

# Minnesota Public Utilities Commission

## *Staff Briefing Paper*

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Meeting Date: February 26, 2016.....\*\* Agenda Item # 3

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Companies: Hiawatha Broadband Communications, Inc.; Federated Telephone Cooperative & CenturyLink EQ

Docket Nos. P-6267, 5561/IC-15-1020  
In the Matter of the Adoption of an Interconnection Agreement by Hiawatha Broadband Communications, Inc. pursuant to Section 252(i)

P-430, 523, 5561/IC-16-94  
In the Matter of the Adoption of an Interconnection Agreement by Federated Telephone Cooperative pursuant to Section 252(i)

- Issues:
- (1) Should the Commission require Hiawatha and/or Federated to provide CenturyLink with the interconnection information it seeks?
  - (2) Should the Commission approve Hiawatha's and/or Federated's requests to adopt the Hutchinson-CenturyLink interconnection agreement?

Staff: Kevin O'Grady.....651-201-2218

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The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## *Relevant Documents*

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Hutchinson-CenturyLink Interconnection Agreement (14-189) .....	August 5, 2015
Hiawatha Petition (15-1020).....	December 2, 2015
CenturyLink Letter (15-1020).....	December 11, 2015
Hiawatha Comments (15-1020).....	December 28, 2015
Federated Petition to Intervene (15-1020) .....	December 29, 2015
DOC Comments (15-1020).....	December 31, 2015
CenturyLink Comments (15-1020).....	December 31, 2015
CenturyLink Reply (15-1020).....	January 21, 2016
Federated Reply (15-1020 & 16-94).....	January 21, 2016
CenturyLink Comments (16-94).....	February 9, 2016
DOC Comments (16-94).....	February 10, 2016
Gardonville-CenturyLink Adoption Letter (15-897).....	October 6, 2015

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## *Filing Summary*

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**On December 2, 2015**, Hiawatha Broadband Communications, Inc. (Hiawatha or HBC) asked the Commission to “compel CenturyLink EQ to proceed with HBC’s requested ICA [Interconnection Agreement] adoption pursuant to Section 252(i) of the Act without further delay.” Hiawatha seeks to adopt the terms and conditions of the ICA that currently governs the relationship between Hutchinson Telecommunications, Inc. (Hutchinson) and CenturyLink EQ.<sup>1</sup> The Commission assigned this matter to Docket 15-1020.

**On December 11, 2015**, CenturyLink filed a letter explaining that it requires information from Hiawatha so that it may first evaluate the cost to CenturyLink of providing the ICA to Hiawatha.

**On December 28, 2015**, Hiawatha filed comments in response to a Commission request.

**On December 29, 2015**, Federated Telephone Cooperative (Federated) petitioned to intervene in the proceedings.

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<sup>1</sup> Approved by the Commission on August 21, 2015, in Docket 14-189.

**On December 31, 2015**, both CenturyLink and the Minnesota Department of Commerce (DOC) filed comments in response to a Commission request.

**On January 21, 2016**, CenturyLink and Federated filed reply comments. Federated also voiced a request to adopt the current Hutchinson-CenturyLink ICA. The Commission assigned Federated's adoption request to Docket 16-94.

**On February 9, 2016**, CenturyLink filed comments stating that it believes the issues raised by Federated's request are identical to those raised by the Hiawatha request. CenturyLink submitted the comments and reply comments that it had submitted previously in the Hiawatha docket.

**On February 10, 2016**, DOC restated the arguments made in its December 31, 2015, submission stating that its Hiawatha comments apply equally to the Federated petition.

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## *Issues and Parties*

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### *Central Issue*

The Telecommunications Act of 1996 governs the establishment of the rates, terms and conditions of some interconnection agreements (ICAs; that is, contracts) between Incumbent Local Exchange Carriers (ILECs, eye-leks) and new market entrants, Competitive Local Exchange Carriers (CLECs, see-leks). Section 252(i) makes provision for the adoption of an existing ILEC/CLEC agreement by a different CLEC that also seeks to compete with that ILEC. Parties may refer to adoption as "opting in."

Hiawatha seeks to develop a contractual relationship with CenturyLink that is identical to the contractual relationship between Hutchinson and CenturyLink. That is, Hiawatha seeks to adopt (opt into) the Hutchinson-CenturyLink ICA.

Federated also seeks to opt in to the Hutchinson-CenturyLink ICA.

CenturyLink believes that, pursuant to FCC rules, it may have reason to challenge Hiawatha's and Federated's desired adoptions on the basis that the cost of providing the ICA to Hiawatha and Federated may be higher than the cost of providing the ICA to Hutchinson. To date,

CenturyLink has not argued that a cost difference exists, only that it is entitled to information from Hiawatha and Federated sufficient to allow it to examine specific costs. **CenturyLink makes two main arguments, somewhat intertwined, with respect to its request for information:**

- (a) The explicit argument is that Hiawatha and Federated must provide the requested information, and that a refusal to do so is to violate the Act's requirement that CLECs must negotiate in good faith.**
- (b) The other argument, implied by the request, is that the requested information is relevant to a cost analysis.**

Hiawatha and Federated believe that they are not required to provide the information sought by CenturyLink.

### **Parties to the Dockets**

CenturyLink EQ is an ILEC providing local service in the territory previously served by Embarq. In this docket parties may use the terms "CenturyLink" and "Embarq" interchangeably. CenturyLink QC is also an ILEC, but it operates in the service area previously held by Qwest. CenturyLink QC is not a party to this proceeding.

Hiawatha is a Winona-based CLEC offering local service in competition with CenturyLink.

Federated is a Chokio-based CLEC offering local service in competition with CenturyLink. Federated stated that it, too, approached CenturyLink with a request to adopt the Hutchinson ICA, and that CenturyLink responded with a request for specific information from Federated. No party objected to Federated's petition to intervene and, as such, intervention was granted administratively pursuant to Minn. Rules Part 7829.0800, subparts 4 and 5.

Hutchinson is not a party to this proceeding.

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## ***Background***

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### ***Opening Markets to Competition***

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (the Act), which established requirements and procedures intended to open existing local telecommunications markets to competition. The FCC, charged by Congress with the task of implementing the Act, summarizes the purpose of the Act, as follows:

The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition.<sup>2</sup>

With respect to the goals of the Act, the FCC states:

Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition.<sup>3</sup>

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<sup>2</sup> Federal Communications Commission. First Report and Order. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act*. FCC 96-325, CC Docket 96-98, August 1, 1996 (*Local Competition Order*), ¶ 1, footnote omitted.

<sup>3</sup> *Local Competition Order*, ¶ 3.

## Local Competition Order

The *Local Competition Order* (often called the *First Report and Order*) provides the initial and core regulatory framework for opening local markets. That *Order* comprises a monumental discussion totaling over 1,300 paragraphs and over 3,200 footnotes. In the opening pages of the *Order*, the FCC makes a point from which much of its subsequent discussion proceeds:

[T]he removal of statutory and regulatory barriers to entry into the local exchange and exchange access markets, while a necessary precondition to competition, is not sufficient to ensure that competition will supplant monopolies. An incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking and loops to serve its customers. Furthermore, absent interconnection between the incumbent LEC and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network. ... [A]n incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.<sup>4</sup>

Further, when discussing the necessity of developing national rules, the FCC stated:

We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. **The inequality of bargaining power between incumbents and new entrants militates in favor of**

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<sup>4</sup> *Local Competition Order*, ¶ 10, footnotes omitted.

**rules that have the effect of equalizing bargaining power** in part because many new entrants seek to enter national or regional markets.<sup>5</sup>

Thus, the *Local Competition Order* recognizes that ILECs and CLECs are differently placed and, as such, ILECs are obligated to allow and accommodate market entry. **However, the *Local Competition Order* does not grant CLECs unlimited access to ILEC networks.** Sections 251 and 252 set principals to guide the balancing of ILEC and CLEC rights and obligations.

### **Interconnection Agreements**

Interconnection agreements (ICAs) establish the working relationship between ILECs and CLECs. ICAs typically contain terms regarding permissible locations for interconnection, technical standards, the availability of facilities, network components available for lease to CLECs, payment for establishing interconnection, and payment for delivering traffic. ICAs that are negotiated, arbitrated or adopted pursuant to §§ 251 and 252 are unlike typical contractual relationships. The FCC noted a fundamental difference between ICAs and typical commercial agreements:

Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants.<sup>6</sup>

### **Sections 251 and 252**

Section 251 of the Act sets forth the duties of telecommunications carriers in a hierarchical framework:

Section 251(a) states that **all telecommunications carriers** must (1) interconnect directly or indirectly with other carriers and (2) comply with technical guidelines and standards.

