.**

## **CERTIFICATE OF SERVICE**

I, Margie DeLaHunt, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission  
REQUEST FOR COMMENTS/STATUS REPORT & NOTICE OF COMMISSION  
MEETING**

Docket Number P-421, et al./PA-10-456  
Dated this 14th day of February 14, 2011

/s/ Margie DeLaHunt

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PUC DELIBERATIONS - 10-456 and 10-1012 - FEBRUARY 10, 2011

PUC DELIBERATIONS - FEBRUARY 10, 2011  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION  
OF THE STATE OF MINNESOTA

In the Matter of the Joint Petition for Approval of  
Indirect Transfer of Control of Qwest Operating Companies  
to CenturyLink

PUC DOCKET NO: P421,et.al./PA-10-456

OAH DOCKET NO: 11-2500-21391-2

February 10, 2011

CD TRANSCRIBED BY: Janet Shaddix Elling,  
Registered Professional Reporter

1 adding that reference to underlying databases with  
2 the understanding that I think has been made crystal  
3 clear here through the questioning of Commissioners  
4 Pugh and Wergin that what this language does would  
5 give us the same level of access to flow-through and  
6 e-bonding. And with that understanding, I don't  
7 want to hold this thing up over language that I  
8 think at the end of the day we ought to be able to  
9 agree to.

10 CHAIR BOYD: All right. Okay. Anything  
11 else? No? Last call.

12 All right. Let's move on to deliberate,  
13 then.

14 Commissioner O'Brien.

15 COMMISSIONER O'BRIEN: Mr. Chair, Members  
16 of the Commission. The reason I did not  
17 particularly participate in fine-tuning this  
18 agreement is that I'm stuck further up the upstream.  
19 As Vice President Biden said to President Obama on  
20 the eve of health care legislation, this is a really  
21 big deal. Now, he used some modifiers that I'll  
22 avoid.

23 But this is a big deal. This is tens of  
24 billions of dollars. And by statute and law we are  
25 charged with the obligation to approve or disapprove

1 based on public interest. And I'm going to be  
2 coming back to public interest a lot in these  
3 comments. But the first contextual observation is a  
4 lot of money, a big deal.

5 The first contextual observation, and I'm  
6 going to have some contextual observations but I'm  
7 going to bring them back into this docket. The  
8 first contextual observation is that 30, 40 years  
9 ago a federal judge busted up Ma Bell. Congress and  
10 the FCC have kind of fine-tuned it, but it was that  
11 large it was considered to be in violation of the  
12 antitrust laws.

13 Now, I know that this merger has passed  
14 Department of Justice scrutiny, but we should not  
15 assume that because it's big, it's good. In this  
16 industry we have a record of big leading to higher  
17 prices, average service, and lack of innovation.  
18 Can anybody doubt that in the last couple of decades  
19 we've had a revolution because of the competition in  
20 the marketplace? Prices have come down, we have a  
21 lot better quality, a lot more service options. So  
22 let's not say because this is a big deal and because  
23 we're going to create a third largest CLEC, that's  
24 something to embrace. It isn't.

25 So now what does that mean on this

1 record? Well, big will prevail. That's the nature  
2 of big. They have a lot of muscle. We heard and  
3 have been -- we spent the last hour, 45 minutes, on  
4 the operating system, critical to this enterprise  
5 going forward with the competitors. We need to keep  
6 in mind that the national policy was to allow these  
7 CLECs to grow and thrive and compete. When you  
8 bring a very large player into this market, that is  
9 a real threat. Access charges for Sprint are of the  
10 same nature and notice. So let's just keep that in  
11 mind.

12 A second observation is social compact.  
13 Minnesota is a northern liberal state. I know that  
14 we have newspaper stories about a \$6 billion budget  
15 gap, but, in fact, we are spending almost \$18  
16 billion in this fiscal year. 75 percent of that  
17 goes to education and health care. That is a big  
18 investment.

19 We have to have a wage structure to  
20 support that investment because we have high taxes.  
21 Qwest had about 29,000 employees, of which 14,000  
22 were union members. CenturyLink has about 20,000  
23 employees, of which 3,700 are union members. They  
24 are in a culture that allows for limited investment  
25 in public education and health care, that has lower

1 wages, and with those two advantages they get more  
2 access to capital. Access to capital allows them to  
3 be the acquirer rather than being acquired. It's a  
4 fact.

