

JOSEPH M. MURPHY
General Counsel

VIA E-MAIL UPLOAD

Public Utility Commission of
Oregon Filing Center
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308

Re: Petition for Enforcement of Interconnection Agreement, Eltopia Communication, LLC v. Qwest Corporation d/b/a CenturyLink Corporation

Dear Sir/Madam:

Eltopia Communications, LLC, ("Eltopia"), by and through undersigned counsel, hereby submits the enclosed Complaint for Enforcement of Interconnection Agreement against Qwest Corporation d/b/a CenturyLink ("CenturyLink"). Pursuant to OAR 860-16-0050(3)(a), Eltopia submitted a 10-day notice of intention to file complaint on July 2nd 2015, and that notice is referenced in and appended to the Complaint. Concurrent with this submission, Eltopia is filing its Complaint by e-file/upload through the Commissions e-mail Address.

1. Cover letter;
2. Complaint for Enforcement of Interconnection Agreement;
3. Exhibits A through C;
4. Notice of intent to file Petition;
5. Affidavit of Will MacHugh
6. Executive Summary of Complaint for Enforcement of Interconnection Agreement
7. Certificate of Service

Please contact me if you have questions about this submission.

Sincerely,



Joseph Murphy
General Counsel for Eltopia Communications, LLC

BEFORE THE PUBLIC UTILITY COMISSION OF OREGON

ELTOPIA COMMUNICATIONS, LLC,)	
	)	Docket No. IC-
Plaintiff,)	
	)	COMPLAINT FOR ENFORCEMENT
v.	)	OF INTERCONNECTION
	)	AGREEMENT
QWEST CORPORATION, d/b/a)	
CENTURYLINK CORPORATION)	
)	
Respondent.)	
_____)	

Pursuant to OAR 860-032-0050, Eltopia Communications, LLC. (“Eltopia”), brings the following Complaint for Enforcement of its Interconnection Agreement with Qwest Corporation d/b/a CenturyLink Corporation (“CenturyLink”). In support of its Complaint, Eltopia alleges as follows:

PARTIES

- Plaintiff. Eltopia is a Limited Liability Corporation that has been registered and classified by the Commission as a Competitive Local Exchange Carrier (“CLEC”). Eltopia is authorized to provide switched and non-switched local exchange and long distance services in Oregon.
- Respondent. CenturyLink is an incumbent local exchange company (“ILEC”), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Oregon.

JURISDICTION

- Commission Jurisdiction. The Commission has jurisdiction over this Complaint

and Respondent CenturyLink pursuant to 47 U.S.C. §§ 251-52, RCW 80.36.610, and OAR 860-032-0050.

BACKGROUND

4. Interconnection Agreement. Eltopia and CenturyLink are parties to the Local Interconnection Agreement Between [CenturyLink formerly Qwest] and Eltopia Communications, LLC. for Oregon. (“Interconnection Agreement”). The Interconnection Agreement is the result of Eltopia’s request, pursuant to 47 U.S.C. § 252(i), to opt into the Local Interconnection Agreement Between CenturyLink and Eltopia for Oregon. The Commission approved the final amended Interconnection Agreement on June 10th 2010, in Order No. 10-212. All relevant portions of the Interconnection Agreement are attached as Exhibit A.

5. Relative Use Factor (“RUF”). The RUF is used to allocate the cost of interconnection trunks between the two carriers. In Oregon, Eltopia’s share is based on the traffic it originates and the RUF is used to allocate the cost of interconnection facilities. Section 7.3.1.1.3.1 of the Oregon Interconnection Agreement provides instructions for determining and changing the RUF as follows:

The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data... If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party... Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent.

6. CenturyLink changing the RUF. In August of 2011, Will MacHugh (“Will”), the owner and President of Eltopia, requested a review of the traffic under Section 7.3.1.1.3.1 of the

Oregon Interconnection Agreement. The traffic study indicated Eltopia was pushing a lot of ISP-Bound traffic, which is not consistent with Eltopia's understanding of the traffic. The Parties scheduled calls and meetings regarding this issue, but, after two months it was never resolved and both Parties ceased communication without any changes to the RUF. Relevant portions of communication are in the Affidavit of Will MacHugh ("MacHugh Aff."). CenturyLink continued using the original RUF for two ("2") years until August 2013. Without any notice, Eltopia received an invoice for a "true-up" amount dating back to August of 2011 totaling \$61,998.88. Additionally, the RUF charges were adjusted representing a new rate doubling Eltopia's cost. Upon receiving the "True-up" bill and higher RUF rates, Will requested details and invoices for review. MacHugh Aff. ¶¶ 5-8.

7. RUF Dispute and "true-up" bill. It is standard practice for Eltopia to dispute any bills that are not supported by invoices. As such, Eltopia disputed additional charges and requested details of the back-billed amounts. Will made several requests for invoices and details until September 12th 2013, Clara Morales ("Clara") told Will the details were not available and the issue would be addressed with "Barb" when she returned the next week. MacHugh Aff. ¶¶ 5. Will never heard from Barb and Eltopia did not hear back from CenturyLink until October 17th 2013, when Mary Ann Ware ("Mary") contacted Will. Mary was not able to provide invoices or details, but she informed Will that Clara was no longer on the team and that Rose Shaw ("Rose") would be handling Eltopia's accounts. Mary stated, "It is my understanding that you were back billed RUF charges without advance notification. This is a service that we extend to our customers in advance but for reasons beyond my control you were not notified." Mary told Will the charges were valid and he would need to file a formal dispute. MacHugh Aff. ¶¶ 6.

