MINNESOTA DEPARTMENT OF COMMERCE

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December 31, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: **In the Matter of the Adoption of an Interconnection Agreement by Hiawatha Broadband Communications, Inc., Pursuant to Section 252(i)**
Docket No. P6267, 5561/IC-15-1020

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce (Department) in the above referenced matter. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rates Analyst

KD/lt
Attachment

MINNESOTA DEPARTMENT OF COMMERCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P6267, 5561/IC-15-1020

I. BACKGROUND

On December 1, 2015, Hiawatha Broadband Communications (HBC) filed a "Request to Compel Embarq, Minnesota, Inc. dba CenturyLink (CenturyLink EQ) to Proceed with the Section 252 (i) Adoption of Interconnection Agreement." HBC sought to adopt the existing interconnection agreement (ICA) between CenturyLink EQ and Hutchinson Telecommunications, Inc. (HTI) approved by the Minnesota Public Utilities Commission (Commission) on June 10, 2015, in Docket P-421, 5561, 430/IC-14-189.

HBC stated that "CenturyLink is attempting to circumvent the network disclosure terms of the HTI ICA by preemptively requiring the CLEC to disclose how and where it will interconnect before acting upon the ICA Adoption."[1] HBC stated its belief that "CenturyLink cannot place pre-conditions on HBC's choice of an ICA to be adopted pursuant to Section 252(i) of the Telecommunications Act."[2]

On December 9, 2015, the Commission issued a notice seeking comments regarding HTI's request. The Commission invited comment with respect to four specific questions, in addition to other related concerns. The Commission established a comment period requesting initial comments by December 31, 2015 and reply comments by January 21, 2016.

On December 11, CenturyLink EQ filed a letter indicating that it had not refused HBC's request, but had asked for information from HBC regarding the manner in which it intends to interconnect with CenturyLink. CenturyLink EQ requested that the Commission reject HBC's petition, and require that HBC "explain its intended interconnection so that CenturyLink can evaluate whether or not it will consent to HBC's opt-in request."[3]

On December 28, 2015, initial comments were filed by HBC.

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[1] HBC December 1 petition, page 1.
[2] *Id*.
[3] CenturyLink EQ December 11 letter, page 2.

II. THE COMMISSION'S QUESTIONS

The Commission requested comments in response to the following questions:

A. Does 252(i) of the Telecommunications Act of 1996 grant HBC the right to adopt the Hutchinson/CenturyLink ICA without CenturyLink's participation or consent?
B. Are there any terms or conditions in the Hutchinson/ CenturyLink ICA that would warrant the Commission rejecting a request by HBC to adopt the ICA?
C. Does HBC's letter filed on December 2, 2015 constitute a request to adopt the Hutchinson/CenturyLink ICA?
D. Does 252(e)(4), in the absence of Commission action, result in approval of HBC's request on January 1, 2016 (thirty days), or on March 1, 2016 (ninety days)?

III. COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

The Minnesota Department of Commerce (Department) provides the following responses to the Commission's questions:

A. SECTION 252(I) OF THE TELECOMMUNICATIONS ACT GRANTS HBC THE RIGHT TO ADOPT THE HTI/CENTURYLINK EQ ICA WITHOUT CENTURYLINK'S PARTICIPATION OR CONSENT.

47 U.S.C. §251(i) states that "a local exchange carrier *shall* make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement" (emphasis added). The statute *requires* CenturyLink EQ to make the existing, Commission approved HTI/CenturyLink EQ agreement, including all terms and conditions, available for adoption to any other requesting telecommunications carrier. The statute requires only that HBC *request* the adoption, and does not appear to contemplate that the requestor provide additional information, nor does it provide for circumstances under which the request may be rejected or disallowed.

FCC Rule 47 C.F.R. §51.809 (a)[4] also makes clear that it is CenturyLink EQ's *obligation* as an incumbent local exchange carrier to make the ICA available, *in its entirety* and *without*

[4] 47 C.F.R. §51.809, entitled "Availability of agreements to other telecommunications carriers under section 252(i) of the Act," states in subpart (a) that:

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

unreasonable delay to any requesting telecommunications carrier upon the same rates, terms, and conditions as those provided in the agreement.