5 Again, let's put it in context. We are  
6 about to begin the 150th anniversary of the Civil  
7 War. Some of the South viewed that as a War of  
8 Northern Aggression. Other commentators view that  
9 as a class of culture. I know slavery was a big  
10 issue, but slavery doesn't encompass all of that  
11 conflict, it was culture as well.

12 In the recent few years, Northern legacy  
13 industries have been moving from Minnesota to the  
14 South. Northwest Airlines is now headquartered in  
15 Delta -- in Dallas. Or excuse me, Georgia, Delta.  
16 Ford Motor is soon closing a plant while the South  
17 is building car plants. And now Qwest is going to  
18 Louisiana. Again, that's not a reason to approve or  
19 disapprove, but it's context. And we have seen  
20 cultural sparks that are -- that we are not used to.

21 The first would be the dust-up we had a  
22 couple of days ago on trade secret. Platitudes on  
23 mergers that you can find in any book are elevated  
24 to the status of trade secret. Now, they have the  
25 right to do that, but we should not lose sight of

1 the fact that we are dealing with hyperaggressive  
2 perspective. Investment reduction is advertised as  
3 enhancement. Again, they have the right to do that,  
4 it's a question of emphasis, but we're on notice of  
5 a culture clash.

6 The most troubling contextual observation  
7 that precedes my views on this is the lack of a  
8 record with respect to public interest. Ordinarily,  
9 of something this big, this important, we'd have  
10 public agencies, the Department of Commerce,  
11 attorney general, weighing in, putting on facts and  
12 records, challenging the assertion of public  
13 interest. That is missing from this record.

14 What we have is what other states have  
15 done. Not all, but others. The ALJ said it's okay,  
16 but, again, it wasn't a litigated fact. There  
17 wasn't a contrary view of public record -- or public  
18 interest. And the Department of Commerce says it's  
19 okay.

20 Well, I don't know. Here's the problem  
21 the Communication Workers were put into. Unions  
22 represent less than 7 percent of the American work  
23 force. I've been a labor relations lawyer for more  
24 than 40 years. They are struggling to maintain  
25 relevance. They had an offer pre-approval, and I

1 suspect they were afraid of what a post-approval  
2 position would be so they made a -- I suspect, I  
3 don't know this, a tactical decision to try to steer  
4 the bus rather than to challenge public interest.

5 In any event, unions don't represent the  
6 public interest in the full scope of what we have to  
7 do, they have an important part of it. The  
8 intervening CLECs do not represent the public  
9 interest, they have a business perspective they're  
10 trying to hold onto. But there is no organized  
11 institutional challenge to this significant merger  
12 and that's troubling to me.

13 Well, are there some public policy  
14 reasons to oppose this? Sure. Reduced investment  
15 in broadband, both as to the fact, but more  
16 importantly how it was presented. Lower credit  
17 ratings. Again, that's in the record, we have lower  
18 credit ratings in this new merged entity. Two of  
19 the three have failed, we're on notice, there may be  
20 failure. We have a legacy industry that is going to  
21 bear the burden of the \$600 million of synergy.

22 In the 1930s, Willie Sutton was robbing  
23 banks. He was asked why he was robbing banks and he  
24 replied, That's where the money is. That's where  
25 the savings are. They're here. And we're going to



1 see those synergies in increased cost and reduced  
2 service. But, mostly, we don't have a sufficient  
3 record.

4 Now, I'd like to talk about the elephant  
5 in the living room, something that hasn't been  
6 articulated. We have a challenged business model.  
7 Qwest is losing 10 percent of landlines a year. And  
8 so they hire investment bank or bankers, probably  
9 more than one, to get out and see what they can  
10 find. We haven't looked at all the deals they  
11 looked at, we've looked at the first one. And  
12 they're going to merge with a company that's got the  
13 same phenomenon, losing business lines, and somehow  
14 that is going to create economies of scale.  
15 Economies of scale don't address the root cause of  
16 this problem. They don't. They simply postpone it.

17 The elephant in the living room is a  
18 suspicion that we have to do this deal 'cause  
19 something bad will happen if we don't. Well, where  
20 is the record evidence on this? There isn't any.  
21 We operate as if there is urgency to this, we gotta  
22 get it done, we have to do it, it's time sensitive,  
23 we're going to be hyperaggressive on every issue.  
24 With what record?