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<sup>5</sup> *Local Competition Order*, ¶ 55; emphasis added.

<sup>6</sup> *Local Competition Order*, ¶ 15.

Section 251(b) sets forth the general duties of both **ILECs and CLECs**, including but not limited to, (1) the establishment of arrangements to compensate other local carriers for the provision of transport and termination, (2) the provision of access to rights-of-way and, (3) the provision of number portability.

Section 251(c) places even more stringent obligations upon **ILECs**, including but not limited to the duty to (1) negotiate in good faith the requirements established in § 251(b) above (the requesting carrier, typically a CLEC,<sup>7</sup> must also negotiate in good faith), and (2) provide interconnection facilities and equipment for the movement of traffic, and/or unbundled network elements (UNEs, or you-neeZ)(such as Network Interface Devices, local loops, transport and switch ports (under some circumstances)) to any requesting carrier, that is technically feasible, on rates, terms and conditions that are just, reasonable and nondiscriminatory.

The Minnesota Commission approved the Hutchinson-CenturyLink ICA pursuant to the above requirements (as relevant to the parties' specific contractual needs).

Section 252 addresses the procedures for negotiation, arbitration and approval of ICAs. It sets forth processes and time lines, and it addresses decision criteria governing the review of contracts by state commissions. Of immediate importance to the issue at hand is § 252(i).

### **Section 252(i)**

The sum of Congress' statement regarding ICA adoption is contained in the single sentence comprising § 252(i):

**Availability to other Telecommunications Carriers** - 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.

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<sup>7</sup> The *Local Competition Order* notes that an ILEC may also request an ICA with another ILEC; ¶ 1323.



Interpretation of this statute engendered considerable debate, in particular, with respect to whether requesting carriers could adopt individual terms (pick-and-choose) or whether they should be restricted only to the adoption of whole contracts (all-or-nothing). The FCC, in 1996, gave considerable weight to Congress' term "any interconnection, service, or network element" and codified the pick-and-choose principal in its rules.<sup>8</sup> However, in 1997, the Eighth Circuit Court of Appeals vacated the pick-and-choose rule.<sup>9</sup> Subsequently, in 1999, the U.S. Supreme Court reversed the Eighth Circuit decision and reinstated the pick-and-choose rule.<sup>10</sup> But, in 2004, in its *252(i) Review Order*, the FCC on its own initiative dropped the pick-and-choose interpretation in favor of the all-or-nothing interpretation.<sup>11</sup> The all-or-nothing interpretation remains in place today.

The full text of the FCC's ICA-adoption rule follows. The original text from 1996 has been modified below with strikeouts and insertions placed to reflect the rule as it was modified in 2004.

**§ 51.809 Availability of ~~provisions of~~ agreements to other telecommunications carriers under section 252(i) of the Act.**

- (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier ~~any individual interconnection, service, or network element arrangement contained in~~ any agreement to which the incumbent LEC ~~it~~ 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 ~~individual interconnection, service, or network element~~ 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.
- (b) **The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:**
- (1) **The costs of providing a particular agreement ~~interconnection, service, or element~~ to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or**

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<sup>8</sup> *Local Competition Order*, ¶¶ 1310-1314.

<sup>9</sup> *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d at 801 (1997).

<sup>10</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 396 (1999).

<sup>11</sup> Federal Communications Commission. *Second Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*. FCC 04-164, CC Docket No. 01-338, July 8, 2004 (*252(i) Review Order*).

- (2) The provision of a particular agreement ~~interconnection, service, or element~~ to the requesting carrier is not technically feasible.
- (c) Individual agreements ~~interconnection, service, or network element arrangements~~ shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h~~f~~) of the Act.<sup>12</sup>

Despite the fundamental change in the FCC’s rules in 2004, the principal that is most relevant to the present debate remains unchanged: the “cost-exception” phrase in § 51.809(b)(1). CenturyLink cites this exception in support of its request for information from Hiawatha and Federated. That this portion of the text has not changed allows the Commission to draw on discussions in both the *Local Competition Order* and the *252(i) Review Order* to interpret the cost-exception clause.

### **The Hutchinson-CenturyLink Agreement**

The Hutchinson-CenturyLink ICA is a 68-page document designed to govern the relationship between the parties for three years. It may continue to govern thereafter on a month-to-month basis if neither party chooses to terminate it. The parties may amend the document with Commission approval. Table 1 provides a glimpse into the components of the Hutchinson-CenturyLink ICA.

<b>Table 1. Section Headings of Hutchinson-CenturyLink Interconnection Agreement*</b>	
<b>Part A - Definitions</b>	
1. Defined Terms	
<b>Part B - General Terms and Conditions</b>	
2. Scope of This Agreement	18. Relationship of Parties
3. Network Changes	19. No Third Party Beneficiaries
4. Regulatory Approvals	20. Notices
5. Effective Date, Term and Termination	21. Waivers
6. Charges, Billing and Payment	22. Survival
7. Audits and Examinations	23. Force Majeure
<b>Table 1. Continues ...</b>	

<sup>12</sup> 47 C.F.R § 51.809, emphasis added.

8. Intellectual Property Rights	24. Dispute Resolution
9. Limitation of Liability	25. Cooperation on Fraud
10. Indemnification	26. Taxes
11. Insurance	27. Amendments and Modifications
12. Branding	28. Severability
13. Remedies	29. Headings Not Controlling
14. Confidentiality and Publicity	30. Entire Agreement
15. Disclaimer of Warranties	31. Successors and Assigns
16. Assignment and Subcontract	32. Implementation Plan
17. Governing Law	33. Federal Jurisdictional Areas
<b>Part C - General Principles</b>	
34. Price Schedule	35. Security Deposit
<b>Part D - Network Interface Device</b>	
36. Network Interface Device	
<b>Part E - Interconnection</b>	
37. Local Interconnection Trunk Arrangement	43. Intercarrier Compensation
38. Network Interconnection Methods	44. Signaling and Interconnection Trunking Requirements
39. Points of Interconnection (POI)	45. Trunk Forecasting
40. Direct Interconnection at the CenturyLink Tandem	46. Network Management
41. Direct Interconnection at the CenturyLink End Office	47. Usage Measurement
42. Indirect Network Connection	48. Responsibilities of the Parties
<b>Part F - Local Number Portability</b>	
49. Introduction	52. E911/911
50. Testing	53. Billing for Ported Numbers
51. Engineering and Maintenance	
<b>Part G - Non-251 Services</b>	
54. Call-Related Databases	55. Transit Traffic
<b>Part H - General Business Requirements</b>	
56. Procedures	58. Miscellaneous Services and Functions
57. Provision Of Usage Data	59. Bona Fide Request
<b>Part I - Reporting Standards</b>	
60. General	61. Miscellaneous
<b>Table 1 - Rates</b>	
* This list is derived from the main text of the ICA. The Table of Contents attached to the filed ICA does not accurately reflect the text of the ICA.	

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## ***Positions of the Parties***

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### **Background**

On November 20, 2015, Hiawatha sent an email to CenturyLink stating:

HBC had sent notification of the 252 (i) HTI adoption notice to CenturyLink-Embarq, MN on November 9th. It has been more than 10 days. Please explain the delay and let me know when we will see the adoption paperwork for review and signature.<sup>13</sup>

On November 23, 2015, Century link responded by email:

After internal review, as far as the adoption of the Hutchinson Telecommunications Agreement in the Embarq territory, please provide information on the specific type of interconnection services and points of interconnection that you will need. As you may be aware, the Hutchinson Traffic Exchange Agreement was the result of an arbitration decision that relied heavily on the specific network interconnection arrangements that were unique to Hutchinson. CenturyLink needs a better understanding of the specific CLEC network arrangements currently in place for Gardonville [sic – read Hiawatha] and of the interconnection request in order to determine if the costs are greater than the costs of providing it to the CLEC that originally negotiated the agreement, consistent with 47 CFR 51.809 (b)(1).<sup>14</sup>

On December 9, 2015, Federated made a request to CenturyLink to opt into the Hutchinson ICA. Federated has stated that CenturyLink also responded with a request for information.

