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December 11, 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:

Embarq Minnesota, Inc., dba CenturyLink EQ ("CenturyLink") submits this letter in response to the petition for an interconnection agreement submitted by Hiawatha Broadband Communications ("HBC"). This dispute arises because HBC seeks to opt-in to an interconnection agreement between CenturyLink and HTI that resulted from arbitration. CenturyLink has not refused HBC's request. It has, however, asked for information from HBC regarding the manner in which it intends to interconnect with CenturyLink.

CenturyLink's position is squarely supported by FCC rules. The rules provide that (1) HBC is obligated to provide CenturyLink with the information necessary to make a decision and (2) the costs associated with interconnection are the primary issue that governs whether or not a CLEC is entitled to opt-in to an existing interconnection agreement.

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 . . ." ¹ is an example of bad faith negotiation identified in the rules.

The FCC's rule regarding opt-in make clear that information associated with the costs of interconnection fall squarely within the scope of "information necessary to reach agreement." 47 CFR 51.809(b)(1) provides that the obligation to allow adoption does not apply where the ILEC proves that "[t]he costs of providing a particular agreement to the

¹ 47 CFR §51.301(c)(8)(2015).

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requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.”

There is some reason to believe that the costs associated with HBC’s interconnection request might be different from the costs associated with the HTI agreement. HTI is affiliated with an incumbent provider and therefore was able to take advantage of existing incumbent facilities. The existence of ILEC facilities was a significant factor identified by the Commission in adopting interconnection language in the HTI arbitration.² HBC does not appear to be affiliated with an ILEC, and it is unclear whether or not a request from HBC will require CenturyLink to build new facilities or expand existing capacity.

CenturyLink cannot judge the costs associated with HBC’s request without understanding how HBC intends to interconnect. As a part of its obligation to negotiate in good faith, HBC is obligated to provide CenturyLink with sufficient information to allow it to evaluate this issue. CenturyLink is therefore well within its rights in seeking the information it seeks from HBC.

CenturyLink respectfully requests that the Commission reject HBC’s petition and issue an order requiring HBC to explain its intended interconnection so that CenturyLink can evaluate whether or not it will consent to HBC’s opt-in request.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm
Enclosures
cc: Service List

² See, e.g., *In the Matter of the Petition of Hutchinson Telecommunications, Inc., for Arbitration of an Interconnection Agreement with Embarq Minnesota Inc., dba CenturyLink EQ*, Dkt P-421. 5561, 430/IC 14-189 (Jan. 16, 2015), adopted by Commission in its *Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement* (June 10, 2015), ¶¶ 121, 128.

Second, as noted by Department witness Ms. Doherty, the facts of this case differ from the facts of the *Charter Arbitration* in a number of significant respects. For example, because there is already ample capacity between Glencoe and Osseo, HTI’s request will not require CenturyLink EQ to construct new facilities. Also, CenturyLink EQ’s extra costs are not due to HTI’s choice, they are the result of how CenturyLink EQ decided to configure its network. The Department sees no unfairness arising from requiring CenturyLink EQ to bear that cost.

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