

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: 11/24/2014 *Agenda Item # 5

Company: **Qwest Corporation dba CenturyLink QC and Dex Media East, Inc.**

Docket No. **P421-14-775**

In the matter of a Joint Petition by Qwest Corporation dba CenturyLink QC and Dex Media East, Inc., pursuant to Minn. State. § 237.081 Subd. 1, for a Variance of Rules 7810.2900 and 7812.0600 requiring distribution of a printed residential white pages directory to all customers served in Minnesota.

Issue I. What action should the Commission take regarding the granting of the request for variance from these rules requiring distribution of a printed residential white pages directory?

Issue II. If the petition is approved, what, if any, conditions should be required?

Issue III. If the petition is approved, what, if any, variance should be granted to competitive service providers?

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Relevant Documents

Initial Filing, Qwest Corporation dba CenturyLink QC and DEX Media East	09/12/2014
Notice of Comment Period, PUC	10/01/2014
Comments, Minnesota Cable Communications Association	10/23/2014
Reply Comments, Qwest Corporation dba CenturyLink QC and DEX Media East	11/04/2014
Comments, Minnesota Department of Commerce	10/24/2014

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I. Statement of the Issues

Issue I. What action should the Commission take regarding the granting of the request for variance from these rules requiring distribution of a printed residential white pages directory?

Issue II. If the petition is approved, what, if any, conditions should be required?

Issue III. If the petition is approved, what, if any, variance should be granted to competitive service providers?

II. Background

Commission Rules 7810.2900 and 7812.0600 currently require delivery of a printed white pages directory to each customer of a local service provider, except where an offer for a directory is made and explicitly refused by the customer.

Minn. Rule 7829.3200, Entitled “other Variances” provides for the Commission to grant a departure from practices set forth in rules when it determines the following

Subpart 1. When granted. The commission shall grant a variance to its rules when it determines that the following requirements are met:

- A. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. Granting the variance would not adversely affect the public interest; and
- C. Granting the variance would not conflict with standards imposed by law.

Subp. 2. Conditions. A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

On September 11, 2014 Qwest dba CenturyLink QC and Dex Media East, Inc. (the “Petitioners”), filed a joint petition, pursuant to Minn. Stat. § 237.081, Subd. 1, for a variance of Minn. Rules 7810.2900 and 7812.0600 regarding the distribution of telephone directories in the territory and exchanges served by Qwest Corporation dba CenturyLink in the State of Minnesota.

The Petitioners indicated that CenturyLink has, by contract, delegated to Dex Media the directory publishing and distribution obligations. Dex Media East, Inc. filed a broader petition in Docket No. P-421/AM-12-1236 nearly two years ago requesting a variance of these rules. The Petitioners observe that although the earlier petition was denied by the Commission, potential benefits to eliminating unwanted directories were acknowledged and the Commission initiated a rulemaking (Docket No. U-999-R-13-459) to examine the need for saturation distribution of residential white pages directories on a state wide basis. In light of the time remaining in the

rulemaking process, the Petitioners request more immediate relief from their obligation to provide residential white pages directories on a saturation basis.

Further, the Petitioners state that their recommended conditions are modeled on those in the Order approving the petition from Frontier and Citizens in Docket No. P-405,407/AM-12-140.

The Commission solicited comments and reply comments regarding this petition for variance of the rules requiring distribution of a printed residential white pages directory to all customers. In particular, comments were requested on the adequacy and completeness of the proposed conditions, including the need for the Petitioners to provide an electronic alternative to the printed residential white pages directory, the means by which customers would be notified of changes, and the means by which customers would inform the Petitioners of their choice from among the options available.¹

III. Comments on Conditions

All parties agree that the Petitioner's request meets the threshold for relief through the granting of a variance. Their differences are over the extent to which conditions are placed on the variance, if granted. In their Comments, recommended conditions are presented by the Petitioners, the Minnesota Cable Communications Association, and the Department.