25 In my view, deals that are inexorable,

1           that are compelling, move at a deliberate pace and  
2           the speed of pace and the urgency is not something  
3           that comforts me, it is a red flag.

4                   I believe we have three options. Reject  
5           it, the public policy is conclusionary, is not  
6           supported in the record and we should not allow it  
7           to go forward on this big of a transaction. A  
8           second option, we could use our prior precedent, we  
9           could bring in experts. We could give the parties  
10          the opportunity to cross-examine our experts and  
11          present their own experts and develop a public  
12          policy record. A third option would be to table  
13          this for a while and allow at least the new  
14          commissioner to take a look.

15                   I think that when we are about to lose a  
16          legacy industry, we should at least have some  
17          minimal public record to support that beyond other  
18          states have done it and Department of Commerce says  
19          it's okay and the other parties that have intervened  
20          have cut their deals with the exception of a few  
21          CLECs.

22                   That is not public policy, that's not how  
23          it should be formed, and I have substantial  
24          reservations as to the wisdom of this transaction.

25                   Thank you.

1 CHAIR BOYD: Comments?

2 Commissioner O'Brien, do you want to  
3 offer a motion based on your feelings or would you  
4 rather wait?

5 COMMISSIONER O'BRIEN: Well, you know, as  
6 I sat here this morning I saw people jumping into  
7 the deal without really -- I mean, it's kind of fun  
8 to put together the finishing touches on a 19, 20  
9 billion dollar deal. And I couldn't get into that  
10 'cause I wanted to make sure that we had the right  
11 public interest in mind.

12 So I am always trying to find consensus,  
13 and I suspect that -- that we haven't had a lot of  
14 questions or -- or interest in public -- in looking  
15 critically at public interest. I think that others  
16 have reached different conclusions and I want to be  
17 respectful of those conclusions, so I prefer to wait  
18 and see whether I can find some other support for my  
19 thoughts.

20 CHAIR BOYD: All right. Appreciate that.  
21 Commissioner Pugh.

22 COMMISSIONER PUGH: Mr. Chair, I'll  
23 address the concern actually that I had.

24 In questioning on Tuesday I was -- the  
25 representative from the Department of Commerce,

1       their attorney, indicated that she was not aware  
2       whether or not the new commissioner had, in fact,  
3       reviewed this matter and was aware of the position  
4       that the Department was, in essence, advocating for  
5       approval before us. That was of some concern. And  
6       I almost asked on Tuesday to see if they could get a  
7       letter saying he was okay with it, coming back  
8       today.

9               But today there was further information  
10       and that is with the development of the OSS issue,  
11       which I find to be very important, and how that is  
12       shaping in -- it appears to be shaping in the best  
13       way possible for CLECs in the states that act latest  
14       on the issue.

15              Now, granted, many of the states that  
16       have approved this are CenturyLink states that  
17       didn't have a Qwest presence previously, in any  
18       event, but Arizona, Washington, Oregon and Minnesota  
19       have shared certain commonalities with issues facing  
20       Qwest. I know several years ago Qwest sought  
21       forbearance on certain issues before the FCC, and  
22       Minnesota posed that request along with Arizona,  
23       Washington and Colorado, I believe, not Oregon. So  
24       we did have common interest in certain issues.

25              Arizona is going to conclude their ALJ

1 report in a couple of weeks, so in terms of waiting  
2 for something to develop, I don't know that we have  
3 a deadline of February 10th in which to act. I  
4 might be open to setting our decision back awaiting  
5 further comment from the new Commissioner of  
6 Commerce and perhaps watching to see the exact  
7 language that develops in at least Arizona, but  
8 perhaps Arizona, Washington and Oregon, in that  
9 they're all kind of going to happen in March, well  
10 before the June closing.

11 So with respect to that issue, I might  
12 share some interest in what Commissioner O'Brien  
13 is -- has presented. And I'll reserve comments on  
14 anything else until we see what the rest of the  
15 panel feels like on that issue.