8. Formal RUF Dispute. Filing a formal dispute requires e-mail to Wholesale.Disputes@CenturyLink.com identifying the dispute. MacHugh Aff. ¶¶ 6. Starting in December, that e-mail was added to all disputes. MacHugh Aff. ¶¶ 8. This continued until February when CenturyLink threatened to suspend services to Eltopia for failure to pay undisputed amounts prompting an emergency conference call with at CenturyLink and Eltopia personnel, including Eltopia's attorney Joe Murphy ("Joe"). Eltopia disclosed all call participants and after thirty ("30") minutes of waiting for CenturyLink to join the call, Eltopia was informed that CenturyLink participants would not be joining, citing the presence of an attorney on the call. That same evening following the attempted conference call, Joe drafted another formal dispute and sent it to all parties designated for notice under the Interconnection Agreement referencing the Dispute Resolution Process. MacHugh Aff. ¶¶ 11. Despite several attempts to invoke the Interconnection Agreement Dispute Resolution Clause, CenturyLink never assigned a representative with decision-making authority. December 18th 2014, Dennis O'Brian informed Joe that Jeff Nodland ("Jeff") may be able to assist and Joe e-mailed Jeff the same day regarding the issue.

9. RUF Dispute Negotiations between Parties. On December 19th 2014, Jeff responded to Joe's email and the parties began negotiating the dispute. During negotiations, Jeff explained that the delay in billing Eltopia was the result of a "minor billing oversight." Relevant portions of e-mail communications from Jeff are attached as Exhibit B ("Exhibit B."). Additionally, Jeff informed Eltopia that CenturyLink implemented the RUF once Eltopia failed to provide contrary RUF data then sent Notice. However, the new RUF was not implemented and billed until August of 2013, not after the Notice. Exhibit B, pg. 1. While disagreeing on

CenturyLink's right to back-bill the RUF, the Parties engaged in analyzing the traffic as it relates to RUF. While negotiating, both Parties learned that in Idaho, Oregon and Montana, some traffic was incorrectly allocated as VNXX traffic instead of ISP-Bound. Additionally, CenturyLink was not properly billing for Jointly Provided Switched Access ("JPSA") traffic in Washington. Eltopia maintains that ISP-Bound Traffic is overstated in the traffic analysis as applied to RUF. The Parties have not agreed on acceptable methods to represent contrary data. Regardless of allocating traffic responsibility, the Parties negotiated until June 9th 2015, when Eltopia received notice that CenturyLink will suspend services on July 13th 2015, because CenturyLink considers the dispute closed. However, Eltopia contends that CenturyLink's violations of the Interconnection Agreement disqualify CenturyLink from billing Eltopia for the new RUF. CenturyLink's Notice to Suspend Services has prompted Eltopia to respond with a Complaint to Enforce Interconnection Agreement.

10. Alternative Arrangements. Originally, working with CenturyLink made sense because the cost, while above average, worked for Eltopia based on CenturyLink's involvement. In 2013, when that cost doubled, it did not. As a result, while negotiating with CenturyLink, Eltopia learned that CenturyLink's rate structure would not work moving forward. Eltopia has pursued alternative interconnection arrangements to mitigate the excessive cost of CenturyLink. Eltopia engaged private companies that can provide services at roughly one-third ("1/3") the cost. Currently, Eltopia is making arrangements and moving traffic to an interconnection arrangement that aligns with their budget expectations.

11. Notice of Intent to File Complaint. Pursuant to OAR 860-016-0050(2), Eltopia served a Notice of Intent to File Complaint for enforcement of the Agreement ("Notice to File

Complaint”) on July 2nd, 2015, more than 10 days prior to the date on which this Complaint is filed with the Commission. A copy of the Notice is attached to this Complaint.

CENTURYLINK’S VIOLATION OF THE AGREEMENT

12. Failure to Agree on RUF. The Interconnection Agreement requires the Parties to agree on a new RUF in Section 7.3.1.1.3.1. Eltopia did not agree to change the RUF. CenturyLink contends that Eltopia’s request to analyze traffic qualifies the new RUF authorizing the Notice and change. However, Eltopia does not agree with CenturyLink’s traffic data and the Parties never agreed on a reasonable method demonstrating contrary traffic data. CenturyLink may not unilaterally change and back bill Eltopia’s RUF based on traffic that is in dispute.

13. Failure to Implement the RUF. CenturyLink failed to update the new RUF after providing Eltopia with Notice. Section 7.3.1.1.3.1 requires the Parties to finalize the new factor applying payments from the date of the original notice. CenturyLink claims the RUF was finalized back in 2011 because Eltopia failed to present contrary traffic data. However, Jeff’s e-mail implies that CenturyLink implemented the RUF once Notice was sent. Exhibit B, pg 1. CenturyLink did not implement or bill a new RUF until August of 2013, two (“2”) years after any notice. Regardless of the oversight, this is not a reasonable billing delay. As a point of reference for the Oregon Utility Commission, The Washington Utility and Transportation Commission determined that billing adjustments should appear on the bill for the first complete month after the date on which the conversion is deemed effective. *Re Verizon Northwest Inc., Docket No. UT-043013, 773.* CenturyLink claims the RUF was effective in August of 2011 but never made any changes until August of 2013. Even if CenturyLink is correct about the traffic

data and RUF calculation, their delay in billing robbed Eltopia of any opportunity to make interconnection changes based on cost.