### **CenturyLink Position**

CenturyLink has not yet taken a position as to whether or not Hiawatha and Federated are entitled to opt-in to the ICA they seek. CenturyLink is not opposed to allowing CLECs to opt-in to the Hutchinson ICA. One CLEC (Gardonville) has provided the interconnection information CenturyLink seeks here and CenturyLink agreed the opt-in was appropriate and signed the agreement (Docket 15-897).

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<sup>13</sup> Hiawatha Initial Filing, December 2, 2015, Attachment 2.

<sup>14</sup> Hiawatha Initial Filing, December 2, 2015, Attachment 2.

FCC rules establish that an incumbent's obligation to allow a CLEC to opt in to an ICA is not unfettered. To the contrary, § 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 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 courts.

Absent the requested 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. Refusing to provide information necessary to reach agreement is an example of bad faith negotiation identified in the rules (§ 51.301). Hiawatha'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.

Courts have not only found the rules to be appropriate but have confirmed that the obligation of good faith applies to requests to opt-in pursuant to Section 252(i). In *Global Naps v. Verizon*, the CLEC argued that it had a right under Section 252(i) to opt-in to an existing interconnection agreement rather than accept the adverse results of an arbitration. The court rejected its argument and held that good faith obligations associated with an arbitration proceeding applied in the context of a request to opt-in:

Global NAPs responds by asking the court to read an implicit limitation on the good faith requirement of § 252(b)(5) – ***that CLECs are not bound by the terms of § 252(b)(5), if they attempt to opt into a previously available contract. Global NAPs says that this is the effect of § 252(i). But § 252(i) says nothing of the sort. Rather, it is written in terms of an obligation on the part of ILECs to make agreements available to potential CLECs, not as an unconditional right on the part of CLECs to modify their clear obligations under earlier subsections of § 252.*** We read the sections consistently, and conclude that § 252(i) is not an implicit limit on the binding effect of the arbitration provisions of § 252(b)(5). In this context, there is nothing ambiguous about the terms of § 252(b)(4)(C) and (b)(5).<sup>15</sup>

This same analysis applies to the good faith obligations associated with a carrier requesting interconnection.

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<sup>15</sup> *Global NAPS, Inc. v. Verizon New Eng., Inc.*, 396 F.3d 16, 25, 2005 U.S. App. Emphasis added by CenturyLink.

Hiawatha and DOC argue that CenturyLink is seeking to evade requirements to provide interconnection information under Section 39.2 of the Hutchinson ICA. Section 39.2 imposes broad network disclosure requirements on CenturyLink if a CLEC requests such information. But, section 39.2 is irrelevant here because the agreement has not yet been adopted. The obligations at issue in this proceeding are the obligation to negotiate in good faith and the incumbent's obligation to allow a CLEC to opt in to an existing agreement. Courts have determined that good faith obligations associated with an arbitration apply in the context of adoption requests.

Because HBC's proposed agreement was neither negotiated nor arbitrated as set forth in 252(e)(1), the Commission faces no statutory deadline for review of this issue.

### **Hiawatha Position**

Hiawatha argues that it has a right to opt into the Hutchinson agreement and that there are no terms within the Hutchinson ICA that would warrant its rejection by the Commission. Hiawatha believes CenturyLink cannot place pre-conditions on its ICA adoption choice.

CenturyLink is attempting to circumvent its network disclosure obligations in the Hutchinson ICA by preemptively requiring the CLEC to disclose how and where it will interconnect before acting upon the ICA adoption request.

As the Commission is well-aware, one of the most vigorously litigated issues in the Hutchinson arbitration was what information Embarq must provide regarding its interconnection arrangements with other carriers. The Commission found in favor of Hutchinson on that issue, requiring, among other things, that Embarq must identify to Hutchinson all its interconnection points within a given LATA, and to disclose specific information about each point. In reaching its conclusion, the Commission found that it was persuaded that CenturyLink should provide Hutchinson with information about the variety of interconnection points available to it, so that Hutchinson can compare its alternatives and identify the most efficient choice. Embarq's position, which would require Hiawatha to specify where it intends to interconnect before it may opt in to the Hutchinson agreement puts the cart before the horse. To adopt Embarq's argument would deprive Hiawatha of a significant benefit of opting in to the Hutchinson agreement.

Hiawatha believes that, as the Hutchinson ICA was arbitrated, and that the Commission has not yet approved or rejected the request, the request should have been approved administratively on January 1, 2016, pursuant to § 252(e)(4), thirty days after Hiawatha's request for adoption.

### **Federated Position**

Federated supports and joins in the comments filed by Hiawatha.

### **DOC Position**

DOC recommends that the Commission grant Hiawatha's request for adoption. Section 252(i) requires only that Hiawatha 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. Further, FCC Rule § 51.809(b) places a burden on CenturyLink to establish "greater costs." CenturyLink has not done so.

DOC is not aware of any terms or conditions in the Hutchinson ICA that would warrant rejection of the request. While CenturyLink claimed, in its email response to Hiawatha, that the Hutchinson ICA relied heavily on the specific network interconnection arrangements that were unique to Hutchinson, the terms of Sections 37 (Local Interconnection Trunk Arrangement), 38 (Network Interconnection Methods), and 39 (Points of Interconnection) are not specific to Hutchinson, nor do they preclude a network interconnection arrangement that is different from that chosen by Hutchinson.

By the terms of the Hutchinson ICA, section 39.2, CenturyLink is obligated to disclose to a requesting CLEC certain specific 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. Clearly, the information must be provided by CenturyLink to the requesting CLEC prior to a CLEC choosing where and how to interconnect. To the extent that CenturyLink has withheld or delayed the network information required by Section 39.2 and 47 C.F.R. §51.305, until after Hiawatha provides CenturyLink with details about how it wishes to interconnect, DOC agrees with Hiawatha that CenturyLink seeks to put the cart before the horse. Such a practice creates an insurmountable "Catch 22" for the requesting CLEC. It is unreasonable for CenturyLink 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 Hiawatha provides interconnection details (which Hiawatha cannot provide until it obtains the information that CenturyLink EQ has withheld).

DOC recommends that the Commission make clear in its Order that CenturyLink has the obligation to provide the Section 39.2 network information to any requesting CLEC choosing to

adopt the Hutchinson ICA, prior to requiring details about the CLEC's proposed interconnection.

Given the lack of clear direction in Section 252(e)(4) with respect to the approval of adoptive ICAs, DOC recommends that a default approval date not be set by the Commission in the current case, and that the Commission move forward expeditiously to consider the comments of all parties prior to making its determination.

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## *Staff Analysis*

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### *Introduction*

Section 51.809(a) of the FCC rules clearly mandates that CenturyLink “shall make available without unreasonable delay to any requesting telecommunications carrier any agreement [the Hutchinson agreement] to which the incumbent LEC [CenturyLink] is a party that is approved by a state commission ... upon the same rates, terms, and conditions as those provided in the agreement.”

And § 51.809(b) relieves CenturyLink of that duty only where CenturyLink can prove to this Commission that (1) the costs of providing the Hutchinson agreement to Hiawatha/Federated “are greater than the costs of providing” that agreement to Hutchinson, or (2) the provision of the Hutchinson agreement to Hiawatha/Federated is not technically feasible.

CenturyLink's arguments go directly to the cost-exception clause of § 51.809(b)(1). To date, CenturyLink has not argued that a cost difference exists, only that it is entitled to information from Hiawatha and Federated sufficient to allow it to examine specific costs. **CenturyLink makes two main arguments, somewhat intertwined, with respect to its request for information:**

- (a) The explicit argument is that Hiawatha and Federated must provide the requested information, and that a refusal to do so represents a violation of the Act's requirement that CLECs negotiate in good faith.**
- (b) The other argument, implied by the request, is that the requested information is relevant to addressing the cost-exception clause of § 51.809(b)(1).**



Staff will argue that Hiawatha and Federated are not subject to the good faith negotiation requirements of §§ 251(c) and 252(b)(5) because those sections only address negotiations and arbitrations. An adoption request is not a request for negotiation or arbitration. Section 252(i) makes no provision for agreement by the parties, let alone for negotiation toward an agreement. Staff will also argue that the cost information CenturyLink seeks is not relevant to establishing a cost-exception argument. CenturyLink seeks to fundamentally recast the obligations of the Act in a manner that is not supported by the wording of the Act, the FCC rules, or the FCC's supporting discussion.

