



Jason D. Topp
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December 30, 2015

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

Re: In the Matter of Hiawatha Broadband Communications, Inc.'s Request to Compel Embarq Minnesota, Inc. dba CenturyLink to Proceed with Section 251(i) Adoption of Interconnection Agreement MPUC Docket No. P-6267, 5561/IC-15-1020

Dear Mr. Wolf:

Enclosed for filing are CenturyLink EQ's Comments regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm
Enclosure
cc: Service List

200 South 5th Street, Room 2200
Minneapolis, MN 55402
www.centurylink.com

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

Re: In the Matter of Hiawatha Broadband Communications, Inc.’s Request to Compel Embarq Minnesota, Inc. dba CenturyLink to Proceed with Section 251(i) Adoption of Interconnection Agreement MPUC Docket No. P-6267, 5561/IC-15-1020

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Dianne Barthel hereby certifies that on the 30th day of December, 2015, she e-filed a true and correct copy of CenturyLink EQ’s Comments by posting it on www.edockets.state.mn.us. Said document was also served on the service list via U.S. mail and e-mail as designated with the Minnesota Public Utilities Commission.

/s/ Dianne Barthel _____
Dianne Barthel

Subscribed and sworn to before me
this 30th day of December, 2015.

/s/ LeAnn M. Cammarata _____
Notary Public

My Commission Expires Jan 31, 2020

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
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**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of the Adoption of an
Interconnection Agreement by
Hiawatha Broadband Communications,
Inc. pursuant to Section 252(i)**

Docket No. P- 6267, 5561/IC-15-1020

EMBARQ MINNESOTA, INC. DBA CENTURYLINK EQ'S COMMENTS

Embarq Minnesota, Inc. dba CenturyLink EQ (“CenturyLink”) submits these comments in response to the Commission’s notice in this matter. CenturyLink has not yet taken a position as to whether or not Hiawatha Broadband Communications, Inc. (“HBC”) is or is not entitled to opt-in to the interconnection agreement it seeks. CenturyLink is not opposed to allowing CLECs to opt-in to the HTI interconnection agreement. One CLEC represented by the same consultant has provided the interconnection information CenturyLink seeks here and CenturyLink agreed that opt-in was appropriate and signed the agreement.¹

CenturyLink filed a letter in this docket on December 11, 2015 outlining its position on these issues. FCC rules establish that an incumbent’s obligation to allow a CLEC to opt-in to an agreement under 47 U.S.C. § 252(i) is not unfettered. To the contrary, 47 CFR 51.809(b)(1) provides that the obligation to allow adoption does not apply where the ILEC

¹ Docket No: P-527, P430/IC-15-897 (order approving agreement)

proves that “[t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.” This rule has been upheld on appeal to the courts².

In order to determine whether or not the costs of providing interconnection to HBC are greater than the costs associated with the original interconnection agreement, CenturyLink has asked HBC for information about how it intends to interconnect. Absent that information, CenturyLink has no basis upon which to determine whether or not HBC has the right to opt-in to the agreement.

FCC rules require that HBC provide such information as a part of its duty to negotiate in good faith. 47 CFR 51.301(b) requires that “[a] requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.” That duty includes an obligation to provide information necessary to reach agreement. “Refusing to provide information necessary to reach agreement . . .”³ is an example of bad faith negotiation identified in the rules.

HBC’s proposed approach would turn the concept of negotiating interconnection agreements on its head. Interconnection agreements would act as tariffs, which a CLEC could choose to adopt without any limitations. The FCC did not adopt such an approach and its rules have been approved by reviewing courts.⁴

²*Cf.*, *New Edge Network, Inc. v. FCC*, 461 F.3d 1105 (9th Cir., 2006)(upholding rule against CLEC challenge to all or nothing requirements).

³ 47 CFR §51.301(c)(8)(2015).

⁴ *New Edge Network, Inc. v. FCC*, 461 F.3d 1105 (9th Cir. 2006).

Question 1: Does 252(i) grant HBC the right to adopt the Hutchinson/CenturyLink ICA without CenturyLink’s participation or consent?

Response:

252(i) does not grant such a right. The FCC has adopted 47 CFR 51.809(b)(1) interpreting Section 252(i) and issued a rule requiring that the obligation to allow adoption does not apply where the ILEC proves that “[t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.” Furthermore, Section 252(e) gives the Minnesota Commission the authority to approve agreements reached through negotiations (Section 252(a)) and arbitration (Section 252(b)).

HBC’s position does not fit within either of these categories. HBC’s petition would most appropriately be classified as a complaint for an alleged violation of the obligations in section 252(i) because CenturyLink has asked for interconnection information before agreeing to allow opt-in. Such a complaint would be meritless in light of the obligation to negotiate in good faith⁵ and limitations on the obligation of an incumbent to allow opt-in set forth in FCC rules.⁶ HBC has refused to provide CenturyLink the information necessary to determine the costs of providing interconnection.

Question 2: Are there any terms or conditions in the Hutchinson/CenturyLink ICA (compliance filing of August 5, 2015 in Docket 14-183) that would warrant the Commission rejecting a request by HBC to adopt that ICA?

⁵ 47 CFR 51.301(b) requires that “[a] requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.” That duty includes an obligation to provide information necessary to reach agreement. “Refusing to provide information necessary to reach agreement . . .” is an example of bad faith negotiation identified in the rules in 47 CFR § 51.301(c)(8)(2015).

⁶ 47 CFR 51.809(b)(1).

Response:

This question cannot be answered without the information CenturyLink seeks. It also misses a key pre-condition of the statute – that the agreement either be submitted from negotiation or arbitration⁷. Neither of those situations exists at this time. CenturyLink has not yet determined whether or not it will consent to an opt-in and asserts it is entitled to information about HBC’s interconnection plans before it can make such a decision.

Question 3a: Does HBC’s letter filed on December 2, 2015 constitute a request to adopt the Hutchinson/CenturyLink ICA?

Response:

If it does constitute such a request the request should be rejected because the only situations in which a commission is authorized to approve an interconnection agreement are those in which the agreement has been reached through arbitration or negotiation. Neither of those situations exists today. It’s letter can best be characterized as a complaint for a violation of Section 252(i).

Question 3b: 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)?

Response:

Because HBC’s proposed agreement was neither negotiated nor arbitrated as set forth in 252(e)(1), these deadlines do not apply.

⁷ 47 U.S.C. § 252(e)(1) “APPROVAL REQUIRED - Any interconnection agreement **adopted by negotiation or arbitration** shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.” (emphasis added)

Dated this 30th day of December, 2015.

EMBARQ MINNESOTA, INC. DBA
CENTURLINK EQ

/s/ Jason D. Topp _____

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