16 CHAIR BOYD: Thank you. Others?

17 COMMISSIONER WERGIN: Mr. Chair, I'm  
18 really not there on delaying and there are actually  
19 several reasons. While it might seem as though it's  
20 been a hurried decision, there has been -- there is,  
21 in fact, a very large record associated with this  
22 docket. Many hearings, of course all the briefs and  
23 rebuttals and surrebuttals and objections and all  
24 the other words that come in there. And there has  
25 been -- there really hasn't been anyone along the

1 way or any agency or any entity that has said do not  
2 let this merger go forward. The ALJ didn't go  
3 there, the FCC didn't go there, the Department of  
4 Justice didn't go there, numerous states didn't go  
5 there, albeit there are differences between states,  
6 so I don't -- I don't weigh our judgment on what  
7 another state does. I weigh it on what's good in  
8 Minnesota, and I think that goes to the ALJ's  
9 record.

10 And I -- I see the public interest having  
11 been discussed throughout the record with the ALJ.  
12 As you look at each point that the ALJ makes a  
13 recommendation or a conclusion, she addresses the  
14 public interest in nearly every one. And so while I  
15 have concerns, there is no doubt about that, I will  
16 freely and quickly say I have concerns, I don't  
17 think that they are concerns that would warrant not  
18 moving ahead. I think with some of the things that  
19 we've done this morning and perhaps a couple of  
20 suggestions as we go through the issues, I do see us  
21 having as complete a record as we probably could  
22 get. So that's where I'm coming from.

23 CHAIR BOYD: Commissioner O'Brien.

24 COMMISSIONER O'BRIEN: Before CWA  
25 withdrew they entered evidence in the record that

1 the CenturyLink acquisition of Embarq resulted in a  
2 number of serious operational, service-affecting  
3 problems in North Carolina. Including workers being  
4 dispatched to incorrect locations for service,  
5 workers being dispatched for service with  
6 insufficient or incorrect information, longer out of  
7 service periods, longer delays of initiating  
8 service, differing and confusing software that  
9 dispatches and assigns technicians, systems do not  
10 appear to be interconnected or coordinated, negative  
11 impacts on work flow, inefficiencies in the new  
12 systems, consumer frustration about installation,  
13 and service appointments not being met and long hold  
14 times.

15 The challenge of integrating and running  
16 Qwest with its unique obligations comparatively,  
17 enormous customer base, wholesale responsibilities  
18 and complex OSS is particularly daunting and far  
19 beyond anything CenturyLink has faced to date. And  
20 when we get the complaints, when they come in, we  
21 can't say we relied for our public policy  
22 determination on what the other states did, we can't  
23 say we relied on the ALJ, we relied on the  
24 Department of Commerce. They all concluded without  
25 telling us the factual basis for those conclusions.

1       That's where I'm getting at. We don't know the  
2       factual basis. There is no evidence in the record  
3       testing public interest. They are conclusions of  
4       the public interest. And I think that's an  
5       important point.

6               COMMISSIONER WERGIN: Mr. Chair,  
7       Commissioner O'Brien, when I read the part about the  
8       service that you just quoted to us, that gave me a  
9       great deal of pause reading that there were service  
10      issues, there were interconnection issues, there  
11      were mistaken dispatches, there were significant  
12      issues. And I was -- I spent quite a bit of time  
13      thinking about that because this is huge and those  
14      are things that you don't want to see happen.

15             The difficulty that I found myself up  
16      against with that particular piece is that any time  
17      there's a merger, there are hiccups. And I'm not  
18      dismissing how important those service issues are by  
19      saying hiccups, I'm just saying no matter what  
20      merger you would look at you would find things that  
21      happen that are unpleasant in the merger. And one  
22      of the best examples I can give of that is that I  
23      serve on a board of directors where we have taken  
24      individual locations within the same corporation and  
25      implemented one database, one system of record



1        accountability, and the number of hiccups, glitches,  
2        incidents, have been significant, and that was with  
3        one entity meshing its own systems.

4                    And so in a -- I would prefer that we had  
5        no system errors, no dispatch errors, anything like  
6        that, but I don't know that in any merger, whether  
7        it be two smaller CLECs, I don't know that we  
8        wouldn't see any of that. What sort of nullified  
9        that for me or sort of comforted me with that is  
10       that the CWA did ultimately settle. And my -- I  
11       would suspect that as part of the discussion with  
12       that settlement, those issues that they indicated  
13       are very important were, at the very least, strongly  
14       discussed.