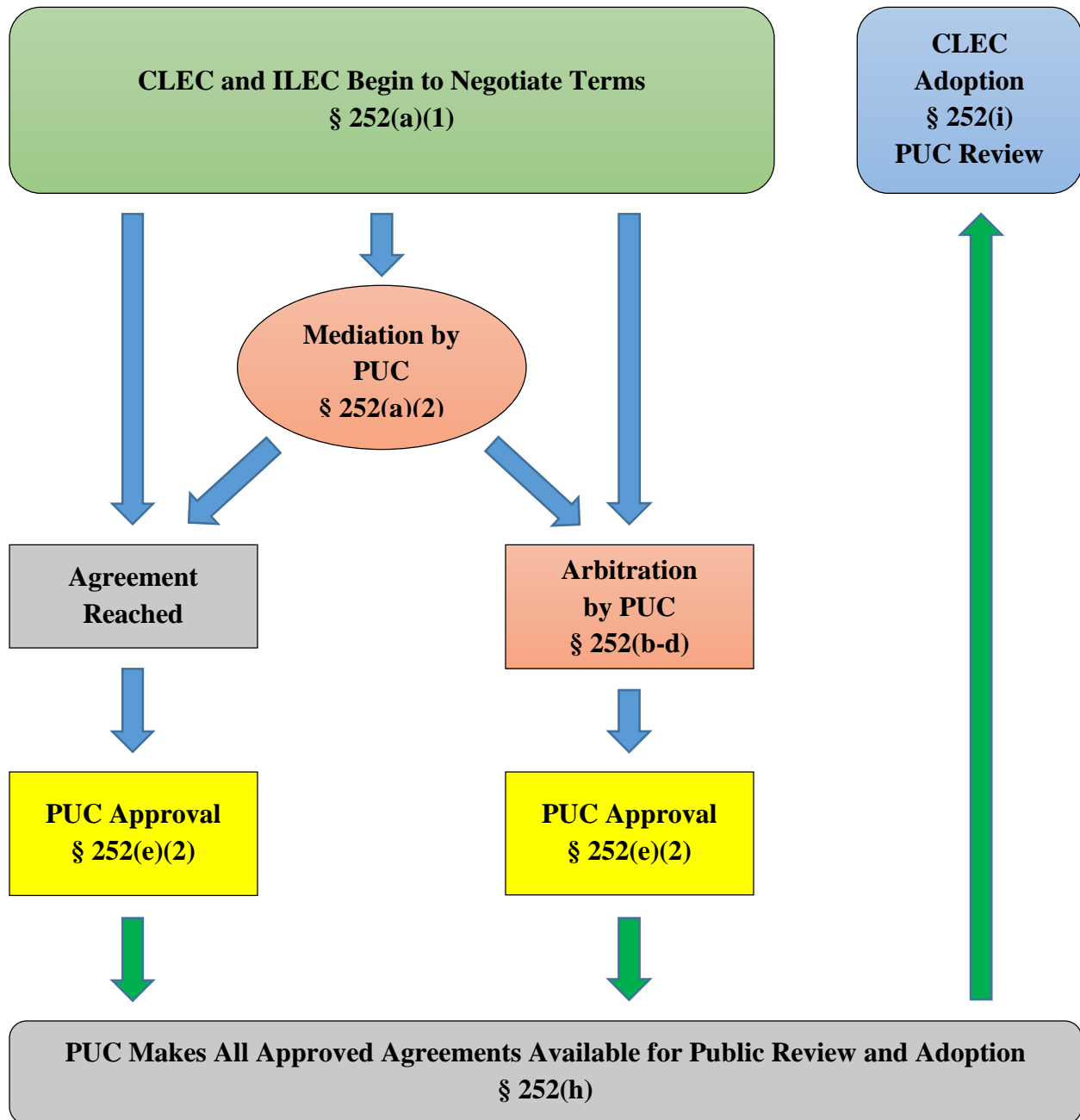
Before getting to the heart of those discussions, and to set the stage for those discussions, Staff will provide an overview of the structure of the Act with respect to ICA negotiation, arbitration and adoption. Staff will then address whether the Commission faces any statutory time constraints in addressing the issues. Staff will also discuss the purpose of § 252(i) as determined by the FCC in discussion and rule. That purpose is significant to the interpretation of the FCC's rules and to the options available to the Commission.

### **Framework for Establishing Rates, Terms and Conditions**

Figure 1 depicts two main paths toward establishing contract language. Following the first path, a CLEC approaches an ILEC seeking to negotiate an agreement. That process may yield resolution directly or may require the aid of the state commission for mediation or arbitration. No matter how the contract terms are established the state commission has the task of reviewing the agreements with respect to the standards of § 252(e). Subsequently, pursuant to § 252(h), a "State commission shall make a copy of each agreement approved under subsection (e) ... available for public inspection and copying within 10 days after the agreement or statement is approved." And § 51.809(c) of the Rules dictates that individual agreements shall remain available for adoption for a reasonable period of time after the approved agreement is available for public inspection.

The second path to establishing contract terms is provided by § 252(i): adoption by a CLEC of an ICA that has already been approved by the state commission.

The first path is established by a request for negotiation. The second path is established by a request for adoption.



**Figure 1. Framework for Interconnection Agreement Negotiation, Arbitration and Adoption**

### **Negotiated or Arbitrated?**

Much of §§ 251 and 252 contemplate a situation where a requesting carrier approaches an ILEC to negotiate interconnection rates, terms and conditions and, where negotiations fail, to seek arbitration before a state commission. In the months and years immediately following the implementation of the Act in 1996, the Minnesota Commission reviewed ICAs where a substantial majority, but not all, of the terms were disputed. With the establishment of precedent by courts and commissions over time, and with carriers' hard-won awareness of the cost of arbitration, few ICAs are now arbitrated by this Commission, and the proportion of disputed terms in those ICAs has declined.

The distinction between fully negotiated ICAs and those with some portion of arbitrated terms has bearing on a state commission's time lines for ICA approval. Specifically, § 252(e)(4) states, in part:

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved.

If Hiawatha's request for adoption of an ICA on December 2, 2015, triggers a clock, and if the Hutchinson ICA is considered to be an arbitrated ICA, it could be argued that the adoption has already been granted administratively.<sup>16</sup> As a practical matter, given that § 51.809(b)(1) makes provision for the establishment of cost as a limitation on the requesting carriers' right of adoption, even the 90-day deadline may severely limit an ILEC's analysis, a CLEC's challenge, and a state commission's review. However, it can be reasonably argued that neither the 30-day nor the 90-day deadline applies to adoption requests. First, ICAs that have been approved pursuant to § 252(e) and placed in the pool of available agreements do not need re-approval pursuant to § 252(e). And, second, a Commission-approved ICA that is sought by a requesting carrier no longer bears the distinction of being negotiated or arbitrated. There is support for this interpretation in the *252(i) Review Order*:

First, we find that section 252(i), which expressly applies to agreements approved under section 252, does not differentiate between negotiated and arbitrated agreements. ... Moreover, we believe that maintaining separate regimes for negotiated and arbitrated agreements would be unnecessarily difficult to administer in

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<sup>16</sup> Although Hiawatha approached the Commission on December 2, 2015, it initially approached CenturyLink on November 9, 2015.

practice. Accordingly, we do not find it necessary to adopt separate regulatory regimes for negotiated and arbitrated agreements . . . .<sup>17</sup>

And

We also note that section 252(e), which requires “[a]ny interconnection agreement adopted by negotiation or arbitration” to be submitted for approval, does not differentiate between the two types of agreements.<sup>18</sup>

Thus, once approved by a state commission, the lineage of the ICA becomes irrelevant. The deadlines for approval/rejection by a state commission established in § 252(e)(4) are not relevant to § 252(i) adoptions. Staff believes that the Commission faces no statutory deadline in addressing the issues raised by Hiawatha, Federated and CenturyLink.

However, as discussed below, the FCC urges state commissions to move expeditiously.

### **Purpose of § 252(i)**

The FCC, in its 1996 *Notice of Proposed Rulemaking* (NPRM), clearly articulated the primary purpose of § 252(i):

Section 251 requires that interconnection, unbundled element, and collocation rates be “nondiscriminatory” and prohibits the imposition of “discriminatory conditions” on the resale of telecommunications services. **Section 252(i) appears to be a primary tool of the 1996 Act for preventing discrimination under section 251.**<sup>19</sup>

That view was restated in the *Local Competition Order* and the *252(i) Review Order*.<sup>20</sup> Indeed, much discussion in both orders goes to the issue of ILEC discrimination among requesting carriers.

