PUBLIC NOTICE

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DA 04-136
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COMMISSION SEEKS COMMENT ON APPLICATION FOR ACQUISITION OF ASSETS OF ALLEGIANCE TELECOM, INC., BY QWEST COMMUNICATIONS INTERNATIONAL INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-13

IB File No. ITC-ASG-20040112-00012

On December 31, 2003, Allegiance Telecom, Inc., Debtor-in-Possession, (ATI) (with operating subsidiaries, Allegiance) and Qwest Communications International Inc. (QCII) (with its operating subsidiaries, Qwest Communications Corporation (QCC) and Qwest Corporation (QC), (Qwest)) (Allegiance and Qwest, collectively, the Applicants) filed an application, pursuant to sections 63.03, 63.04, and 63.12 of the Commission's rules,[1] for consent to transfer from Allegiance to Qwest substantially all of the assets used by Allegiance in the provision of domestic interstate and international telecommunications services.[2]

Applicants request streamlined treatment under sections 63.03(b) and 63.12 of the Commission's rules in light of certain public interest benefits that Applicants assert would result from expeditiously consummating the proposed transaction. However, because Qwest is affiliated with a dominant local exchange carrier (LEC)[3] and some of the assets being acquired relate to Allegiance services provided in the geographic area where Qwest's LEC affiliate is dominant, we find that streamlined processing is not appropriate in this case.[4] Alternatively,

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[1] 47 C.F.R §§ 63.03, 63.04, 63.12; *see* 47 U.S.C. § 214.

[2] Allegiance filed its applications to assign its assets used for the provision of international service on January 12, 2004.

[3] For purposes of the streamlining rules, the term "carrier" includes any affiliates of such entities. *See* 47 C.F.R. § 63.03(b)(3).

[4] *See Domestic Section 214 Application Filed for Acquisition of Assets of Level 3 Communications, LLC by CenturyTel Fiber Company III, LLC d/b/a LightCore*, WC Docket No. 03-209, Public Notice, DA 03-3155 (WCB Oct. 9, 2003); *see also Domestic Section 214 Applications Filed for Acquisitions of Assets of Digital Teleport, Inc. by CenturyTel Fiber Company II, LLC*, WC Docket No. 03-99, Public Notice, DA 03-1289 (WCB Apr. 25, 2003).

Applicants request an expedited comment cycle, which we find is appropriate based on the bankruptcy considerations in this case.

ATI is a Delaware corporation with principal offices located in Dallas, Texas. Through its subsidiaries, Allegiance provides telecommunications products and services to small and medium-sized business customers, large businesses, governmental entities, wholesale customers, and other institutional users. Allegiance offers its customers a variety of services, including local, long distance and international voice services, broadband and other Internet and data services, integrated local/long distance/Internet access offerings, and wholesale services to other regional and national service providers. Allegiance provides services primarily through the use of its own switches and routing equipment, leased transport facilities, fiber optic networks, and local loops obtained from incumbent LECs. Applicants state that Allegiance operates in 36 metropolitan areas, 31 of which are outside the 14-state region in which Qwest operates as an incumbent LEC and include the territories of each of the other regional Bell Operating Companies (RBOCs). Applicants claim that nearly 90 percent of Allegiance's revenues come from these out-of-region operations.

Qwest, an incumbent LEC, provides voice, video and data services throughout the United States, with approximately 16.5 million residential and business access lines in its core 14-state local service territory.[5] Qwest, through QCC and QC, is authorized to provide interstate and international telecommunications services under section 214. QCC is a Delaware corporation and a wholly-owned subsidiary of Qwest Services Corporation (QSC). QSC is a Delaware corporation and a wholly-owned subsidiary of QCII. QCII and its domestic affiliates are also affiliated with several foreign carriers, each of which is an indirect, wholly-owned subsidiary of QCII that lacks market power in any destination market.[6] Each of these destination markets is a member of the World Trade Organization.

On May 14, 2003, ATI and certain operating subsidiaries commenced cases under chapter 11 of the Bankruptcy Code.[7] No trustee or examiner has been appointed in the chapter 11 cases, and Allegiance is authorized to operate its businesses and manage its properties as

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[5] The 14 states in Qwest's incumbent local service territory are Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

[6] Applicants state that Qwest's international affiliates are: Qwest Argentina S.R.L.; Qwest Australia Pty, Ltd.; Qwest Communications Corporation(QCC) (operating in Canada); Qwest Hong Kong Telecommunications, Limited; Qwest Communications Japan Corporation; Qwest Communications Korea, Ltd.,; Qwest Netherlands B.V.; Qwest Singapore Pte Ltd.; Qwest Netherlands B.V. (operating in Switzerland); Qwest Taiwan Telecommunications, Ltd.; Qwest Communications International Ltd. (operating in the United Kingdom). Letter from Yaron Dori, Counsel for Qwest Communications International Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 2-3 (filed January 13, 2004) (Qwest Jan. 13 Letter).

[7] *In re Allegiance Telecom, Inc., et al.,* Chap. 11 Case Nos. 03-13057-rdd, *et seq.* (Bankr. S.D.N.Y., filed May 14, 2003). The bankruptcy cases of ATI and its subsidiaries have been consolidated for procedural purposes and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As debtor-in-possession, Allegiance has retained possession of its property and businesses during the reorganization process, and there have been no significant changes in its management as a result of the chapter 11 cases.