15                   COMMISSIONER O'BRIEN: Yes, of course.  
16       Mr. Chair, of course, this was their position and  
17       their case was settled so we can't rely on these  
18       facts, I get that. But we're on notice. The bell  
19       has been rung, it's hard to unring the bell. And  
20       there wasn't a bell rung by the Department of  
21       Commerce.

22                   And, remember, the record is that two out  
23       of three of these types of big deals have failed,  
24       and in failure will it really be sufficient to say,  
25       you know, geez, we relied on Commerce, we relied on

1 the ALJ, and they didn't have much public interest  
2 test on it, but we just kind of trusted them.

3 Not on this deal, not for me, too big, I  
4 don't believe in the trust me standard.

5 CHAIR BOYD: Commissioner Reha.

6 COMMISSIONER REHA: Mr. Chair, I  
7 appreciate the comments of the Commissioners and  
8 this is a difficult case. But I look at the  
9 statutory factors that this Commission has to look  
10 at. And they're on page 4 of the briefing papers.  
11 And I think the record supports the finding that the  
12 post-merger company will have the financial,  
13 technical, and managerial resources to enable the  
14 Qwest and CenturyLink operating companies to  
15 continue providing reliable, quality  
16 telecommunications services in Minnesota. I think  
17 the record supports that conclusion.

18 And the third one, I'll skip to C, what  
19 impact the transaction will have on Commission  
20 authority, and I think there's a consensus that it  
21 really will not have it.

22 The one issue is what impact the  
23 transaction will have on Minnesota customers and on  
24 competition in the local telecommunications market,  
25 and that item concerns me, as I think I've expressed

1 previously.

2 I -- we have to determine what's in the  
3 public interest. And as it stands with just the  
4 ALJ's recommendations, it's my view that it's not in  
5 the public interest now, but I think it's fixable.  
6 I think it's fixable by putting in the assurances  
7 that the CLECs have -- many, not all, but some of  
8 the assurances and the CLECs and the intervening  
9 parties have proposed here. The most important one  
10 has to do with the OSS and the OSS testing, as we've  
11 discussed.

12 And in my view, I think that with the  
13 synergies that are supposed to be recouped here by  
14 the new applicants, that I don't think it'll be  
15 harmful to their operations to have third-party  
16 testing, which will provide the assurances that the  
17 intervenors have proposed here today, and the  
18 extension of the existing Qwest systems for the  
19 period of time that the extensions are recommended.

20 There are others, like the -- that, you  
21 know, I really feel that should be made, which we  
22 didn't really specifically talk about today, but,  
23 you know, having one -- one point of  
24 interconnection, I think that that, in my view,  
25 that's a no-brainer. I think the parties -- the

1 applicant could easily provide that. And they are  
2 going to be merging the two systems together and  
3 they could certainly merge that, and I didn't really  
4 hear very strong evidence that that should not be  
5 completed. And there are others in here, I mean, we  
6 could go one by one and I could talk about that.

7 But, so I think that the -- this  
8 approval, while in my view right now it is not in  
9 the public interest, it could be fixed and that we  
10 should attempt to fix it by stating that these  
11 factors need to be included before this Commission  
12 approves it.

13 I don't know what really can be gained by  
14 a delay. I think we have a very robust record here,  
15 I think the briefing papers are excellent, I think  
16 the parties' briefs are thorough. I agree with you,  
17 Commissioner O'Brien, it would have been nice to  
18 have the Department more involved in this matter,  
19 and rather than having settled quickly and then not  
20 providing the challenges and the discussion and the  
21 witnesses and all of that. I mean, that probably  
22 would have been a better record. But this is the  
23 record we have and I think it would stand up on  
24 appeal with respect to most of these items.

25 And the issue of the new commissioner.

1 Well, you know, we can't delay everything every time  
2 there's a change in administration or a change in  
3 commissioners or a change in attorneys or a change  
4 in anything, and I think if there were some strong  
5 objections by now we would have heard something.  
6 And we haven't. Silence is deafening. So, and the  
7 new commissioner has been in place for some time  
8 now. So I don't think we should delay it on that  
9 basis.

10 We have the attorney for the Department  
11 sitting here at the desk and -- and she said that  
12 she hadn't heard any intention to interfere with the  
13 process as it's been going on, so I think that  
14 that's something that we shouldn't go there, in my  
15 opinion.