14. Failure to Comply with the Dispute Resolution Clause. The Interconnection Agreement Dispute Resolution Clause, Section 5.18.1, mandates procedure when there is a dispute and CenturyLink did not comply. It states “Each Party will within seven (“7”) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute.” Eltopia began disputing the charges August 27th 2013 in an e-mail response to Clara Morales (“Clara”), then escalating the dispute to Wholesale.Disputes@centurylink.com at the instruction of Mary, and finally using an attorney to file the dispute in accordance with the Dispute Resolution Clause, citing CenturyLink Legal as per the instructions of the Interconnection Agreement on February 24th 2014. Despite several attempts to engage procedure, CenturyLink never contacted or attempted to resolve the dispute. Joe e-mailed Jeff, a representative with necessary authority, to negotiate a dispute on December 18th 2014. CenturyLink hasn’t complied with the Interconnection Agreement procedure costing Eltopia another year and four (“4”) months of disputed RUF charges. Eltopia should not be liable for additional RUF charges that accrue while CenturyLink is non-compliant with their own Interconnection Agreement.

15. Threatening to Suspend Services. The Interconnection Agreement requires CenturyLink to maintain services while undisputed amounts are paid. Section 5.4.3 states “The Billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement.” Currently,

CenturyLink is threatening to suspend Eltopia's services for failure to pay undisputed amounts. Eltopia contends that the amount referenced in the June 9th 2015 Notice to Suspend Services, attached as Exhibit C, is in dispute. CenturyLink claims that Eltopia has not provided data contradicting the damages and considers the dispute closed. Eltopia disagrees and has presented these arguments to CenturyLink over the past seven ("7") months qualifying a good faith dispute. Regardless, CenturyLink has unilaterally closed the dispute in June and notified Eltopia that services will be suspended on July 13th 2015. CenturyLink has a duty to maintain Eltopia's services while undisputed amounts are paid and the dispute is resolved.

16. Doctrine of Laches. CenturyLink should be barred from claiming payment for additional RUF charges because CenturyLink's unreasonable delay in billing and complying with the Interconnection Agreement has caused excessive billing to Eltopia. The Doctrine of Laches bars a claim if unreasonable delay causes prejudice to the defendant. TELINK, INC. v. U.S., 24 F.3d 42 at 45. CenturyLink's minor billing oversight caused a 2-year delay in RUF implementation. The Washington Utility and Transportation Commission determined that billing adjustments should appear on the bill for the first complete month after the date on which the conversion is deemed effective. Verizon Northwest Inc. Based on prior Commission decisions, a two-year delay isn't reasonable for a billing adjustment. Additionally, CenturyLink failed responding to Eltopia's disputes. Both billing and delays in dispute response total a period over three ("3") years. This delay caused Eltopia to accumulate excessive disputed charges. CenturyLink's failure to follow procedure has deprived Eltopia of the opportunity to qualify the charges causing extreme prejudice. Allowing CenturyLink to charge Eltopia for unreasonably late billing and accrued damages while failing Dispute Resolution procedures forces an inequity

on Eltopia. CenturyLink should not be allowed to charge for services without offering Eltopia an opportunity to qualify those charges and make decisions based on information.

17. Mitigation of Damages. CenturyLink breached their duty to bill in a timely manner and respond to Eltopia's multiple requests for Dispute Resolution. Eltopia cannot be called upon to pay avoidable losses resulting in an increase of charges payable to CenturyLink. Eltopia has a lost the opportunity because within six ("6") months of negotiating with CenturyLink, Eltopia found providers with comparable services for roughly one-third of the cost. CenturyLink's procedural errors have cost Eltopia valuable time that could have been used to mitigate costs. Now, CenturyLink wants to hold Eltopia liable for expenses incurred while waiting for delayed bills and Dispute Resolution. CenturyLink failed to use reasonable care and diligence in any effort to minimize the monetary injury to Eltopia and should be disqualified from collecting any monetary damages resulting from delays.

PRAYER FOR RELIEF

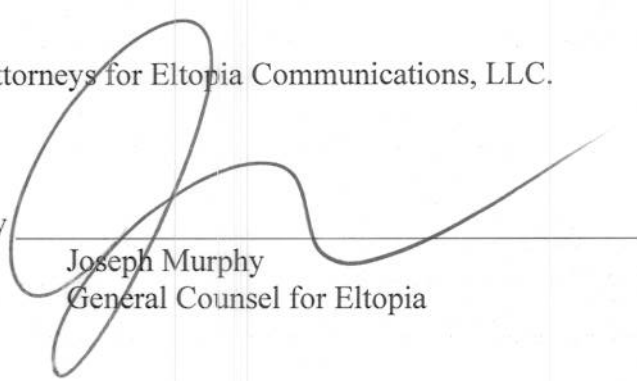
WHEREFORE, Eltopia prays for the following relief:

- A. An order from the Commission requiring that CenturyLink comply with the Interconnection Agreement, specifically that CenturyLink maintain all services to Eltopia until both Parties can reach a reasonable settlement or the commission rules on the dispute.
- B. An order from the commission requiring CenturyLink to dismiss all disputed charges as a result of CenturyLink's failure to follow procedure outlined in the Interconnection Agreement.
- C. Such other or further relief as the Commission finds fair, just and reasonable.