In furtherance of its reorganization under chapter 11, on December 18, 2003, Allegiance and Qwest executed an Asset Purchase Agreement pursuant to which Qwest will acquire substantially all of Allegiance's telecommunications assets used in connection with the provision of local exchange and long distance voice services, broadband and other data services, and wholesale services (Allegiance Services).[8] Upon receipt of required regulatory approvals and closing of the transaction, Qwest will assume responsibility for the provision of telecommunications services to Allegiance Services customers and operations.[9] Through this proposed transaction Qwest will acquire Allegiance's local network facilities such as switches, collocation, and transport equipment. Qwest also will acquire Allegiance's customer contracts and assume responsibility for the balance of those contract terms. All of the Allegiance Services customers, assets and facilities located outside the Qwest service territory will be assigned to QCC. Allegiance Services customers, assets and facilities located within the Qwest local service region will be divided between QCC, QC, and QLDC in order to maintain Qwest's compliance with section 272 of the Telecommunications Act.[10]

As required by the Agreement, on December 18, 2003, Allegiance filed a motion asking the Bankruptcy Court for the Southern District of New York (Bankruptcy Court) to issue an order establishing an auction for the sale of Allegiance's assets under Section 363 of the Bankruptcy Code, designating Qwest as the "stalking horse" bidder, and setting a date by which the auction would conclude and the winning bidder be confirmed by the Bankruptcy Court. Allegiance has asked the Bankruptcy Court to require other interested bidders to submit their bids by February 9, 2004. If a qualified bid is submitted, Allegiance has requested that an auction for Allegiance's assets be held on or about February 12, 2004. Allegiance has requested a hearing on or about February 17, 2004, to confirm the winning bidder. Assuming Qwest is the successful bidder, Allegiance expects that substantially all of its telecommunications operations would be transferred to Qwest and that Allegiance would no longer offer telecommunication services. ATI will retain its customer premises equipment sales and maintenance business and certain other assets that are outside the jurisdiction of the Commission. The Agreement provides that Allegiance or Qwest may terminate the proposed transaction if it does not close by August 18, 2004. However, Qwest states that consummation of the proposed transaction as soon as

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[8] Certain assets related to Allegiance's customer premises equipment sales and maintenance businesses are not being sold to Qwest.

[9] Asset Purchase Agreement by and among Allegiance Telecom, Inc. and the other Sellers Named Herein, Jointly and Severally as Sellers, and Qwest Communications International, Inc. as Buyer, dated December 18, 2003 (the "Agreement"). A copy of the Agreement is in Exhibit C of the filed application.

[10] *See* Letter from Yaron Dori, Counsel for Qwest Communications International Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (filed January 14, 2004) (Qwest Jan. 14 Letter).

possible following the entry of the Bankruptcy Court's sale order is essential in order to eliminate the continuing uncertainty caused by Allegiance's bankruptcy and to ensure a smooth transition of Allegiance Services customers to Qwest.

The Applicants state that strong public interest benefits will accrue from combining Qwest's and Allegiance's resources in these territories, and the increased competition that will result from the proposed transaction. Applicants argue that the combination of Allegiance's assets with Qwest's existing nationwide telecommunications network will promote competition in the marketplace for local, long distance, international and data services by dramatically increasing Qwest's out-of-region presence. Applicants claim that the proposed transaction will promote one of the fundamental objectives of the Telecommunications Act and national telecommunications policy by effectuating the widespread competitive expansion of Qwest, an RBOC, into the local service territories of other incumbent LECs, including each of the other RBOCs. As a result of the proposed transaction, Applicants state that Qwest will gain personnel with significant experience in competitive entry strategies, as well as additional OSS capabilities to support the expansion of facilities-based local exchange service across the country.

Further, Applicants state that this proposed transaction will not adversely affect competition in the in-region markets where Allegiance and Qwest currently have overlapping operations because Allegiance is only one of many competitors in those markets. Applicants submit that Allegiance provides local exchange services in only five Qwest in-region metropolitan areas: Denver, Minneapolis, Phoenix, Portland, and Seattle. Applicants maintain that competition for business customers in these five cities is particularly intense and that numerous competitive LECs operate in each of those markets. Furthermore, Applicants state that Allegiance's chapter 11 cases and its current financial position effectively preclude Allegiance from expanding its business. Applicants maintain that Qwest's acquisition of the overall Allegiance Services assets and customers will permit the expansion of this business going forward while ensuring that Allegiance's customers continue to receive high-quality service without interruption.

GENERAL INFORMATION

The acquisition of assets and authorization transfer identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.[11] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to

11 *See* 47 C.F.R. § 63.52(b).

<http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: Tracey.Wilson-Parker@fcc.gov;

(3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: Dennis.Johnson@fcc.gov;

(4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: William.Dever@fcc.gov;

(5) David Krech, International Bureau, 445 12th Street, S.W., Room 7-A664, Washington, D.C. 20554; e-mail David.Krech@fcc.gov;

(6) Cynthia Bryant, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 7-A623, Washington, D.C. 20554; email: Cynthia.Bryant@fcc.gov; and

(7) Ann Bushmiller, Office of General Counsel, 445 12th Street, S.W., Room 8-A831, Washington, D.C. 20554; e-mail: Ann.Bushmiller@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson (Wireline Competition Bureau), at (202) 418-1394, Dennis Johnson (Wireline Competition Bureau), at (202) 418-0809, or David Krech (International Bureau), at (202) 418-7443.

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