16 So I think it's fixable, and I think that  
17 we have enough information to do that today. So,  
18 that's my opinion, my read.

19 CHAIR BOYD: Commissioner Pugh.

20 COMMISSIONER PUGH: One follow-up to  
21 Commissioner Reha. Since your opinion is that as it  
22 is without further conditions --

23 COMMISSIONER REHA: Yes.

24 COMMISSIONER PUGH: -- beyond the  
25 settlements --

1 COMMISSIONER REHA: Right.

2 COMMISSIONER PUGH: -- it wouldn't meet  
3 the public interest test --

4 COMMISSIONER REHA: Correct.

5 COMMISSIONER PUGH: -- do you see any --  
6 do you have any interest in waiting to see what  
7 Arizona, Washington and Oregon do, in terms of  
8 additional considerations or conditions that might  
9 aid in our determination as to our public interest?

10 COMMISSIONER REHA: Well, I -- we  
11 could -- we could wait forever for those kinds of  
12 things. There's always going to be something that  
13 comes up. We've got to decide it on the basis of  
14 what's important for Minnesota. So I think, you  
15 know, it's interesting what other states are doing.  
16 You know, I think we could probably borrow some of  
17 the ideas, whether or not there's a final commission  
18 action in Arizona or wherever. It's our case, it's  
19 Minnesota, and the -- I think the issue is the items  
20 A, B and C relate to Minnesota. And so I don't  
21 think we have to wait.

22 COMMISSIONER PUGH: Mr. Chair, my only  
23 response would be the timing of the hearing was  
24 essentially at the request of the petitioning  
25 parties, not --

1 COMMISSIONER REHA: Yeah. Nothing's  
2 perfect.

3 COMMISSIONER PUGH: -- the closure of  
4 negotiations, negotiations by all parties on what is  
5 a nationwide transaction, it's not really a  
6 Minnesota transaction. It seems as though the  
7 bargaining becomes -- the bargaining positions  
8 become stronger as the closing date becomes closer,  
9 and that would be my only observation. I don't  
10 intend, I guess, to push on it. I suspect we'd have  
11 the availability to move for reconsideration if, in  
12 fact, there was some incredible breakthrough in some  
13 other state at a later time. I maybe look to staff  
14 to assure me that that would be, so long as a party  
15 votes correctly, a Commissioner votes correctly,  
16 we'd be able to move for reconsideration to amend  
17 the --

18 CHAIR BOYD: The Commission always has  
19 that authority on their own.

20 COMMISSIONER PUGH: So, just to be sure.

21 CHAIR BOYD: I understand Commissioner  
22 O'Brien's frustration and I share it in part. At  
23 the end of the day, I think this is a very  
24 substantial record. We've yet to find a perfect  
25 record in any proceeding, I think it's adequate to

1 move forward. I share Commissioner Reha's comments  
2 about waiting on the new Commissioner of Commerce.  
3 We have a number of important proceedings that move  
4 forward and move forward and move forward, and while  
5 I respect his opinion, I might be curious what he  
6 thinks about this, I don't know that that's grounds  
7 onto itself for any delay.

8 I suspect, Commissioner Pugh, if there  
9 was to date any significant nugget in those other  
10 states, those western states, we would have heard  
11 about them. And I think you're correct, if some  
12 breakthrough comes along we may have a chance to  
13 revisit any decision of ours, perhaps. I'm not  
14 going to predict the future on what breakthroughs  
15 will come along, because I happen to agree with you,  
16 as you get closer to zero hour negotiations change.

17 My sense would be that we move ahead and  
18 take action today one way or another. And if the  
19 decision is to make a motion to find the merger not  
20 in the public interest, we certainly could entertain  
21 that. Commissioner Reha has indicated that she has  
22 a position that some of the -- some or all, I don't  
23 know, of these conditions would be required to help  
24 her meet that determination. I'd be open to that  
25 discussion. But I think if there's a threshold



1 question of whether this is in the public interest  
2 or not, straight up, straight down, that that's an  
3 issue we should address or move on.

4 COMMISSIONER O'BRIEN: Mr. Chairman.

5 CHAIR BOYD: Commissioner O'Brien.

6 COMMISSIONER O'BRIEN: As we struggle  
7 with this public interest conundrum, we can say that  
8 the views of the new commissioner aren't  
9 particularly relevant to the docket at hand, and I'd  
10 be inclined to maybe join in that perspective if I  
11 knew why the former commissioner approved the deal.  
12 If there was a record, if there was evidence, there  
13 was some weighing and some discussion. But we don't  
14 have that. And so now if two people say, yeah, it's  
15 okay, at least that we have a firewall.