DATED this 14TH day of July 2015.

Attorneys for Eltopia Communications, LLC.

By



Joseph Murphy
General Counsel for Eltopia

July 2nd, 2015

Notice of Intent to File Petition

To: Attached Service List

Re: Breach of Interconnection Agreement

PLEASE BE ADVISED that pursuant to the Oregon Administrative Rule 860-016-0050, Etopia Communications, LLC. ("Etopia") intends to file a petition with the Oregon Public Utility Commission ("Commission") for enforcement of the Local Interconnection Agreement ("ICA") between CenturyLink Corporation ("CenturyLink") and Etopia, no less than ten ("10") days from the date of this Notice. Specifically, Etopia will seek injunctive relief to enforce CenturyLink's obligations to follow ICA procedures and provide services to Etopia until the Parties resolve outstanding disputes.

Section 7.3.1.1.3.1 of ICA provides as follows:

The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data.

Section 5.18.1 of the ICA provides as follows:

The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will within seven (7) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute.

Section 5.4.3 of the ICA provides as follows:

The Billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) Days following the payment due date... For reconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the services.

Notice of Intent to File Petition
July 2nd, 2015

CenturyLink failed to negotiate changes to the Parties Relative Use Factor ("RUF"). Once Eltopia was notified and billed the new RUF, Eltopia promptly disputed additional charges and requested details, which should have initiated procedure under the ICA Dispute Resolution clause. Eltopia has disputed all additional charges resulting from CenturyLink's unilateral changes to the RUF from 2011 to the present date while paying all non-disputed charges. Regardless of the ongoing dispute, CenturyLink recently notified Eltopia that services would be suspended unless payments, including disputed payments, are made in full. After several years of acknowledging this dispute, CenturyLink no longer recognizes Eltopia's dispute and has filed Notice of Suspension of Service Order Activity.

CenturyLink may not unilaterally change the RUF without agreement from Eltopia. Section 7.3.1.1.3.1 of ICA requires that "the initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data." Agreement on the RUF requires traffic between parties to be analyzed, agreed upon, and then applied to the calculation. Eltopia never agreed to results of an analysis proposing changes to traffic as applied to the RUF.

Additionally, CenturyLink failed to follow the Dispute Resolution process by failing to engage necessary representatives to negotiate the dispute for almost one and one-half (1.5) years after the initial dispute. Section 5.18.1 states "Each Party will within seven (7) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute." Eltopia began disputing the additional charges immediately in August of 2013 while consistently requesting invoices to qualify back-billed charges. To this day and despite several requests, Eltopia has not received amended invoices for services provided prior to August of 2013. The written and acknowledged dispute should have, but did not, insure communications with decision-making parties from CenturyLink within 7-days.

Finally, CenturyLink must stop threatening to suspend services to Eltopia until the dispute is resolved. CenturyLink may only suspend services to Eltopia when undisputed bills are not paid as outlined in ICA 5.4.3. Eltopia continually pays undisputed invoices and "in good faith" disputes additional RUF charges. CenturyLink recognized Eltopia's dispute three weeks ago while engaging in negotiations. Once the Parties failed to reach a resolution, Eltopia was sent the following notice:

Please be advised that Eltopia Communications LLC has undisputed past due balances on its CenturyLink account(s). This letter constitutes written notice of non-payment as may be required under applicable contract, tariff and/or state utility commission rules and regulations. Failure to respond to this letter or submit payment will result in additional treatment activity (discussed below) being initiated thirty (30) days after the date of this letter.

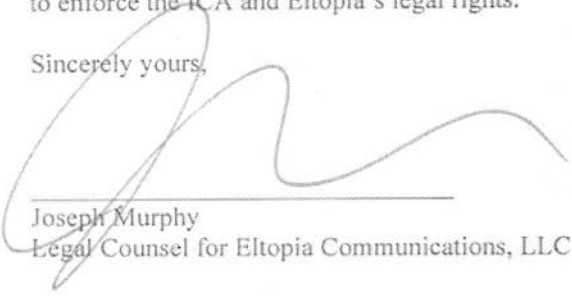
The total undisputed past due balance on your CenturyLink account(s) as of today is \$126,292.89. These balances could be associated to both active and inactive accounts. If CenturyLink does not receive payment in full on or before 07/09/2015, CenturyLink will suspend all service order activity for Eltopia Communications LLC, effective 07/13/2015 and begin the disconnection process of all Eltopia Communications LLC's services.

The charges of \$126,292.89 referenced in the Notice are still in dispute and are either incorrectly or fraudulently labeled as undisputed by CenturyLink. The Notice is inaccurate and Eltopia continues disputing additional charges related to RUF. If services are discontinued, CenturyLink will be violating ICA 5.4.3 by forcing Eltopia to pay disputed amounts restoring necessary services.

Notice of Intent to File Petition
July 2nd, 2015

CenturyLink is violating the ICA by failing to seek Eltopia's agreement changing the RUF then following procedure when Eltopia disputed unauthorized charges. Now, CenturyLink is inaccurately labeling disputed amounts as undisputed, authorizing service suspension under the ICA. If CenturyLink continues to refuse compliance with legal obligations under the ICA, Eltopia will seek to file a petition with the Commission seeking to enforce the ICA and Eltopia's legal rights.