The FCC further clarified its understanding of “nondiscriminatory”:

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<sup>17</sup> *252(i) Review Order*, ¶ 28.

<sup>18</sup> *252(i) Review Order*, fn 94 to ¶ 28.

<sup>19</sup> Federal Communications Commission. Notice of Proposed Rulemaking. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act*. FCC 96-182, CC Docket 96-98, April 19, 1996, ¶ 269, emphasis added.

<sup>20</sup> *Local Competition Order*, ¶ 1315; *252(i) Review Order*, ¶¶ 18 and 28.

We conclude that the term “nondiscriminatory” in the 1996 Act is not synonymous with “unjust and unreasonable discrimination” in section 202(a), but rather is a more stringent standard.<sup>21</sup>

In addition to its concerns regarding discrimination against requesting carriers, the FCC sees § 252(i) as a means of expediting competition:

**We ... conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. We find that this interpretation furthers Congress’s stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement. Since agreements shall necessarily be filed with the states pursuant to section 252(h), we leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis.**<sup>22</sup>

In its *252(i) Review Order* the FCC again expressed the importance of speed:

Thus, we find that, based on the record, the pick-and-choose rule has not expedited the process, as the Commission expected, and that the all-or-nothing rule will not add delays in reaching agreements. Instead, we conclude that an all-or-nothing rule would benefit competitive LECs because competitive LECs that are sensitive to delay would be able to adopt whole agreements ...<sup>23</sup>

In its Final Regulatory Flexibility Analysis, with reference to § 252(i), the FCC notes:

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<sup>21</sup> *Local Competition Order*, ¶ 859, footnote omitted.

<sup>22</sup> *Local Competition Order*, ¶ 1321, emphasis added.

<sup>23</sup> *252(i) Review Order*, ¶ 15.

Moreover, small entities may be able to obtain the same terms and conditions of agreements reached by larger carriers that possess greater bargaining power **without having to incur the costs of negotiation and/or arbitration.**<sup>24</sup>

Thus, the FCC perceives the purposes of § 252(i) to be (1) protection against discrimination between requesting carriers by an ILEC, (2) a means to expedite agreements between carriers, and (3) a means of reducing the cost of interconnection for small carriers.

### **Good Faith Negotiation: Explicit Argument**

CenturyLink argues that, pursuant to the Act and FCC rules requiring good faith negotiation, Hiawatha and Federated must provide CenturyLink with the information it seeks or, in good faith, communicate that they have no idea of how they want to interconnect. CenturyLink relies on §§ 251 and 252 of the Act, § 51.301 of FCC rules, and a 2005 ruling by the United States Court of Appeals, First Circuit. Staff will address each of these elements in turn. But before proceeding Staff believes the Commission should consider that Section 252(i) makes no provision for agreement by the parties. The ILEC's consent to the adoption is not required. The ILEC may argue about cost differentials and/or technical feasibility but its consent is irrelevant. Only two clauses in §§ 251 and 252 make reference to good-faith negotiation and those two clauses point away from CenturyLink's conclusion.

### **Section 251 of the Act**

Section 251 generally addresses the obligations of carriers to interconnect. Section 251(c) states:

In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

- (1) DUTY TO NEGOTIATE - The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [subsection c]. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

The duties set out in paragraphs (1) through (5) of § 251(b) address (1) resale, (2) number portability, (3) dialing parity, (4) access to rights-of-way, and (5) reciprocal compensation.

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<sup>24</sup> Local Competition Order, ¶ 1438, emphasis added.

Subsection 252(c), aside from the reference above in § 251(b)(1), addresses duties specific to ILECs: (2) interconnection, unbundled access, (3) resale, (4) notice of changes affecting interoperability, and (5) collocation.

Section 251 addresses the negotiation process, not the adoption process. Section 252(i) makes no reference to negotiation and indeed negotiation would fundamentally undercut the purpose of § 252(i) adoptions. Section 252(i) provides a path to interconnection distinctly separate from the negotiation/arbitration process envisioned in §§ 251(b) and (c).

### **Section 252 of the Act**

Section 252 generally addresses procedures for negotiation, arbitration and approval of ICAs. Section 252(a) address procedures for initiating and conducting negotiations, and § 252(b) addresses procedures for arbitrations, should negotiations stall. With reference to negotiations and arbitrations § 252(b)(5) states:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Here too, the Act addresses negotiation and arbitration. Section 252(i) makes no provision for negotiation.

### **Section 51.301 of FCC Rules: Duty to Negotiate**

Section 51.301 states, in part:

- (a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.
- (b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.
- (c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

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- (8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to:
- (i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; and
  - (ii) Refusal by an incumbent LEC to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

Here, in §§ 51.301(a) and (b), the FCC makes specific reference to the negotiation and arbitration duties of §§ 251(b) and (c), not to § 252(i). Section 252(i) stands apart from § 51.301.

### **Global NAPS v. Verizon New England**

CenturyLink offers a 2005 decision in the United States Court of Appeals, First Circuit, as support for a reading of statute that would require good-faith negotiation by parties to negotiations, arbitrations, **and** § 252(i) adoptions. In particular, CenturyLink points to the Court's statement:

Global NAPs responds by asking the court to read an implicit limitation on the good faith requirement of § 252(b)(5) – *that CLECs are not bound by the terms of § 252(b)(5) if they attempt to opt into a previously available contract. Global NAPs says that this is the effect of § 252(i). But § 252(i) says nothing of the sort. Rather, it is written in terms of an obligation on the part of ILECs to make agreements available to potential CLECs, not as an unconditional right on the part of CLECs to modify their clear obligations under earlier subsections of § 252.* We read the sections consistently, and conclude that § 252(i) is not an implicit limit on the binding effect of the arbitration provisions of § 252(b)(5). In this context, there is nothing ambiguous about the terms of § 252(b)(4)(C) and (b)(5).<sup>25</sup>

According to the Court, Global NAPs (a CLEC) began negotiations with Verizon (an ILEC) in early 2002. Failing to reach complete agreement Global NAPs sought arbitration by the Massachusetts Department of Telecommunications and Energy (DTE). DTE ultimately issued

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<sup>25</sup> *Global NAPs, Inc. v. Verizon New Eng., Inc.*, 396 F.3d 16, 25, 2005 U.S. App. Emphasis added by CenturyLink.



its arbitration order establishing the terms of the ICA on December 12, 2002. DTE, subsequently, required the parties to file the complete agreement for final review (negotiated and arbitrated terms) by January 17, 2003. However, eight days before that deadline, Global NAPs notified Verizon that, rather than finalizing their agreement, it was seeking to adopt, pursuant to § 252(i), an agreement between Verizon and Sprint. The Court supported DTE in its argument that § 252(i) did not grant Global NAPs an unconditional right to avoid the terms of the ICA it had just arbitrated with Verizon.

Staff's first response to CenturyLink's argument is that the Court's decision is not binding on the Minnesota Commission. Second, Staff believes that CenturyLink mischaracterizes the Court's decision as requiring a CLEC to negotiate the terms of an agreement it seeks to adopt. The question before the Court was a narrower one:

The precise legal question under review is narrow, though one of first impression in the circuit courts of appeals: does a competing carrier have an unconditional right, under § 252(i) of the TCA, to avoid the terms of a final arbitration order from a state telecommunications commission, adjudicating a dispute between the CLEC and ILEC, by seeking to opt into the terms of a previous interconnection agreement that the ILEC has with another CLEC? ... We agree with the DTE and the district court that the TCA grants no such right.<sup>26</sup>

Thus, the Court made no determination that CLECs seeking adoption are bound by the Act to negotiate **the agreement sought**. The Court went only so far as to say that a CLEC could not use an adoption request **to dodge obligations it incurred previously by negotiating and arbitrating a different agreement** before a state commission, after the state commission had ruled on that arbitration. The obligation to negotiate in good faith applies to negotiations and arbitrations, not to adoptions.