16 And what I'm trying to do is maintain the  
17 integrity of our finding of public interest. It's a  
18 nationwide deal, other states have done it. We went  
19 along, but we had two commissioners that said, yeah,  
20 go ahead and do that. Right now we have one -- and  
21 if, God forbid, the thing goes south, I can tell you  
22 the new commissioner is not going to say I signed  
23 off on that, nobody asked me. So just think about  
24 that.

25 I mean, this -- we are on notice, two or

1       three fail, it's got reduced bond ratings, I think  
2       the elephant in the living room, which is the best  
3       deal we're ever going to look at, there's no record  
4       evidence to support that.

5               But, in any event, I don't see the need  
6       for urgency, other than we want to get it done, if  
7       we're going to do it, so that they can close on June  
8       1st. Why February 10th as opposed to March 1 is  
9       compelling, I don't see, given this record.

10              CHAIR BOYD: I'll entertain any kind of  
11       motion about delaying the record, rejecting the  
12       merger, and if I don't hear that we'll move on,  
13       assuming we're going to work through the conditions.

14              Commissioner O'Brien.

15              COMMISSIONER O'BRIEN: I'll try it.

16              I'll move to table this until our first  
17       meeting in March, to allow the -- our staff and the  
18       intervenors and the petitioners to work out the  
19       agreements that Commissioner Reha has in mind and to  
20       give the new commissioner an opportunity to advise  
21       us with whether he wants to comment on this or not.

22              CHAIR BOYD: Discussion of the motion?

23              COMMISSIONER WERGIN: Mr. Chair, I'd love  
24       to, but there's no discussing.

25              CHAIR BOYD: But there are other pieces

1 in here about suggesting -- I understand that, but  
2 there are other pieces in here about staff and  
3 parties working out agreements, and as of the moment  
4 we don't know what Commissioner Reha's thoughts are.  
5 That seems a little problematic .

6 COMMISSIONER O'BRIEN: I'm just trying to  
7 be respectful to Commissioner Reha to allow her to  
8 have some time to develop that.

9 CHAIR BOYD: All right. Since I  
10 discussed something that's not discussable --

11 COMMISSIONER PUGH: You just restated the  
12 motion.

13 CHAIR BOYD: Yeah. We'll go to a vote.

14 Commissioner Wergin, do you want to help  
15 me on process?

16 COMMISSIONER WERGIN: Let me work on the  
17 motion.

18 CHAIR BOYD: All right. Take your time.

19 COMMISSIONER WERGIN: Commissioner  
20 O'Brien, for clarification.

21 CHAIR BOYD: Not discussion.

22 COMMISSIONER WERGIN: Right.

23 When you say the motion is for the  
24 parties and the staff to work with Commissioner Reha  
25 on agreements, that says to me that your motion

1 anticipates that we could have a better product if  
2 we table this and allow some agreements to take  
3 place. Is that correct?

4 COMMISSIONER O'BRIEN: Yeah, Commissioner  
5 Wergin, here's where I'm at. If Commissioner Reha  
6 says the parties have worked out a deal, I've looked  
7 at it, it's fine with me, and the new commissioner  
8 says I've looked at it, it's fine with me, I'll be  
9 voting in support of it. All I'm asking is that we  
10 put the collection, have those two pieces. If that  
11 clarifies my motion.

12 COMMISSIONER WERGIN: Mr. Chair, and your  
13 motion was until the first meeting in March; is that  
14 correct?

15 COMMISSIONER O'BRIEN: Yes.

16 CHAIR BOYD: You might want to make that  
17 the first meeting in March where we can have five  
18 Commissioners present.

19 COMMISSIONER O'BRIEN: Yes.

20 CHAIR BOYD: And there's a commission  
21 slot.

22 COMMISSIONER O'BRIEN: And it's the first  
23 duly constituted meeting of the Commission, I don't  
24 know that I have to --

25 MR. OBERLANDER: And with the additional

1       caveat that other cases move as needed to  
2       accommodate that scheduling.