Sincerely yours,



Joseph Murphy
Legal Counsel for Eltopia Communications, LLC

Notice of Intent to File Petition
July 2nd, 2015

SERVICE LIST

Director Wholesale Contracts
930 15th Street 6th Floor Denver, Co 80202
Email: Intagree@CenturyLink.Com
Phone: 303-672-2879

Via – Email and Legal Messenger

CenturyLink Law Department
Associate General Counsel, Interconnection
1801 California Street, 9th Floor
Denver, Co 80202
Email: Legal.Interconnection@CenturyLink.Com
Phone: 303-383-6553

Via – Email and Legal Messenger

Jeffrey T. Nodland
Senior Associate General Counsel
CenturyLink Legal Department
Suite 900
1801 California Street
Denver, Colorado 80202

Via - Email

Filing Center
Oregon State Utility Commission
PO Box 1088,
Salem, OR 97308-1088
PUC.filingCener@state.or.us

Via – Email

Exhibit A

EXHIBIT A

RELEVANT PROVISIONS OF THE WASHINGTON INTERCONNECTION AGREEMENT

Section 7.3.1.1.3.1

The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data.

Section 5.18.1

The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will within seven (7) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute.

Section 5.4.3

The Billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) Days following the payment due date... For reconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the services.

Exhibit B

From: <Nodland>, Jeff <Jeff.Nodland@CenturyLink.com>
Date: Thursday, January 22, 2015 at 12:42 PM
To: Joseph Murphy <jmurphy@eltopia.com>
Subject: RE: RUF Analysis

Joe:

I will review this more fully with our business personnel, but I do have the following initial responses:

1. On the WA RUF, you are incorrect that we applied any ISP-bound factor. CenturyLink applied Jointly Provided Switched Access MOUs, which are the CLEC's responsibility.
2. Your presumption of VNXX traffic being applied is without support. If you look at the spreadsheet, it add both VNXX and ISP bound as part of that category of traffic to be included with the CLEC's MOUs, and those are not double counted. Lines 25 and 26 are two distinct classes, one for traffic sent by Qwest/CTL, and the second for traffic transited through Qwest/CTL. Thus, there is no double counting, the totals are correct.
3. With regard to the implementation and request, Eltopia did, as you confirm, request a new RUF calculation, which was done at the time and sent back. CenturyLink merely sought confirmation by Eltopia. Eltopia then responded that it disagreed, but did not produce contrary data, nor did it state even the level of dispute that you have attempted to do. Instead, it ceased responding to CenturyLink's requests for support for Eltopia's disagreement, and when none was forthcoming, the RUF was then implemented. I will review the history of all of the implementation and discuss it with you, but we do not agree with your characterization of the history of this issue.
4. Finally, no incorrect formulas were used. As I discussed above, I believe you are misreading the data in the Excel documents and CenturyLink maintains that the information is correct as sent. That said, I will again review it with our business personnel and get back to you.

I will call you after I discuss this internally. Thanks.

Jeff

Jeffrey T. Nodland
303-992-5764

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From: Joe Murphy [<mailto:jmurphy@eltopia.com>]
Sent: Thursday, January 22, 2015 1:29 PM
To: Nodland, Jeff
Subject: RUF Analysis

Subject: Re: RUF Analysis
Date: Friday, January 23, 2015 at 8:46:03 AM Pacific Standard Time
From: Joe Murphy
To: Nodland, Jeff

I have read the whole section. CenturyLink sent Eltopia an analysis that the parties attempted to schedule a discussion that never happened. That was the point of trying to schedule a conference call with Suzanne. It was Eltopia's position that because the issue had been dropped, both parties were resigning to the original RUF. There was never a new arrangement that Eltopia agreed to.

From: <Nodland>, Jeff <jeff.nodland@CenturyLink.com>
Date: Friday, January 23, 2015 at 8:32 AM
To: Joseph Murphy <jmurphy@eltopia.com>
Subject: RE: RUF Analysis

Joe:

I will also point out that I believe that you are reading Section 7.3.1.1.3.1 incorrectly (and also, 7.3.2.2.1, regarding DTT). Here is the whole section:

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center different from the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Qwest Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. Qwest has never agreed to exchange VNXX traffic with CLEC.

The yellow highlighted language is what you seem to be relying upon. As you can see, that only applies for a change to the initial RUF, which was done many years ago, changing it from 50/50. The language highlighted in blue then applies. This states that either Party can initiate a change in RUF with actual traffic data, which will then lead to a new calculation. In 2011, Eltopia never provided any contrary data, so the RUF applications were finalized and correct (in the 2011 spreadsheet we keep trading back and forth, you will note that WA was 100/0 with all costs on Qwest/CenturyLink at that time. CenturyLink then sent the 2013 notice, and Eltopia did not respond at all in any way disputing the RUF, so it was finalized and applied. CenturyLink has followed the plain language of the ICA in the RUF implementations.

The simplest reading of the facts on this set of issues is as follows:

1. Eltopia requested new RUF calculations in 2011
2. CenturyLink, using actual traffic data, showed the new RUFs;

3. Eltopia, while disliking the calculations, never countered with contrary data;
4. Due to a simple oversight, billing was not implemented until 2013, but was correctly based on the data;
5. In addition to the backbill and implementation of ID, MT and OR, CenturyLink, pursuant to the plain language of 7.3.1.1.3.1, provided notice of new traffic data and a new RUF in WA;
6. Eltopia never disputed this in any way;
7. CTL then implemented the new WA RUF.