### **Cart before the Horse**

CenturyLink's good-faith negotiation argument places the cart before the horse. CenturyLink seeks information from the CLECs that, for the CLECs to formulate with any accuracy, requires network information from CenturyLink. CenturyLink is bound by the terms of the Hutchinson ICA to provide the necessary information to the CLECs but, as CenturyLink points out, the CLECs have not yet adopted the Hutchinson ICA. Thus, it appears that CenturyLink would have a CLEC make a best guess as to the facilities it needs to gain entry to a contract that would allow the CLEC to modify its needs once CenturyLink's information is made available to the CLEC

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<sup>26</sup> *Global NAPs* at 23.

pursuant to the terms of that contract.<sup>27</sup> Thus, the CLEC is placed in a position where it must stumble forward in its planning, most likely facing a significant expenditure of time and resources ... contrary to the stated purpose and obligations of § 252(i).

### **Relevant Cost: Implied Argument**

A central question before the Commission is how to interpret the cost-exception clause of § 51.809(b)(1). The term “cost” in the Rule has no modifier leaving room for considerable debate and widely divergent outcomes for the question at hand. Determining the appropriate meaning of “cost” may go far in resolving the dispute and Staff looks to the FCC’s discussion for guidance.

Based on the discussion below Staff recommends that the Commission deny CenturyLink’s request for network information from Hiawatha and Federated. Staff believes that:

- (1) CenturyLink already possesses the information relevant to a valid cost study, that is, information necessary for costing and pricing its own products and services,
- (2) the information requested by CenturyLink could not provide the basis for a valid and meaningful cost study (any such study would face intractable conceptual problems),
- (3) the information requested by CenturyLink would provide CenturyLink a basis for discriminating against Hiawatha and/or Federated, and
- (4) a cost study based on the information sought by CenturyLink could extend the time for an adoption process well beyond that of an arbitration.

### **Distinction between CLECs**

CenturyLink appears to perceive Hiawatha as an emerging and significant competitive threat:

HBC has been in business since 1992. It started to provide service in Winona and has been providing telecommunications service to an expanding list of communities for over a decade. HBC is a sophisticated provider in the cities it serves. On October 23,

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<sup>27</sup> And, perhaps, by CenturyLink’s reasoning, a CLEC that modifies its stated needs once gaining entry to a contract could be faced with a charge that, by modifying its plans, it has failed to negotiate in good faith.

2015, HBC filed a request to expand its service territory to include the cities of New Trier and Miesville. CenturyLink EQ is the incumbent provider for New Trier and a portion of Miesville.<sup>28</sup>

And, clearly CenturyLink seeks information that could distinguish Hiawatha and Federated from Hutchinson. In its November 20, 2015, email response to Hiawatha, CenturyLink asked for:

information on the specific type of interconnection services and points of interconnection that you will need. As you may be aware, the Hutchinson Traffic Exchange Agreement was the result of **an arbitration decision that relied heavily on the specific network interconnection arrangements that were unique to Hutchinson**. CenturyLink needs a better understanding of **the specific CLEC network arrangements currently in place** for Gardonville [sic – read Hiawatha] and of the interconnection request in order to determine if the costs are greater than the costs of providing it to the CLEC that originally negotiated the agreement ...<sup>29</sup>

CenturyLink provided additional insight into its request:

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. **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.<sup>30</sup>

### Costs Reflected in Rates

As discussed above, the FCC states that the primary purpose § 252(i) is to prevent ILECs from discriminating among requesting carriers and the FCC views the “nondiscriminatory” standard in the Act as one that is more stringent than an “unjust and unreasonable discrimination” standard. The FCC provides clarity here addressing two significant points. First, costs are reflected in rates and, second, rates that do not reflect costs are discriminatory.

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<sup>28</sup> Reply Comments, January 21, 2016, ¶¶ 2-3, footnotes omitted.

<sup>29</sup> Hiawatha Initial Filing, December 2, 2015, emphasis added.

<sup>30</sup> CenturyLink Letter, December 11, 2015, footnote omitted, emphasis added.

Where costs differ, rate differences that accurately reflect those differences are not discriminatory. This is consistent with the economic definition of price discrimination ...<sup>31</sup>

And,

[P]rice differences based not on cost differences but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs, the requirements of the Act, or applicable rules, would be discriminatory and not permissible under the new standard. Such examples include the imposition of different rates, terms and conditions based on the fact that the competing provider does or does not compete with the incumbent LEC, or offers service via wireless rather than wireline facilities. We find that it would be unlawfully discriminatory, in violation of sections 251 and 252, if an incumbent LEC were to charge one class of interconnecting carriers, such as CMRS providers, higher rates for interconnection than it charges other carriers, unless the different rates could be justified by differences in the costs incurred by the incumbent LEC.<sup>32</sup>

And,

State regulations permitting non-cost based discriminatory treatment are prohibited by the 1996 Act. This conclusion is consistent with both the letter and the spirit of the 1996 Act and our determination that the pricing for interconnection, unbundled elements, and transport and termination of traffic should not vary based on the identity or classification of the interconnector.<sup>33</sup>

The only relevant and nondiscriminatory approach to costing is to focus on the rates and the degree to which rates reflect costs ... **information CenturyLink already possesses.** If CenturyLink is to examine cost differences it must look to the rates, terms and conditions of the ICA to determine if there is a cost basis that would allow it to charge one CLEC a different rate than another CLEC for the same service. Some relevant cost questions are: Does it cost CenturyLink more than \$0.000684 per message to offer message provisioning to Hiawatha? Does it cost more than \$1.43 per month to provision Hiawatha with a Stand Alone Network Interface Device (NID)? Does it cost more than \$134.02 per month (with a non-recurring charge

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<sup>31</sup> *Local Competition Order*, ¶ 860.

<sup>32</sup> *Local Competition Order*, ¶ 861.

<sup>33</sup> *Local Competition Order*, ¶ 862, footnote omitted.

of \$347.96) to provision Hiawatha with DS1-Band 1- Local Interconnection Entrance Facility?<sup>34</sup> Cost differences here could, potentially, arise from technological change and/or increased input costs. To date, CenturyLink has not offered evidence of such cost differences.

It is highly unlikely that either Hiawatha or Federated will seek interconnection arrangements that are identical those sought by Hutchinson. However, that Hiawatha and/or Federated may seek more services from CenturyLink than did Hutchinson does not provide a basis for a cost analysis as long as Hiawatha and Federated make CenturyLink whole per the contract rates. Conceivably, Hiawatha could purchase more NIDs from CenturyLink than did Hutchinson when it first entered its ICA with CenturyLink (or choose to interconnect at more points than Hutchinson did). But, this does not play into the cost difference unless CenturyLink can establish that the unit cost of a service has increased.

### **Buildout Costs**

CenturyLink provides a clue to its concerns when stating “it is unclear whether or not a request from HBC will require CenturyLink to build new facilities or expand existing capacity.”<sup>35</sup> CenturyLink may indeed be required to build out more facilities for Hiawatha and/or Federated than it did for Hutchinson, but that too does not play into a cost study. The Hutchinson ICA makes provision for CenturyLink to build facilities to meet a CLEC-designated meet point:

“Meet Point Interconnection Arrangement” means each telecommunications carrier builds and maintains its network to a Meet Point (47 CFR §51.5) CenturyLink may deny a meet point at a particular point requested by CLEC on the grounds that its build-out of facilities from that point would exceed the limited build-out that would constitute a “reasonable accommodation of interconnection” under *Local Competition Order* ¶ 553. CenturyLink must prove that fact to the state commission.<sup>36</sup>

Paragraph 553 of the *Local Competition Order* recognizes that ILECs must make a reasonable accommodation of interconnection:

New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection

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<sup>34</sup> Hutchinson ICA, Docket 14-189, filed August 5, 2015, approved August 21, 2015, Table 1.

<sup>35</sup> CenturyLink Letter, December 11, 2015.

<sup>36</sup> Hutchinson ICA, definition of “Meet Point Arrangement.”

arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement.<sup>37</sup>

Thus, the Hutchinson ICA recognizes that, within reason, CenturyLink's buildout costs also represent a benefit to CenturyLink.

Of critical importance here is the fact that the Hutchinson ICA allows for myriad interconnection options. This goes to the validity of any non-rate-based cost study, and it goes to the issue of discrimination, because there is no standard, other than unit rates, by which to measure CenturyLink's costs for either Hutchinson, Hiawatha or Federated. Consider that the Hutchinson ICA sets the parameters for myriad interconnection options, allowing both parties to respond to changes in law and business plans. For example:

Section 3.1 allows CenturyLink to modify and upgrade its network.

Sections 4 and 17 allow for modification of the ICA in response to changes in law, rules, regulations and regulatory orders.

Section 27 acknowledges the potential for amendments to the ICA.

