ISSUE DATE: December 23, 1996

DOCKET NO. P-3123/PA-96-888

ORDER APPROVING JOINT PETITION AND REFERRING MATTER FOR PENALTY PROCEEDINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of a Request by Continental Cablevision, Inc. and US WEST, Inc. for Approval of the Merger/Acquisition of Continental Cablevision, Inc. by US WEST, Inc.

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PROCEDURAL HISTORY

On August 21, 1996, US WEST, Inc. (US WEST) and Continental Cablevision, Inc. (Continental) filed a joint petition seeking Commission authority for US WEST to acquire ownership of Continental, including Continental's state-regulated operating subsidiary, Continental Telecommunications Corporation of Minnesota (CTCM).

Continental worked closely with the Department of Public Service (the Department) in developing the filing and accompanying regulatory and financial information. On October 31, 1996, the Department filed comments. The Department stated that Continental and US WEST had obtained the necessary federal regulatory approvals to proceed with the transfer. The Department also stated that the merger/acquisition was not likely to adversely affect the financial position of US WEST. For these reasons, the Department recommended approval of the merger/acquisition.

On November 15, 1996, Continental filed a letter providing an update on the transfer of ownership. Continental noted that the Department had recommended approval of the transfer on October 30, and that the Company had anticipated Commission approval in November, prior to the scheduled closing. The Company had recently found out, however, that the next Commission meeting would not be held until December 3. Continental therefore asked the Commission to consider extenuating circumstances if the Company proceeded with the closing without prior Commission approval. Continental specifically mentioned as extenuating circumstances the fact that Continental had been unable to get on the agenda because Commission meetings had been canceled, the fact that no policy issues had been raised regarding the substance of the change of ownership, and the fact that US WEST would soon divest itself of CTCM pursuant to the requirements of the Telecommunications Act of 1996.[1] On November 25, 1996, the Department filed supplemental comments. While still recommending approval of the joint petition, the Department now also recommended referral of this matter to the Office of Attorney General (OAG) for possible penalty proceedings under Minn. Stat. § 237.461, subd. 2.

The matter came before the Commission for consideration on December 3, 1996.

FINDINGS AND CONCLUSIONS

I. THE MERGER/ACQUISITION

The joint petition proposed a merger/acquisition between two parent companies, US WEST and Continental. US WEST had previously established two classes of common stock, one representing the US WEST Communications Group (most of which is regulated) and one representing the US WEST Media Group (which is nonregulated). Continental had established an operating subsidiary, CTCM, which is certified to provide certain private line and special access service in Minnesota. Following the merger/acquisition, Continental became a wholly-owned subsidiary of US WEST, and is now operated and classified as a US WEST Media Group subsidiary.

The acquisition of CTCM by US WEST was one aspect of an overall stock merger, valued at approximately 11 and one half billion dollars, between US WEST and Continental. At the time of the transfer, CTCM had just one paying customer in Minnesota, under contract for services valued at approximately $750 per month.

Aspects of the overall merger/acquisition have been subject to review by numerous regulatory bodies of various states and by several federal agencies, including the Department of Justice, the Internal Revenue Service, the Securities Exchange Commission, and the Federal Communications Commission. No reviewing state or federal agency has opposed the proposed stock transfer.

The Telecommunications Act of 1996 requires US WEST's post-acquisition divestiture of a portion of Continental's cable television systems, including CTCM, the regulated entity in Minnesota. US WEST has sought and obtained a delay in the divestiture deadline to August, 1997. On or before that date, US WEST will sell CTCM to another company.

II. APPROVAL OF THE JOINT PETITION

The merger/acquisition between Continental and US WEST has been analyzed by approximately 400 state regulatory agencies and a number of federal regulatory bodies. No state or federal agency has opposed the proposed stock transfer.

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[1] At the December 3 meeting, Continental's representative also noted that delaying the closing would have a significant adverse economic impact on the participants.

The Department has examined the impact of the stock transfer in Minnesota and has raised no objection to the proposal. The Department has concluded that the merger/acquisition will not adversely affect the financial position of US WEST.

The stock transfer should not affect the small contract for private line service currently held by CTCM.

For these reasons, the Commission will approve the merger/acquisition between Continental and US WEST. The Commission will require the companies to file a joint affidavit of merger/acquisition completion within ten days of the date of this Order.

III. REFERRAL FOR PENALTY PROCEEDINGS

Minn. Stat. § 237.461 is the civil penalty provision under Minn. Stat. Chapter 237. The statute provides as follows:

> A person who knowingly and intentionally violates a provision of this chapter or rule or order of the commission adopted under this chapter shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of at least $100 and not more than $1,000 for each day of each violation. The civil penalties provided for in this section may be recovered by a civil action brought by the attorney general in the name of the state. Amounts recovered under this section must be paid into the state treasury.

In previous Orders, the Commission has discussed the criteria for a finding of a knowing and intentional violation. In a 1995 Order[2] finding that Kantel Corporation had knowingly and intentionally violated Commission Order requirements, the Commission explained the meaning of "knowing and intentional" for purposes of referral under the enforcement statute:

> In Claude v. Collins, 507 N.W. 2d 452,457 (Minn. App. 1993), aff'd in part, 518 N.W. 2d 843 (Minn. 1994), the Minnesota Court of Appeals drew from criminal law to determine if public officials who violated the Open Meeting Law without knowledge of the law nevertheless acted knowingly and intentionally. The Court held that an intentional act is committed when "the actor has a purpose to do the thing or cause the result specified" and the actor has "knowledge of those facts that are necessary to make the actor's conduct criminal." The Court held that the public officials who violated the Open Meeting Law committed an intentional violation of that law, notwithstanding their ignorance of the law's provisions.
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> Order at p. 6.

Applying the same criteria to the present facts, the Commission finds that Continental and US WEST knowingly and intentionally violated Minn. Stat. § 237.23 when they closed the merger/acquisition without prior Commission approval. Continental and US WEST purposefully proceeded with the closing, knowing that they had not obtained the Commission approval necessary under the statute. The companies' actions were thus a knowing and intentional violation of the Minnesota statute requiring Commission approval for the transfer

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[2] In the Matter of a Request by Kantel Communications, Inc. for Authority to Transfer Assets to Peoples Telephone Company, Inc., Docket No. P-1621,1466/PA-93-1884, ORDER DENYING RECONSIDERATION AND ALLOWING ADJUSTMENT OF REFUND.

of telephone property.

The Commission has carefully considered Continental's arguments regarding various mitigating circumstances. While the Commission understands that there were significant financial incentives to close the transaction in mid-November, and procedural difficulties in gaining the necessary approval, these circumstances do not negate the fact that the companies had "the purpose to do the thing or cause the result specified" and had "knowledge of the facts that are necessary" to constitute a violation of the statute governing property transfers. The Commission notes that the mitigating circumstances offered by the companies may appropriately be considered in the context of future penalty proceedings.

The Commission finds that Continental and US WEST knowingly and intentionally violated Minn. Stat. § 237.23 by closing their merger/acquisition before obtaining Commission approval for the property transfer. The Commission will refer this matter to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461.

ORDER

1. The Commission approves the joint petition for approval of the acquisition of Continental Cablevision, Inc. by US WEST, Inc.

2. Within ten days of the date of this Order, the companies shall file a joint affidavit of merger/acquisition.

3. The Commission refers this matter to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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