

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

**ORDER REGARDING THE
JOINT CLECS'
MOTION TO STRIKE**

On October 4, 2010, the Joint Petitioners and the Department of Commerce filed a Stipulation and Agreement and Joint Motion for Approval of Stipulation and Agreement. On October 18, 2010, the Joint CLECs filed a response in opposition to the Motion for Approval of the Stipulation and Agreement.

On October 20, 2010, the Joint Petitioners filed a letter brief in reply to the Joint CLECs response in opposition. On October 21, 2010, the Joint CLECs filed a Motion to Strike the Joint Petitioners' reply brief. On October 22, 2010, the Joint Petitioners filed a response in opposition to the Motion to Strike.

Based on all the files and proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge issues the following:

ORDER

IT IS HEREBY ORDERED as follows:

1. The Joint CLECs' Motion to Strike is **DENIED**.
2. The motion for approval of the Stipulation and Agreement reached between the Joint Petitioners and the Department of Commerce, along with the Joint CLECs' response in opposition, the Joint Petitioners' reply brief, and further discussion of this matter in hearing testimony and post-hearing submissions by the parties, will be addressed in the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge.

Date: October 25, 2010

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Motion of the Joint Petitioners and the Department of Commerce for Approval of the agreement they had reached was filed on October 4, 2010. The Joint CLECs' Response in Opposition to the Motion for Approval was filed on October 18, 2010. In their Response in Opposition, the Joint CLECs argued that the proposed settlement agreement should be rejected because (1) the process by which the agreement was developed was fundamentally flawed; and (2) the agreement fails to adequately address the substantial risks to wholesale customers and competition that are posed by the merger. The Joint CLECs requested that the Administrative Law Judge recommend that the proposed settlement be rejected or substantially modified as part of the Findings of Fact, Conclusions and Recommendation ultimately issued in this matter. They further sought to have the Administrative Law Judge immediately convene a settlement conference of all parties to the proceeding under Minn. Stat. § 237.06, subd. 1.

In their October 20 Reply Brief in support of the Motion for Approval, the Joint Petitioners disagreed with the Joint CLECs' contention that the settlement agreement was not in the public interest and asserted that the settlement agreement provided important benefits for Minnesota customers as well as certainty and stability for wholesale customers. The Joint Petitioners asserted that the Joint CLECs' filing was "untimely and unnecessary" in light of the timetable in this proceeding, and maintained that the substantive arguments made in the CLECs' Response in Opposition would be more appropriately addressed in hearing testimony and post-hearing submissions. The Joint Petitioners also noted that they were receptive to having further settlement discussions with the Intervenors on an individual or collective basis provided that those discussions did not alter the established schedule in this proceeding.

After receiving the CLECs' Response in Opposition and the Joint Petitioners' Reply Brief, the Administrative Law Judge ordered by letter dated October 21, 2010, that a settlement conference be held under Minn. Stat. § 237.06, subd. 1.

On October 21, 2010, the Joint CLECs filed their Motion to Strike the Joint Petitioners' October 20 Reply Brief. They argued that the Reply Brief should be stricken because the arguments made by the Joint Petitioners lacked a proper legal basis and the applicable rules make no provision for the filing of a reply in support of a motion. Thereafter, the Joint Petitioners filed a letter dated October 22, 2010, in which they objected to the Motion to Strike and argued that their Reply Brief properly pointed out procedural irregularities in the Joint CLECs' Response in Opposition and responded to the CLECs' request for a settlement conference.

Minnesota Rules Part 1400.6600 specifies that a response in opposition to a motion in a contested case proceeding must be filed within ten working days after the motion was received. The Joint CLECs' Response in Opposition to the Motion for Approval was filed on the tenth working day after the receipt of the motion, and thus was timely filed under that rule. While the Joint CLECs could have elected to address their opposition to the Motion for Approval in their testimony and post-hearing submissions, their decision to file a Response in Opposition to the motion was not improper.

The Joint Petitioners' filing of a Reply Brief in support of the Motion for Approval was also proper under the circumstances. Even though Minn. R. 1400.6600 does not spell out an automatic time period in which a party may file a reply brief in support of a motion, it is not uncommon for Administrative Law Judges to set a timeframe for submission of reply briefs. Moreover, even where no timeframe has been set, it is not unusual for Judges to consider and receive into the record reply briefs that are submitted by the parties. In addition, where complex issues are raised in motions, it is frequently helpful to a full and fair consideration of those issues if parties are allowed to respond to new material or arguments submitted in the response in opposition to a motion. In this case, the Joint Petitioners' Reply Brief not only responded to the substantive matters raised in the Response in Opposition, but also served to notify the Administrative Law Judge of the Joint Petitioners' position on the request for a settlement conference.

Accordingly, the Joint CLECs' Motion to Strike the Joint Petitioners' October 20, 2010, Reply Brief is denied. If the Joint CLECs wish to file a further response to any new matters raised by the Joint Petitioners in their filing, they may do so in conjunction with their post-hearing submissions.

B. L. N.