Section 38 allows for the parties to jointly plan network interconnection to account for variations in CenturyLink's network between various locations.

Section 39.1 of that ICA provides that Hutchinson is entitled to interconnect with CenturyLink at numerous technically feasible points within CenturyLink's network.

Section 39.3 provides for a CLEC, at its sole discretion, to exchange traffic with CenturyLink at a variety of points in the network.

Section 39.10.4 makes provision for the parties negotiate interconnection via other technically feasible methods.

Those ICA terms referenced above indicate that Hutchinson has numerous interconnection options. Furthermore, Hutchinson may alter its plans and needs as it sees fit within the four corners of the ICA, for the term of the ICA. Thus, there is no one particular snapshot of the relationship between Hutchinson and CenturyLink that could provide a compelling basis of comparison for CenturyLink's cost analysis.

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<sup>37</sup> *Local Competition Order*, ¶ 553.

Consider this illustration. Section 39.6 of the Hutchinson ICA states, in part: “Each Party is responsible for the appropriate sizing, operation, maintenance and cost of the transport facility to a POI [Point of Interconnection].” Further, the ICA places no mileage restriction on the length of either Party’s transport facility; the ICA allows the CLEC considerable leeway in choosing the location of the POI;<sup>38</sup> and the CLEC is not bound to its initial POI location decision. As such, any argument about differences in CenturyLink’s transport cost between Hutchinson and the requesting CLEC would only be relevant for one particular network configuration – a network configuration that the Hutchinson ICA does not even hold Hutchinson to. Thus CenturyLink’s cost comparison would be discriminatory if it holds Hiawatha and Federated to a standard more stringent than Hutchinson. Hiawatha and Federated seek the same flexibility as Hutchinson enjoys.

### **Protracted Proceedings**

Aside from the arbitrary nature of any non-rate-based cost study, CenturyLink’s approach could lead to protracted and costly disputes, thus defeating the purpose of § 252(i). Any non-rate-based analysis presented by CenturyLink may face considerable scrutiny requiring a contested case proceeding (or two, or three proceedings if the CLEC has the patience and resources to subsequently propose additional interconnection plans). Further, CenturyLink’s proposal sets up a scenario where Hiawatha could choose to provide CenturyLink interconnection information that would yield a very low implementation cost, only to change its mind once the adoption has been approved. And then, by the terms of the ICA, Hiawatha could seek a different interconnection arrangement. To hold Hiawatha, for any reason, to its initial pre-adoption-approval request for the term of the ICA would violate the ICA (and would effectively add another condition to § 51.809(b), one beyond the cost-exception and technical feasibility conditions).

### **CenturyLink’s Current Rates**

Consider CenturyLink’s rates, rates presumably based on its cost of providing products and services. On its website CenturyLink posts “Contract Templates” for CLECs seeking ICAs, stating that the template agreements (1) are available “as is,” and may be executed quickly, or (2) may be used as the starting point for negotiations.<sup>39</sup> The Minnesota ICA Price List for CenturyLink EQ is reproduced in Attachment 1. This price list is dated December 2015. The ICA Price List comprises numerous products and services offered by CenturyLink to CLECs,

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<sup>38</sup> Section 39.1 of the Hutchinson ICA dictates that the CLEC is entitled to interconnection at any technically feasible point within CenturyLink’s network.

<sup>39</sup> [http://www.centurylink.com/wholesale/clec\\_contract\\_templates.html](http://www.centurylink.com/wholesale/clec_contract_templates.html); accessed February 8, 2016.

priced, presumably, at CenturyLink's preferred and cost-based rates. Because of Hutchinson's limited needs the Hutchinson ICA contains only a small subset of the products and services offered by CenturyLink. That subset is highlighted in yellow in Attachment 1. It is of particular interest to note that the yellow-highlighted rates in CenturyLink's Price List are identical to the rates in the Hutchinson ICA.

Attachment 1 also displays rates for Reciprocal Compensation for Local Traffic – highlighted in blue. The Hutchinson ICA differs from the Price List in that Hutchinson and CenturyLink agreed to substitute Bill & Keep for those default rates. Bill & Keep refers to a symmetrical compensation arrangement between two LECs for carrying traffic, whereby each carrier refrains from billing the other carrier for terminating its traffic (and avoids billing costs).<sup>40</sup>

Attachment 2 reproduces CenturyLink's Dedicated Transport Price List for Minnesota. This price list, too, is dated December 2015. Attachment 2 comprises the rates for dedicated transport (DS1 and DS3) for each of 53 transport routes (e.g. Altura to Lewiston, and Altura to Rollingstone). CenturyLink's preferred rates in Attachment 2 are identical to the dedicated transport rates contained in the Hutchinson ICA.

As can be seen from the discussion above the Hutchinson rates deviate from CenturyLink's current default (preferred) rates in only one respect – reciprocal compensation – and CenturyLink agreed to that deviation (Bill & Keep) in its negotiations with Hutchinson. Thus, given that Hiawatha and Federated are willing to accept the Hutchinson rates, which are identical to the CenturyLink default (preferred) rates on offer to all comers,<sup>41</sup> Staff believes that CenturyLink has little to no basis to argue that its costs, as embodied in its rates, differ between Hutchinson, Hiawatha and Federated.

### **“Agreement to Adopt”**

CenturyLink has characterized the adoption process as one requiring CenturyLink's agreement, and it has made reference to Gardonville's adoption of the Hutchinson ICA in October, where CenturyLink agreed to the adoption. It is interesting to note that in adopting the Hutchinson ICA, Gardonville signed an “adoption agreement” with CenturyLink acknowledging the adoption and modifying at least one substantive term of the Hutchinson ICA.<sup>42</sup> In reviewing the

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<sup>40</sup> Section 43.2.3 of the Hutchinson ICA states that Bill & Keep “shall mean that the originating Party has no obligation to pay terminating charges to the terminating Party.”

<sup>41</sup> But for reciprocal compensation.

<sup>42</sup> Adoption Letter, Docket 15-897, October 6, 2015.



Gardonville adoption the Commission effectively (1) approved the adoption pursuant to § 252(i), **and** (2) approved an amendment to the ICA pursuant to § 252(e). The amendment provided additional language regarding the effective date and term of the adopted agreement. The Hutchinson ICA does not specify ICA expiration at a date certain, but the amendment adds language to specify expiration at a date certain. Staff does not challenge Gardonville's "adoption agreement - amendment" (and Gardonville is not a party to this docket) but Staff believes that a CLEC wishing to adopt an ICA is not required to obtain CenturyLink's agreement or to sign an "adoption agreement" in order to adopt an ICA. The CLEC need only notify an ILEC and the Commission (perhaps simultaneously) that it wishes to adopt an ICA. Absent an ILEC challenge the Commission can acknowledge the adoption with little fanfare. If the Commission approves the Hiawatha and Federated requests today, the parties may choose to amend the expiration date and term at a later date.

### Summary

CenturyLink is obligated to "make available without unreasonable delay to any requesting telecommunications carrier any agreement" to which it is a party "upon the same rates, terms, and conditions as those provided in the agreement." Section § 51.809(b)(1) of the FCC's rules relieve CenturyLink of that duty where CenturyLink can prove to this Commission that the costs of providing the Hutchinson agreement to Hiawatha and Federated "are greater than the costs of providing" that agreement to Hutchinson.<sup>43</sup> To date, CenturyLink has not argued that a cost difference exists, only that it is entitled to information from Hiawatha and Federated sufficient to allow it to examine specific costs. CenturyLink makes two main arguments, somewhat intertwined, with respect to its request for information:

- (a) The explicit argument is that Hiawatha and Federated must provide the requested information, and that a refusal to do so represents a violation of the Act's requirement that CLECs negotiate in good faith.
- (b) The other argument, implied by the request, is that the requested information is relevant to address the cost-exception clause of § 51.809(b)(1).

Staff recommends the Commission deny CenturyLink's request for information from Hiawatha and Federated. In summation:

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<sup>43</sup> Section 51.809(b)(2) limits adoption to technically feasible requests. CenturyLink has not challenged the technical feasibility of the requested adoptions.

