

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: April 24, 2018

REGULAR  X  CONSENT       EFFECTIVE DATE                       N/A                      

DATE: April 16, 2018

TO: Public Utility Commission

FROM: Kay Marinos *KM*

THROUGH: *E* Jason Eisdorfer and *BAC* Bryan Conway

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: Request to reject Negotiated Interconnection Agreement submitted pursuant to Section 252(e) of the Telecommunications Act of 1996.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission reject the Negotiated Interconnection Agreement (Agreement) between CenturyLink Communications, LLC and Beaver Creek Cooperative Telephone Company filed in Docket No. ARB 1170.

**DISCUSSION:**

Issue

Whether two specific provisions included in the Agreement are inconsistent with the public interest, convenience, and necessity, and thereby constitute grounds for rejection of the Agreement.

Applicable Rule or Law

Under federal law, incumbent local exchange carriers (ILECs) have a variety of duties, including the duty to provide for interconnection with their networks under certain circumstances and to negotiate in good faith regarding such interconnection. See 47 USC § 251(c). On receiving a request for interconnection, services, or network elements pursuant to 47 USC § 251, an incumbent local exchange carrier (ILEC) may negotiate and enter into a binding agreement with the requesting telecommunications carrier, which must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. 47 USC § 252(a).

All such negotiated agreements must be submitted to the state commission for approval. See 47 USC § 252(a),(e). A state commission must approve or reject such agreements within 90 days of filing, or the agreement is deemed approved under 47 USC § 252(e)(4). If it rejects the agreement or a portion thereof, the state commission must make written findings as to its deficiencies. 47 USC § 252(e)(1).

Under 47 USC § 252(e)(2), the Commission may reject a negotiated interconnection agreement or any portion thereof only if it finds that:

- (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

A local exchange carrier is required to make available any interconnection, service, or network element provided under an agreement approved under 47 USC § 252 to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 USC § 252(i).

### Analysis

Through this Agreement, CenturyLink Communications, LLC (CenturyLink), as a competitive local exchange carrier (CLEC), seeks to interconnect with Beaver Creek Cooperative Telephone Company, a rural ILEC.<sup>1</sup> CenturyLink is therefore the requesting telecommunications carrier under 47 USC § 252(a).

The Agreement includes two provisions that have not been included in any interconnection agreements previously approved by the Commission. These provisions, located in Sections 17.18 and 17.19 of the Agreement, are contrary to the public interest, convenience and necessity for the following reasons, which are discussed in more detail below. First, the provisions intrude on authority that properly lies with state and federal regulatory bodies, respectively, not with the parties. Second, the subject matter of the provisions is outside the scope of the interconnection agreements such that the provisions inappropriately serve as conditions for interconnection in a way that risks being against the public interest. Third, the provisions are problematically vague.

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<sup>1</sup> CenturyLink Communications, LLC is the CLEC entity of CenturyLink, Inc., which also owns entities that are ILECs in Oregon. CenturyLink's ILEC entities are not parties to this Agreement.

Section 17.18 of the Agreement states that:

*CLEC agrees it will pay into the Oregon Universal Service Fund (OUSF) on the same basis as ILEC.*

As an initial matter, this provision goes beyond a statement that the CLEC must contribute to the OUSF according to existing Commission regulations and orders. This provision would bind the CLEC into paying into the OUSF on its Interconnected Voice over Internet Protocol (VoIP) traffic, as the ILEC does in connection with the Phase III Stipulation in Docket No. UM 1481, which was approved by the Commission in Order No. 16-093. The fact that this agreement encompasses Interconnected VoIP traffic is apparent from Section 7.4 of the Agreement, which states: "CLEC represents and warrants that all of its traffic originates and terminates in Internet Protocol format. Accordingly, all traffic exchanged between the Parties shall be VoIP-PSTN traffic unless the Parties agree to exchange traffic in Internet Protocol format."