While CenturyLink EQ pointed out in its December 11, 2015 letter that 47 C.F.R. §51.809 (b) provides that the obligation in subpart (a) does not apply when the ILEC proves to the state commission that the costs of providing a particular agreement to a requesting telecommunications carrier are greater than the costs of providing it to the original telecommunications carrier, CenturyLink EQ has not provided such proof.

B. THERE ARE NO TERMS OR CONDITIONS IN THE HUTCHINSON/CENTURYLINK ICA THAT WOULD WARRANT THE COMMISSION REJECTING A REQUEST BY HBC TO ADOPT THAT ICA.

The Department is not aware of any terms or conditions in the Hutchinson/CenturyLink ICA that would warrant rejection of the request.[5] The Commission reviewed and approved the final Hutchinson/ CenturyLink EQ ICA on August 21, 2015, in Docket P-421, 5561, 430/IC-14-189.

While CenturyLink claimed, in its email response to HBC, that "the Hutchinson Traffic Exchange Agreement relied heavily on the specific network interconnection arrangements that were unique to Hutchinson,"[6] the terms of Sections 37 (Local Interconnection Trunk Arrangement), 38 (Network Interconnection Methods), and 39 (Points of Interconnection) are not specific to HTI, nor do they preclude a network interconnection arrangement that is different from that chosen by HTI.

C. HBC'S LETTER FILED ON DECEMBER 2, 2015 CONSTITUTES A REQUEST TO ADOPT THE HUTCHINSON /CENTURYLINK ICA.

The HTI/CenturyLink ICA clearly must be made available for adoption. Given CenturyLink EQ's apparent reluctance to respond, HBC appears to be requesting, in essence, that the Commission approve its request for adoption of the HTI/CenturyLink EQ agreement.

D. SECTION 252 (E)(4) DOES NOT APPEAR TO CONTEMPLATE A TIME FRAME IN WHICH, ABSENT COMMISSION ACTION, AN ADOPTION UNDER 251(I) WOULD BE DEEMED "APPROVED."

The Department is unaware of language in Section 252 or elsewhere that specifically addresses the time frame for Commission approval of adopted ICAs, presumably because the adoptive ICAs have themselves already been reviewed and approved. In light of that fact, a thirty day default time frame would seem more appropriate. However, the Commission has solicited comments and reply comments that extend well beyond a thirty day framework. Given the lack of clear direction in Section 252(e)(4) with respect to the approval of adoptive ICAs, the Department recommends that a default approval date not be set by the

[5] See also the Department's August 10, 2015 comments in Docket 14-189.
[6] HBC Attachment 2.

Commission in the current case, and that the Commission move forward expeditiously to consider the comments of all parties prior to making its determination.

E. OTHER RELEVANT CONCERNS

An incumbent LEC is specifically required to provide technical information about the incumbent LEC's network facilities ***sufficient to allow the requesting carrier to achieve interconnection.***[7] The Commission recognized this in the HTI/CenturyLink EQ case, noting in its Order that "[w]ithout access to relevant comparative information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and the incumbent's facilities – with anticompetitive results."[8] The Commission therefore approved language in the ICA to clarify what specific information, at minimum, must be disclosed by CenturyLink EQ to the requesting CLEC in order to meet the "sufficient" standard required by 47 C.F.R. 51.305(g).

Section 39.2 of the HTI/CenturyLink EQ ICA (which HBC has chosen to adopt) states:

> CenturyLink shall disclose to CLEC three pieces of information – 1) the CenturyLink EQ switch code; 2) the Point of Interconnection CLLI code or the physical location; and the interface level for all locations within a LATA where CenturyLink has established facilities for interconnection with a third party carrier. This existing interconnection information shall be provided within 15 Business Days of a written request from CLEC that specifies the geographic area of the customers it plans to serve. CLEC may request additional information regarding the individual points of interconnection.[9]

CenturyLink EQ stated that it had not *refused* HBC's request to adopt, but rather had asked for information from HBC regarding the "manner in which it intends to interconnect"[10] and the "points of interconnection that [HBC would] need"[11] in order for CenturyLink to evaluate the costs.