Petitioners

The Petition requests that the Commission grant the requested variance for a period of two years from the date of the Commission's Order, or until the Directory Rules are amended, whichever is earlier. They recommend conditions similar (but not identical) to those that the Commission placed in granting the variance on a similar petition from Frontier and Citizens in Docket No. P-405,407/AM-12-140. Excluded is the requirement requiring the acceptance of electronic files, (discussed in Staff Analysis). If the requested variance is granted, the Petitioners indicate that:

- Printed residential white pages directory would be made available to customers of CenturyLink and competitive providers within CenturyLink's service areas upon request and at no change;
- CLECs will be informed of any plans to stop distributing printed residential white pages;
- If competitive providers request that Dex Media accept electronic files identifying customers that request a residential white pages directory, Dex Media will negotiate in good faith a process for exchange of electronic files; and

¹ A more fully developed presentation of this proceeding's Procedural Background, Recent Requests for Variances of Rules 7811.0600 and 7810.2900, Issues, and Legal References are presented in Comments of the Minnesota Department of Commerce (the Department) of October 24, 2014, Pages 1-6.

- The delivery bag, cover and table of contents for the business and government directory will inform customers they can request a printed copy of the residential white pages and provide a toll free number to make the request.

In their initial petition, the Petitioners are silent with regard to making available an electronic alternative to the printed residential white pages directory.

Minnesota Cable Communications Association

The Minnesota Cable Communications Association's (MCCA) Comment support a process whereby subscribers must request a residential directory be delivered to them. Nonetheless, they find the initial conditions set out by the joint Petitioners to be reasonable but lacking:

- A. a clear prohibition against any carrier gaining a retail advantage through the provisioning of a wholesale service;
- B. a clear requirement that Dex as the directory publisher must accept electronic files from competitive service providers, and
- C. the same variance being granted to CenturyLink QC for competitive service providers operating in CenturyLink's service territory.

The Minnesota Cable Communications Association argues that the required acceptance of electronic files from competitive service providers will reduce data entry errors and militate against anticompetitive cross marketing.

The MCCA also notes the competitive service providers are not in the directory publication business and rely on CenturyLink QC and Dex to fulfill white pages directory delivery obligations for them, thereby necessitating their being granted the same variance that CenturyLink QC might be provided.

Department

The Department notes that Dex Media is not a local service provider subject to the jurisdiction of the Commission, but is instead obligated as a directory publisher and distributor only through its contractual relationship with CenturyLink QC. The Department therefore recommends that, if the Commission finds that the variance should be granted, any applicable conditions be placed on CenturyLink QC.

The Department recommends the following conditions (note the Department's filing of October 24, 2014 inadvertently created two sections out of item B):

- A. CenturyLink QC shall provide (or direct its directory publisher to provide) a printed residential white pages directory to the customers of CenturyLink QC and the customers of CenturyLink QC's competitive providers upon request and at no charge by CenturyLink QC or Dex Media.

- B. CenturyLink QC shall continue, or shall direct that its directory publisher continue, the saturation delivery of printed directories that include emergency information, business and government white page, consumer guide pages and other required informational pages.
- C. CenturyLink QC shall make electronic white page residential directories for Minneapolis, Northwestern Suburban, Western Suburban, St. Paul, Forest Lake Area, St. Croix Valley, White Bear Lake Area, South Metro, and Southeast St. Paul Suburbs available on its website.
- D. CenturyLink QC shall notify affected customers in the areas covered by the Minneapolis, Northwestern Suburban, Western Suburban, St. Paul, Forest Lake Area, St. Croix Valley, White Bear Lake Area, South Metro, and Southeast St. Paul Suburbs directories that residential white pages are not included in the business and government telephone directories for those areas, and that customers may request the residential white pages. The notice shall provide a toll free number which customers may call to request residential white pages directories, and shall direct customers to CenturyLink QC's website where the residential white pages may be accessed.
- E. CenturyLink QC shall state (or direct that its directory publisher state) on the delivery bag of the business and government telephone directory that customers can request a printed copy of the residential white pages. The message shall provide a toll free number which customers may call to request residential white pages directories, and shall direct customers to CenturyLink QC's website where the residential white pages may be accessed.
- F. CenturyLink QC shall not market services, including through its affiliate or publisher, other than directories to such requesting customers.
- G. CenturyLink QC shall not require, nor shall it permit its directory publisher to require, customers to divulge any personally identifiable information other than their name and delivery address in order to request a printed residential white pages directory.
- H. CenturyLink QC shall not require (and shall direct that its directory publisher not require) users to create an account, log in, or otherwise provide any personally identifiable information in order to access any electronic directory to which CenturyLink directs its customers.