This is consistent with the communications between the parties and the plain language of the ICA provisions. If Eltopia wishes to litigate these issues, CenturyLink will of course pursue the full amounts and applicable late payment charges. However, it seems to be in the interests of both parties to determine a way forward that provides value to CenturyLink for its claims while finding some stability prospectively. Thus, if Eltopia wishes to make a settlement offer, CenturyLink will, of course, consider it. Absent that, CenturyLink will move forward on collections, as based on this review it is apparent that Eltopia possesses no contrary traffic data and cannot show any miscalculations anywhere, and Eltopia can respond as it sees fit.

How would Eltopia like to proceed? Thanks, I am also available to discuss.

Jeff

Jeffrey T. Nodland
303-992-5764

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From: Joe Murphy [<mailto:jmurphy@eltopia.com>]
Sent: Friday, January 23, 2015 9:08 AM
To: Nodland, Jeff
Subject: Re: RUF Analysis

Hey Jeff,

I think we are getting into the weeds a lot on these issues. Eltopia never agreed to any changes in the RUF as required by WA ICA Section 7.3.1.1.3.1. The language is clear that the initial RUF will continue until the parties agree to a new RUF. Eltopia never agreed to a new RUF. It is Eltopia's position that until the parties agree on a new RUF, the existing RUF needs to remain. However, Eltopia will agree to engage in the process of analyzing the traffic to determine a new RUF moving forward. If that is agreeable, we can begin the process immediately. If not, then lets arbitrate the dispute with the WA UTC and determine if CenturyLink has the authority to change the RUF without any agreement from Eltopia. Let me know what you would like to do. Thanks Jeff.

Exhibit C

EXHIBIT C



June 09, 2015

Eltopia Communications LLC
Will Machugh
1770 Airport Way So
Seattle, WA 98134-1618

Document Number: WLC&C.06.09.15.C.150866
Subject: Undisputed Past Due Balances

Letter sent via Email and Certified Return Receipt

Please be advised that Eltopia Communications LLC has undisputed past due balances on its CenturyLink account(s). This letter constitutes written notice of non-payment as may be required under applicable contract, tariff and/or state utility commission rules and regulations. Failure to respond to this letter or submit payment will result in additional treatment activity (discussed below) being initiated thirty (30) days after the date of this letter.

The total undisputed past due balance on your CenturyLink account(s) as of today is \$126,292.89. These balances could be associated to both active and inactive accounts. If CenturyLink does not receive payment in full on or before 07/09/2015, CenturyLink will suspend all service order activity for Eltopia Communications LLC, effective 07/13/2015 and begin the disconnection process of all Eltopia Communications LLC's services.

CenturyLink may be notifying state utility commissions regarding the action discussed in this notice and may petition state commissions as needed for the authority to take appropriate actions, up to and including termination of services. Please comply with any applicable state end customer notification requirements.

Furthermore, in accordance with applicable contract and/or tariffs, CenturyLink may demand a security deposit as a condition of its continuing provision of services to Eltopia Communications LLC.

If service order processing is suspended, all outstanding charges and a security deposit or additional deposit will be due prior to restoration of service order processing. Late payment charges will be assessed to all past due balances in accordance with applicable contracts and/or tariffs.

Please send payment to the appropriate remittance address located on the return document of your bill. If you have already paid in full, please disregard this notice.

If you have any questions regarding this notice, please do not hesitate to contact me at the telephone number or email address listed below. CenturyLink appreciates your business, and we look forward to working with you to resolve these issues so that we can continue to provide you with excellent customer service.

BEFORE THE PUBLIC UTILITY COMISSION OF OREGON

ELTOPIA COMMUNICATIONS, LLC,)	
	)	Docket No. IC-
Petitioner,)	
	)	AFFIDAVIT OF WILL MACHUGH
v.	)	IN SUPPORT OF PETITION FOR
	)	ENFORCEMENT OF INTERCONNECTION
QWEST CORPORATION, d/b/a	)	AGREEMENT
CENTURYLINK CORPORATION)	
)	
Respondent.)	
_____)	

I, Will MacHugh, state as follows:

1. I am the owner and President of Eltopia Communications, LLC. ("Eltopia"), the Petitioner in the above-captioned proceeding. I have personal knowledge of the facts set forth in this Affidavit, and if called to testify thereto I could and would do so.

2. Eltopia is a competitive local exchange ("CLEC"). Eltopia provides basic local exchange service to customers in Oregon. The Oregon Utilities Commission granted Eltopia's application to provide competitive local exchange services in Order No. 08-422 on August 13, 2008.

3. Eltopia and CenturyLink are parties to the Local Interconnection Agreement Between CenturyLink Corporation ("CenturyLink") and Eltopia for Oregon. ("Interconnection Agreement"). The Interconnection Agreement is the result of Eltopia's request, pursuant to 47 U.S.C. § 252(i), to opt into the Commission- approved Local Interconnection Agreement Between CenturyLink and Eltopia, for Oregon.

4. Eltopia and CenturyLink exchange traffic pursuant to the Interconnection Agreement and have done so since the Agreement became effective. Relevant portions of the Interconnection

Agreement and e-mail communications are attached as Exhibits A and B.