By going beyond a statement that the CLEC must contribute to the OUSF according to existing rules and orders, Section 17.18 of the Agreement intrudes on the Commission's authority to design and set policy for the OUSF. An interconnection agreement is not the proper venue for a determination that a particular provider should contribute. With respect to this issue, Staff has requested that the Commission open rulemaking docket AR 615 to require Interconnected VoIP providers to contribute to the OUSF. Staff does not anticipate an outcome in AR 615 that would be inconsistent with an Interconnected VoIP provider like the CLEC here contributing to the OUSF. But in the event that such an outcome in AR 615 were to occur, then the implementation of Section 17.18 of the Agreement would be problematic because it would be inconsistent with that outcome.

Section 17.18 is also out of the scope of the interconnection agreement. Whether the ILEC and CLEC parties to this Agreement contribute to the OUSF on their VoIP traffic has nothing to do with the CLEC's right to interconnect or the rates or terms of that interconnection. Instead, it reflects an additional condition for interconnection that could potentially serve to disadvantage the CLEC by requiring it to participate in an unrelated regulatory program in order to interconnect with the ILEC's network.

Finally, Section 17.18 language is vague, as it is unclear what is meant by "on the same basis" as the ILEC. To the extent that it refers to the ILEC's actual contributions, it is not possible for the CLEC here to know the basis on which the ILEC contributes to the OUSF. To the extent that the parties intend the provision to reflect the operation of some existing rule or law, that rule or law is not sufficiently identified.

Section 17.19 of the Agreement states that:

*CLEC is an affiliate of Qwest Corporation d/b/a CenturyLink, CenturyTel of Oregon, Inc. d/b/a CenturyLink, CenturyTel of Eastern Oregon, Inc. d/b/a CenturyLink, and United Telephone of the Northwest Incorporated d/b/a CenturyLink, all of whom receive federal and state universal service program support. As such, CLEC recognizes and agrees that it does not constitute an unsubsidized competitor of ILEC for federal support purposes affecting ILEC.*

Staff objects to this provision for many of the same reasons as described in connection with Section 17.18. The provision requires the CLEC to agree to classify itself as an “unsubsidized competitor” with respect to the ILEC for the purposes of the federal universal service program. While a carrier may be in charge of the initial position that it takes with respect to this particular status, the FCC has the ultimate decision-making authority over that status. Which entities are designated as unsubsidized competitors may change on an annual basis, including potentially in 2019. Section 17.19 therefore acts as a condition for interconnection that prospectively requires the CLEC to take a certain position in an unrelated regulatory program, rather than speaking to the rates or terms of the interconnection that is the subject matter of the Agreement. Finally, Section 17.19 is also vague and does not refer to any existing rules or laws in a way that might provide clarification of what it means.

In most cases when Staff objects to provisions in a negotiated agreement or an amendment to such an agreement, Staff shares the relevant concerns with the parties to the agreement and the parties to the agreement then explain, remove or replace the provisions to which Staff objects and, when appropriate, refile the agreement.<sup>2</sup> In accordance with this process, Staff conveyed the relevant objections and concerns to both parties to this Agreement. At this time, it appears that the parties to the Agreement will not act to either withdraw or file a revised Agreement before such time as the Commission must act on this Agreement under the 90-day review requirement.

### Conclusion

For the foregoing reasons, the provisions set forth in Section 17.18 and Section 17.19 of the Agreement are not consistent with the public interest, convenience, and necessity. The Commission should therefore reject the Agreement under 47 USC § 252(e)(2)(A).

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<sup>2</sup> While this process generally serves to limit the number of recommendations to reject agreements that are taken to the Commission for its consideration, the Commission has rejected several amendments to interconnection agreements in the past. For example, see Order No. 04-678 entered November 22, 2004, Order No. 05-014 entered January 10, 2005, and Order No. 05-982 entered September 12, 2005.

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While 47 USC § 252(e)(2)(A) also provides for the rejection of a portion of an agreement, Staff considers it cleaner to reject the entire Agreement in this docket. The parties can at that point choose for themselves whether to renegotiate, amend and refile the agreement to exclude Section 17.18 and Section 17.19, or proceed another way.

**PROPOSED COMMISSION MOTION:**

Reject the Agreement between CenturyLink Communications, LLC and Beaver Creek Cooperative Telephone Company filed in Docket No. ARB 1170 as inconsistent with the public interest, convenience, and necessity.

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