IV. Reply Comments on Conditions

On October 4, 2014 Reply Comments were received from the Petitioners indicating agreement with the Department's recommendations with three edits which the Department does not oppose. The three edits relieve CenturyLink QC of the obligation to host its electronic directory on its own website. The edits (with corrected letter designations) are as follows:

- C. CenturyLink QC shall make electronic white page residential directories for Minneapolis, Northwestern Suburban, Western Suburban, St. Paul, Forest Lake Area, St. Croix Valley, White Bear Lake Area, South Metro, and Southeast St. Paul Suburbs available **by a link** on its website.

- D. CenturyLink QC shall notify affected customers in the areas covered by the Minneapolis, Northwestern Suburban, Western Suburban, St. Paul, Forest Lake Area, St. Croix Valley, White Bear Lake Area, South Metro, and Southeast St. Paul Suburbs directories that residential white pages are not included in the business and government telephone directories for those areas, and that customers may request the residential white pages. The notice shall provide a toll free number which customers may call to request residential white pages directories, and shall direct customers to a CenturyLink QC's website where the residential white pages may be accessed.
- E. CenturyLink QC shall state (or direct that its directory publisher state) on the delivery bag of the business and government telephone directory that customers can request a printed copy of the residential white pages. The message shall provide a toll free number which customers may call to request residential white pages directories, and shall direct customers to a CenturyLink QC's website where the residential white pages may be accessed.

The Petitioners acknowledge MCCA's clarification that the variance should apply to competitive service providers in the affected territory stating "This was specifically stated in the Petition (Paragraph 33A) and is essential ..."

The Petitioners also acknowledge the MCCA's desire that CenturyLink QC be prohibited from marketing itself to callers requesting directories stating that the "Petitioners have no issue with this condition.

The request by MCCA that the acceptance of electronic files be required is strenuously opposed by the Petitioners on grounds more fully developed in the following Staff Analysis.

V. Staff Analysis

The Department, MCCA and Commission staff agree that, with conditions, the Petitioner has met the criteria for the granting of a variance from Rules 7810.2900 and 7812.0600.

Conditions presented by the Department, as modified by the Petitioners in their Reply Comments, address the public interest concerns of informing consumers and enabling them to meet their needs through their choice of printed or electronic residential directories while prohibiting potentially anticompetitive behavior by the Petitioners. While the Petitioners might prefer some of the recommended conditions be left to their discretion, they and the Department are not opposed to the Department's conditions as modified. Commission staff agrees that the conditions presented in the Petitioner's Reply Comments accomplish these goals.

Remaining Differences

There are 2 remaining differences between the MCCA and the Petitioners:

- 1) Should the Commission require Dex Media, as the directory publisher, to accept electronic files from competitive service providers rather than "... to negotiate in good fit a process for exchange of electronic files"?
- 2) Should the Commission provide the same variance being granted to CenturyLink QC for competitive service providers operating in CenturyLink's service territory?

Electronic Files

In the Commission's Order approving the petition from Frontier and Citizens in Docket No. P-405,407/AM-12-140 contained a provision directing that:

Frontier shall accept electronic files from competitive providers identifying customers that request a residential white pages directory and Frontier may establish the process for exchange of electronic files by amending interconnection agreements, if necessary.

In its comments, the MCCA continues to assert that this is the most efficient means of information exchange, avoiding typographical errors, and is a protection against the possibility of marketing to customers contacting the company directly.

In their Reply Comments, the Petitioner's rebut the MCCA by stating:

... Dex Media does not accept such electronic files from CenturyLink in Minnesota nor from any ILEC it contracts with in any state. Indeed, in all 43 states that Dex Media serves as an official ILEC directory publisher, customers contact Dex Media directly for their directory needs. The LECs are not involved and do not need to be involved. The unstated premise of MCCA's request—that large numbers of its members' customers will be contacting the members to request printed residential white pages—is not realistic, efficient, or consistent with Dex Media's planned messaging to consumers based on years of successful implementation of upon request distribution in numerous states.

If sharing of electronic files were truly necessary, then MCCA would be able to point to experience under the Frontier variance, which does include the requested condition. Dex Media is the official publisher for Frontier in Minnesota, but it has not had a single request from an MCCA member to transmit electronic files of their customers who have requested printed residential white pages. Customers of MCCA's members in Frontier's service areas—just as customers of CLECs in dozens of other states—have had no difficulty calling the Dex Media toll free number or going to the Dex Media website to express their directory preferences directly to the directory provider. The current practice is efficient and it is working. (See Reply Comments p. 5-6.)