5. In late August of 2013 CenturyLink, without notifying Eltopia, adjusted Eltopia's Relative Use Factor ("RUF") and account balances reflecting a "true-up" on accounts that were allegedly billed incorrectly. Upon receiving invoices from Clara Morales ("Clara") that included the "true-up" amounts with higher RUF billing, I requested details for review. I made several requests until on September 12th Clara told me the details were not available and the issue would be addressed with "Barb" when she returned the next week.

6. I did not hear back from CenturyLink's team until October 17th. Mary Ann Ware ("Mary") contacted me informing me that Clara was no longer on the team and that Rose Shaw ("Rose") would be handling Eltopia's accounts. Additionally, Mary stated "It is my understanding that you were back billed RUF charges without advance notification. This is a service that we extend to our customers in advance but for reasons beyond my control you were not notified." Mary told me the charges were valid and I would need to file a formal dispute by e-mailing the dispute to Wholesale.Disputes@CenturyLink.com.

7. Again, on October 25th I informed Mary that I had not received the invoices needed to make a formal dispute. As such, I made another request for the outstanding invoices and details of the RUF for the back-billed accounts.

8. I continued paying the undisputed RUF charges. Additionally, I waited for Billing and Collections to send the requested invoices that we needed to review before a formal dispute could be issued. On December 10th 2013, I started including Wholesale.Disputes@CenturyLink.com in all of my dispute e-mails at the request of Mary.

9. On January 3rd, 2014, I informed CenturyLink, again, that we had never agreed to a new RUF as required by the Interconnection Agreement. Undeterred, I was sent another disconnection notice

in February prompting me to involve my attorney, Joe Murphy (“Joe”) while we were on a business trip in Barcelona.

10. On February 24th, 2014 I had to schedule an emergency call with CenturyLink to prevent suspension of services for failure to pay the disputed RUF charges while in Barcelona. I scheduled a call with Mary, including Joe, to discuss payments that were made for the non-disputed accounts and reminding Mary that I was still disputing the additional RUF charges. After scheduling the call and disclosing the participants, Joe Murphy and I waited on a long distance call from Barcelona for about 30 minutes before receiving an e-mail that the parties from CenturyLink would not be joining because my attorney was present on the call.

11. After the failed conference call, Joe drafted another formal dispute that evening and sent it to the parties designated for notice under the Interconnection Agreement referencing the Dispute Resolution Process. It is my understanding that within 7 days we should have had a representative with decision-making authority contact us.

12. I continually paid the undisputed RUF charges and filed disputes for the additional amount for almost another year while we waited for a representative with decision-making authority to contact us. Eventually, Joe was directed to Jeff Nodland (“Jeff”) as a potential representative that could assist us with the dispute. Joe e-mailed Jeff on Thursday December 18th, 2014 and Jeff responded on the 19th. This was, to my knowledge, the first contact Eltopia had with a person designated with the necessary authority to negotiate the dispute.

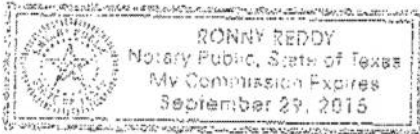
13. Joe and Jeff have been negotiating the traffic and application to the RUF since Jeff has been involved. Until recently, we had hoped to resolve the dispute outside of litigation, but over the past 6 months, both parties have been unable to resolve the dispute.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge, information and belief.

Will J. MacHugh
Will MacHugh

SUBSCRIBED AND SWORN to before me this 13th day of JULY, 2015.



Roddy
Notary Public in and for the State of
Texas, residing in Collin County
My Appointment Expires: 09/29/2015

BEFORE THE PUBLIC UTILITY COMISSION OF OREGON

ELTOPIA COMMUNICATIONS, LLC,)	
	)	Docket No. IC-
Plaintiff,)	
	)	ELTOPIA COMMUNICATIONS, LLC,
v.	)	EXECUTIVE SUMMARY OF
	)	COMPLAINT FOR ENFORCEMENT
QWEST CORPORATION, d/b/a	)	OF INTERCONNECTION AGREEMENT
CENTURYLINK CORPORATION)	
)	
Respondent.)	
_____)	

Pursuant to OAR 860-032-0050, Eltopia Communications, LLC. (“Eltopia”), brings the following Complaint for Enforcement of its Interconnection Agreement with Qwest Corporation d/b/a CenturyLink Corporation (“CenturyLink”). In support of its Complaint, Eltopia alleges as follows:

Eltopia and CenturyLink are parties to the Local Interconnection Agreement Between [CenturyLink formerly Qwest] and Eltopia Communications, LLC., for Oregon. (“Interconnection Agreement”). The Interconnection Agreement is the result of Eltopia’s request, pursuant to 47 U.S.C. § 252(i), to opt into the Local Interconnection Agreement Between CenturyLink and Eltopia for Oregon. The Commission approved the final amended Interconnection Agreement on June 10th 2010, in Order No. 10-212.

The dispute concerns the Relative Use Factor (“RUF”) used to allocate the cost of interconnection trunks between the two carriers and the Dispute Resolution Clause of the Interconnection Agreement. In August of 2013, Eltopia received an invoice for a “true-up” amount dating back to August of 2011 totaling \$61,998.88. Additionally, the RUF charges were

adjusted representing a new rate doubling Eltopia's cost. Upon receiving the "True-up" bill and higher RUF rates without supporting invoices, Eltopia disputed. It is standard practice for Eltopia to dispute any bills that are not supported by invoices.