HBC stated in its December 2 petition that, by "asserting [that] the CLEC must first disclose where and how it interconnects before it will be allowed to adopt the ICA, CenturyLink is attempting to circumvent the network disclosure terms of the HTI ICA."[12]

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[7] In the Matter of the Petition of Hutchinson Telecommunications for Arbitration of an Interconnection Agreement with CenturyLink EQ pursuant to 47 U.S.C. §252(b), Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement, June 10, 2015, page 13. See also 47 C.F.R §305(g).
[8] *Id*., page 16-17, citing to In the Matter of Implementation of the of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98 (Local Competition Order) paras 172 and 205.
[9] CenturyLink/HTI Interconnection and Traffic Exchange Agreement, page 30, Section 39.2.
[10] CenturyLink Letter, page 1.
[11] CenturyLink email November 23rd response to HBC's November 2nd request.
[12] HBC petition page 1.

Clearly, the information must be provided by CenturyLink EQ to the requesting CLEC ***prior to*** a CLEC choosing where and how to interconnect. To the extent that CenturyLink EQ has withheld or delayed the network information required by Section 39.2 and 47 C.F.R. §51.305, until *after* HBC provides CenturyLink EQ with details about how it wishes to interconnect, the Department agrees with HBC. Such a practice creates an insurmountable "catch 22" for the requesting CLEC. It is unreasonable for CenturyLink EQ to withhold or delay providing information about its network that HBC needs in order to make decisions about where and how it will interconnect until HBC provides interconnection details (which HBC cannot provide until it obtains the information that CenturyLink EQ has withheld.)[13]

The Department recommends that the Commission make clear in its Order that CenturyLink EQ has the obligation to provide the Section 39.2 network information to any requesting CLEC choosing to adopt the HTI/CenturyLink EQ ICA, ***prior to*** requiring details about the CLEC's proposed interconnection.

IV. COMMISSION OPTIONS

A1. Find that Section 252(i) of the Telecommunications Act of 1996 grants HBC the right to adopt the Hutchinson/CenturyLink ICA without CenturyLink's participation or consent.

A.2. Find that Section 252(i) of the Telecommunications Act of 1996 does not grant HBC the right to adopt the Hutchinson/CenturyLink ICA without CenturyLink's participation and/or consent.

B.1. Find that HBC's letter filed on December 2, 2015 constitutes a request to adopt the HTI/CenturyLink EQ ICA.

B.2. Find that HBC's letter filed on December 2, 2015 does not constitute a request to adopt the HTI/CenturyLink EQ ICA.B.1.

C.1. Find that there are no grounds to reject HBC's request to adopt the HTI/CenturyLink EQ ICA.

C.2. Find that the HTI/Century Link EQ ICA that HBC seeks to adopt, discriminates against a telecommunications carrier not a party to the agreement, that the implementation of the agreement is not consistent with the public interest, or that the agreement does not meet the requirements of Section 251 of the Telecommunications Act.

D.1. Find that Section 254(e)(4), in the absence of Commission action, results in approval of HBC's request within 30 days of the request (January 1, 2016).

D.2. Find that Section 254(e)(4) in the absence of Commission action results in approval of HBC's request within 90 days of the request (March 1, 2016).

D.3. Find that Section 254(e)(4) provides no direction with respect to a date by which an adoption may be deemed approved absent Commission action, and move forward to consider the case without setting a default approval date.

[13] The Department notes that 47 C.F.R. §51.809 (a) requires that "an incumbent LEC shall make available *without unreasonable delay* to any requesting carrier any agreement in its entirety to which the LEC is a party that is approved by a state commission…"

E.1. Clarify that CenturyLink EQ has the obligation to provide the Section 39.2 network information to any requesting CLEC choosing to adopt the HTI/CenturyLink EQ ICA, *prior to* requiring details about the CLEC's proposed interconnection.
E.2. Take no action with respect to clarification of CenturyLink's network disclosure obligations.
F.1. Approve HBC's request to adopt the HTI/CenturyLink EQ ICA.
F.2. Reject HBC's request to adopt the HTI/CenturyLink EQ ICA.
F.3 Find that HBC's adoption of the HTI/CenturyLink EQ ICA has been deemed approved pursuant to Section 252 (e)(4) of the Telecommunications Act.
F.4. Other action of the Commission's choosing.

V. DEPARTMENT RECOMMENDATION

The Department recommends options A1, B1, C1, D3, E1, and F1 or F3.

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CERTIFICATE OF SERVICE

I Marcella Emeott, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. P-6267, 5561/IC-15-1020
Dated this 31st day of December 2015

/s/Marcella Emeott

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