The Petitioners summarize in their Reply Comments that there is no need for the requirement because the existing process works, that a dialogue similar to present discussions must still occur to execute any such data transfer, and that the Petitioners have no duty under federal or state law to do so. (See Reply Comments p. 5-6.)

The Petitioner's rebuttal is also consistent with the current status of the Commission's rulemaking (Docket No. U-999-R-13-459) regarding the need for saturation distribution of residential white pages directories on a state wide basis.

Variance for Competitive Service Providers

The MCCA asserts the need for the variance granted CenturyLink QC to apply to competitive service providers in the affected territory. The Petitioner's acknowledge MCCA's concerns stating in Reply Comments that "This was specifically stated in the Petition (Paragraph 33A) and is essential ..." (Emphasis added).

On this issue, both parties are relying on the Commission's Order in Frontier and Citizens in Docket No. P-405,407/AM-12-140 as their model. In that Order, the first ordering paragraph (1.A) directs:

Frontier shall provide a printed residential white pages directory to the customer of competitive providers upon request and at no charge by Frontier.

The Petitioners indicate that their initially proposed restriction (in the Petition at Paragraph 33A) is modeled on this language stating that:

Petitioners shall provide a printed residential white pages directory to the customers of CenturyLink and competitive providers within CenturyLink's service areas upon request and at no charge by CenturyLink or Dex Media.

While this (and the Department's proposed first restriction) does draw upon parallel conditioning language from the Commission's Order in Frontier and Citizens in Docket No. P-405,407/AM-12-140, in that docket the Commission also provided in ordering paragraph 3 that:

The Commission grants a variance to Minn. R. 7811.0600, subps. 1(F) and (G) and Minn. R. 7812.0600, subps. 1(F) and (G) for all certified local service providers in Frontier's service area. ... [for the same length of time as provided Frontier.]

The Petitioners and the Department make no mention of such a provision in this proceeding and are silent with regard it's inclusion as a means of meeting MCCA's concerns.

Commission staff observes that the inclusion of an explicit granting of a variance for all certified local services providers in the service area clarifies that all service providers are operating under the same conditions.

VI. Commission Options

Issue I: What action should the Commission take regarding the granting of the request for variance from these rules requiring distribution of a printed residential white pages directory?

- A. Approve variance for Qwest Corporation dba CenturyLink QC pursuant to Minn. State. § 237.081 Subd. 1, for a Variance of Rules 7810.2900 and 7812.0600 requiring distribution of a printed residential white pages directory to all customers served in Minnesota for a period of time lasting until whichever occurs first: a) the passage of 2 years from the date of Order; or b) the time of completion of the rulemaking in Docket No. U-000-R-13-459.
- B. Approve **with conditions** variance for Qwest Corporation dba CenturyLink QC pursuant to Minn. State. § 237.081 Subd. 1, for a Variance of Rules 7810.2900 and 7812.0600 requiring distribution of a printed residential white pages directory to all customers served in Minnesota for a period of time lasting until whichever occurs first: a) the passage of 2 years from the date of Order; or b) the time of completion of the rulemaking in Docket No. U-000-R-13-459.
- C. Deny petition.

Issue II: If the petition is approved, what, if any, conditions should be required?

- A. Do not require any further conditions.
- B. Require the conditions originally proposed by the Department.
- C. Require the conditions proposed by the Department as modified in the Petitioner's Reply Comments.
- D. Require the conditions proposed by the Department as modified in the Petitioner's Reply Comments and a condition requiring that CenturyLink QC shall accept electronic files from competitive providers identifying customers that request a residential white pages directory and CenturyLink may establish the process for exchange of electronic files by amending interconnection agreements, if necessary.

Issue III. If the petition is approved, what, if any, variance should be granted to competitive service providers?

- A. Grant a variance to Minn. R. 7811.0600, subps. 1(F) and (G) and Minn. R. 7812.0600, subps. 1(F) and (G) for all certified local service providers in CenturyLink QC's service area in this proceeding. The variance shall be effective for a period of time lasting until whichever occurs first: a) the passage of 2 years from the date of Order; or b) the time of completion of the rulemaking in Docket No. U-000-R-13-459.
- B. Do not grant a variance.

VII. Staff Recommendations

Staff recommends Options I.B, II.C and III.A.