After disputing the additional charges and paying the undisputed amounts for roughly one year and four months, Joe was directed to contact Jeff Nodland and on December 18th 2014, Jeff responded to Joe's email the next day and the Parties began negotiating the dispute. During negotiations, Jeff explained that the delay in billing Eltopia was the result of a "minor billing oversight." Additionally, Jeff informed Eltopia that CenturyLink implemented a new RUF once Eltopia failed to provide contrary RUF traffic data. However, the new RUF was not implemented and billed until August of 2013, roughly two years after any notice.

Regardless of ongoing disagreement, the Parties negotiated until June 9th 2015, when Eltopia received notice that CenturyLink will suspend services on July 13th 2015 because CenturyLink considers the dispute closed. Eltopia disagrees and served a Notice of Intent to File Complaint for Enforcement of the Interconnection Agreement on July 2nd, 2015, more than 10 days prior to the date on which this Complaint is filed with the Commission.

The Interconnection Agreement requires the Parties to agree on a new RUF and Eltopia did not agreed to any changes. CenturyLink contends that Eltopia's request to analyze traffic qualifies the new RUF authorizing the Notice and change. Eltopia disagrees because CenturyLink failed to update and bill the new RUF after providing Eltopia with Notice in 2011. Regardless of any oversight, Eltopia contends this is not a reasonable billing delay.

As a point of reference for the Oregon Utility Commission, The Washington Utility and Transportation Commission determined that billing adjustments should appear on the bill for the

first complete month after the date on which the conversion is deemed effective. In this case, it was deemed effective in August of 2011. CenturyLink's delay in billing has robbed Eltopia of any opportunity to make interconnection changes based on cost.

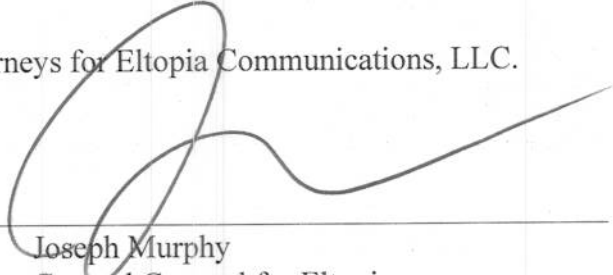
In addition to billing delays, CenturyLink hasn't complied with the Interconnection Agreement Dispute Resolution Clause costing Eltopia another year and four ("4") months of disputed RUF charges. Eltopia made every effort to engage the Dispute Resolution Clause engaging a qualified representative to negotiate the dispute. CenturyLink never complied by assigning a qualified representative within seven days and waiting one year and four months is not reasonable.

In addition to breach of Interconnection Agreement provisions, CenturyLink's delay causing excessive billing to Eltopia violates the Doctrine of Laches by monetarily prejudicing Eltopia. Eltopia cannot be called upon to pay avoidable losses resulting in an increase of charges payable to CenturyLink. Eltopia has a lost opportunity because CenturyLink's procedural errors have cost Eltopia time that could have been used to mitigate costs as demonstrated by use of private companies costing one-third of CenturyLink's interconnection costs. Now, CenturyLink wants to hold Eltopia liable for all expenses. Bottom line is that CenturyLink failed to use reasonable care and diligence in their effort to minimize the monetary injury to Eltopia and should be disqualified from collecting any monetary damages resulting from delays.

DATED this 14th day of July 2015.

Attorneys for Eltopia Communications, LLC.

By



Joseph Murphy
General Counsel for Eltopia

CERTIFICATE OF SERVICE

IC-_____

I, Joseph Murphy, hereby certify that on the 14th day of July, 2015, true and correct copies of the foregoing COMPLAINT FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT were served upon the following persons via e-mail transmission to the email addresses listed.

Director Wholesale Contracts
930 15th Street 6th Floor Denver, Co 80202
Email: Intagree@Centurylink.Com
Phone: 303-672-2879

Via – Email/FedEx

CenturyLink Law Department
Associate General Counsel, Interconnection
1801 California Street, 9th Floor
Denver, Co 80202
Email: Legal.Interconnection@Centurylink.Com
Phone: 303-383-6553

Via – Email/FedEx

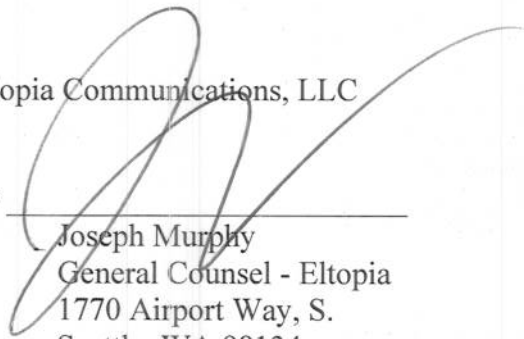
Jeffrey T. Nodland
Senior Associate General Counsel
CenturyLink Legal Department
Suite 900
1801 California Street
Denver, Colorado 80202
E-mail - Jeff.Nodland@CenturyLink.com

Via - Email/FedEx

Dated this 14TH day of July, 2015

Etopia Communications, LLC

By



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General Counsel - Etopia
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Seattle, WA 98134
(509)-981-3024
JMurphy@Etopia.com