3               CHAIR BOYD: That'll create an  
4       interesting discussion in the back room.

5               COMMISSIONER PUGH: Glad you're the  
6       Chair.

7               CHAIR BOYD: All right. Does that help?  
8       Ready to vote?

9               All those in favor of Commissioner  
10      O'Brien's motion, signify by saying aye.

11              COMMISSIONER O'BRIEN: Aye.

12              COMMISSIONER WERGIN: Aye.

13              COMMISSIONER PUGH: Aye.

14              CHAIR BOYD: Opposed, same sign.

15              COMMISSIONER REHA: No.

16              CHAIR BOYD: Aye. Motion carries,  
17      three-two, Commissioner Reha and I voting no.

18              With that, I don't think we have much  
19      more to do today. We will keep you all informed. I  
20      think scheduling will be a significant challenge.  
21      But in the meantime, staff, how will this action of  
22      the -- our action be carried forward? How will you  
23      proceed from here? How -- how are you going to  
24      tackle this task of getting with the parties and  
25      working on conditions? I think the easier part is

1       how to contact the Commissioner of the Department of  
2       Commerce, but how do you intend to proceed going  
3       forward? Commissioner -- Mr. Oberlander.

4               MR. OBERLANDER: Commissioners, given the  
5       unusual nature of this motion and the significant  
6       issues that need to be considered, I think that  
7       staff will have to go back and discuss it  
8       internally, basically, to formulate an appropriate  
9       way to move forward. We've never done anything  
10      quite like this before.

11             CHAIR BOYD: All right. Commissioner  
12      Pugh.

13             COMMISSIONER PUGH: Mr. Chair, perhaps  
14      back to like courtroom days, I'd suspect that  
15      counsel for the commissioner will relay to the  
16      commissioner that we -- that this order will be  
17      forthcoming and we'll be looking for input.

18             CHAIR BOYD: I'm not worried about that  
19      part.

20             COMMISSIONER PUGH: That part should be  
21      solved.

22             CHAIR BOYD: It's the other half I'm  
23      worried about.

24             COMMISSIONER PUGH: Sometimes the part  
25      you don't worry about becomes a problem too. But --

1 CHAIR BOYD: Well, that's true.

2 COMMISSIONER REHA: If I might comment.

3 I think the motion, it's incumbent, and from what I  
4 read from the motion, that the parties get together.  
5 That the applicants and the intervenors and the  
6 Department and everybody else needs to have a  
7 conference to see whether any additional issues can  
8 be resolved. And then also, I suppose, we can ask  
9 counsel for the Department to -- to consult with the  
10 commissioner and see whether the commissioner wishes  
11 to jump into the fray, and then have these parties  
12 report back to us in writing. And then once we have  
13 that we can reconvene and also maybe get an update  
14 from the parties as to what's going on in the other  
15 jurisdictions.

16 I think that that's a process that's  
17 doable, and then this matter comes before us again  
18 in March and we'll see where we go and where we are.  
19 And if we need supplemental briefing papers, we'll  
20 hopefully have them.

21 CHAIR BOYD: I don't have anything to  
22 add. It's the best we'll be able to do.

23 All right. With that, we are adjourned.

24 (Matter concluded.)  
25

1 STATE OF MINNESOTA)

) ss.

2 COUNTY OF HENNEPIN)

3  
4  
5 REPORTER'S CERTIFICATE  
6  
7

8 I, Janet Shaddix Elling, do hereby  
9 certify that the above and foregoing transcript of the  
10 digitally-recorded proceeding, consisting of the  
11 preceding 104 pages, is a full, true and complete  
12 transcript of the digitally-recorded proceeding to the  
13 best of my ability.

14 Dated February 18, 2011.  
15  
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JANET SHADDIX ELLING

19 Registered Professional Reporter  
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**CERTIFICATE OF SERVICE**  
**UM 1484**

I hereby certify that **SUPPLEMENTAL AUTHORITY IN SUPPORT OF POST-HEARING BRIEFS PREVIOUSLY FILED BY JOINT CLECS** was served on the following persons on February 22, 2011, by email to all parties and by U.S. Mail to parties who have not waived paper service:

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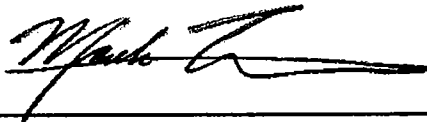
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