1. The purpose of § 252(i) is (1) to prevent discrimination between requesting carriers by an ILEC, (2) to expedite agreements between carriers, and (3) to reduce the cost of interconnection for small carriers.
2. The FCC concluded “that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.”<sup>44</sup>
3. With respect to § 252(i) adoptions, neither the Act nor FCC rules compel the requesting CLECs to negotiate with the CenturyLink, nor do they compel the CLECs to provide the information sought by the CenturyLink. Adoption does not require CenturyLink’s agreement. CenturyLink may object to an adoption on limited grounds and bear the burden of proof to support those objections, but CenturyLink’s consent is not relevant.
4. CenturyLink seeks information from Hiawatha and Federated that it argues is relevant to determining whether the cost of providing the Hutchinson ICA to Hiawatha and/or Federated is higher than the cost of providing that ICA to Hutchinson. That is to say, CenturyLink seeks information that would allow it to distinguish between (1) Hutchinson and Hiawatha, and (2) Hutchinson and Federated.
5. Drawing a distinction between CLECs may be done in a discriminatory manner or a nondiscriminatory manner (i.e., cost-based). The Act clearly prohibits nondiscriminatory treatment of requesting CLECs by an ILEC.
6. CenturyLink possesses the cost information used to set rates for the products and services it offers to CLECs, and CenturyLink holds out those products and services for all CLECs seeking ICAs. Presumably, CenturyLink has priced its products and services in a manner that covers its costs. The Hutchinson ICA rates, but for Switching and Common Transport, are identical to the rates CenturyLink offers all comers, including Hiawatha and Federated. And, CenturyLink has offered no argument that the costs underpinning any of those rates vary with the identity of the purchaser (or because of technological change or increased input prices). Thus, the Commission has no basis for finding that CenturyLink’s costs will be higher in serving Hiawatha and/or Federated than they are for serving Hutchinson.
7. CenturyLink seeks information specific to the requesting CLEC’s future interconnection plans. This information may support discriminatory treatment of the CLECs, would pose

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<sup>44</sup> *Local Competition Order*, ¶ 1321.

intractable conceptual problems for any cost-exception analysis, and would bog down the adoption process in protracted and fruitless empirical analyses (all in direct opposition to the purpose of § 252(i)).

8. Although Hiawatha and Federated have not yet adopted the Hutchinson ICA, that ICA must form the basis of any cost comparison that could inform a cost-exception argument. That ICA makes provision for myriad interconnection arrangements, arrangements that may change throughout the term of the ICA through joint or unilateral decisions by Hutchinson and/or CenturyLink, or through changes in law or regulatory order. To choose one particular Hutchinson interconnection arrangement as a basis for comparison to Hiawatha's and Federated's proposed initial interconnection arrangements is to hold Hiawatha and Federated to a standard that Hutchinson is not held to. The hurdle that Hiawatha and Federated must meet to obtain access to the Hutchinson ICA would be more stringent than the requirements of the ICA itself. Hiawatha and Federated seek no more than the Hutchinson ICA grants to Hutchinson.
9. Hiawatha and/or Federated may choose to purchase more services than did Hutchinson. There is no basis here for a cost comparison as the CLECs have agreed to pay CenturyLink's rates (and cover its costs). A requesting CLEC may seek interconnection requiring CenturyLink to contribute more to a buildout of facilities than it did with Hutchinson. Here too, there is no nondiscriminatory basis for a cost comparison: (1) the Hutchinson ICA does not explicitly restrict buildout expenditures, (2) the FCC recognizes that ILECs also benefit from reasonable buildout expenses: "the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement,"<sup>45</sup> and (3) the ICA makes provision for "reasonable accommodation of interconnection" which may be challenged before the Commission.<sup>46</sup> Thus, CenturyLink has recourse, by the terms of the ICA, to challenge any undue buildout expense that an adopting CLEC may seek to impose.
10. CenturyLink's request for information puts the cart before horse. CenturyLink would have the CLECs propose interconnection arrangements without knowledge of CenturyLink's network in order to gain access to an ICA that would mandate that CenturyLink provide the very information the CLECs need to formulate their interconnection plans.

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<sup>45</sup> *Local Competition Order*, ¶ 553.

<sup>46</sup> Hutchinson ICA, definition of "Meet Point Arrangement."

11. CenturyLink's proffered analysis would yield an uninformative, ponderous and prolonged cost proceeding that could far exceed the cost and time required for an arbitration. Thus, faced with an expensive arbitration or an expensive cost-exception study, a CLEC may have no recourse but to agree to whatever contract CenturyLink puts on the table. CenturyLink's proposed process could box in small CLECs by cutting off their best avenue for interconnection ... and thwarting the very purpose of § 252(i).

If the Commission is persuaded by Staff's arguments above, the question remains as to whether the Commission should approve Hiawatha's and/or Federated's adoption requests at this time. Consider that Hiawatha approached CenturyLink with an adoption request on November 9, 2015 ... 109 days ago. Federated approached CenturyLink with an adoption request on December 9, 2015 ... 79 days ago. In contrast, Gardonville adopted the Hutchinson ICA in October, the Commission approving that unchallenged request within 20 days of its submission (15-897). That approval period is typical of adoptions in Minnesota. Staff believes that CenturyLink has had sufficient time during those time periods to determine whether the costs of its own products and services have changed since the approval of the Hutchinson ICA a few months earlier. CenturyLink could have provided such cost information pending the outcome of this docket. Further, the Hutchinson ICA rates – agreed to by Hiawatha and Federated – are in large part identical to the rates CenturyLink currently puts forward for all CLECs seeking interconnection. Staff recommends that the Commission approve the Hiawatha and the Federated adoption requests at this time.

## **Commission Options**

### **A. Commission Options: CenturyLink's Information Request from Hiawatha**

- A.1 Require Hiawatha, within 15 days of the issuance of this Order, to deliver to CenturyLink information on the specific type of interconnection services and points of interconnection that CenturyLink requires, to the extent that it possesses such information. Find that Hiawatha is bound by the good faith negotiation terms of the Act to provide such information. Require CenturyLink to submit the results of its cost study within 35 days of the issuance of this Order, or to affirmatively indicate that it declines to challenge Hiawatha's adoption request.
- A.2 Deny CenturyLink's request for information from Hiawatha on the grounds that the Act does not compel Hiawatha to provide such information.
- A.3 Deny CenturyLink's request for information from Hiawatha on the grounds that the requested information is not relevant to the determination of cost differences.
- A.4 Take other action.

Staff recommends options A.2 and A.3.

### **B. Commission Options: Hiawatha's Adoption Request**

- B.1 Defer the decision regarding Hiawatha's adoption request until CenturyLink affirmatively declines to challenge Hiawatha's adoption or until the conclusion of a Commission-approved a cost analysis.
- B.2 Approve Hiawatha's adoption of the Hutchinson ICA (as approved by the Commission on August 21, 2015) on the grounds that CenturyLink has not established that the costs of providing the Hutchinson ICA to Hiawatha are greater than the costs of providing it to Hutchinson. It shall be understood that the term "CLEC" in the adopted ICA refers to Hiawatha Broadband Communications, Inc.
- B.3 Take other action.

Staff recommends option B.2.

**C. Commission Options: CenturyLink's Information Request from Federated**

- C.1 Require Federated, within 15 days of the issuance of this Order, to deliver to CenturyLink information on the specific type of interconnection services and points of interconnection that CenturyLink requires, to the extent that it possesses such information. Find that Federated is bound by the good faith negotiation terms of the Act to provide such information. Require CenturyLink to submit the results of its cost study within 35 days of the issuance of this Order, or to affirmatively indicate that it declines to challenge Federated's adoption request.
- C.2 Deny CenturyLink's request for information from Federated on the grounds that the Act does not compel Federated to provide such information.
- C.3 Deny CenturyLink's request for information from Federated on the grounds that the requested information is not relevant to the determination of cost differences.
- C.4 Take other action.

Staff recommends options C.2 and C.3.

**D. Commission Options: Federated's Adoption Request**

- D.1 Defer the decision regarding Federated's adoption until CenturyLink affirmatively declines to challenge Federated's adoption request or until the conclusion of a Commission-approved cost analysis.
- D.2 Approve Federated's adoption of the Hutchinson ICA (as approved by the Commission on August 21, 2015) on the grounds that CenturyLink has not established that the costs of providing the Hutchinson ICA to Federated are greater than the costs of providing it to Hutchinson. It shall be understood that the term "CLEC" in the adopted ICA refers to Federated Telephone Cooperative.
- D.3 Take other action.

Staff recommends options D.2.

## Attachment 1

### CenturyLink EQ Traffic Exchange Agreement Price List, December 2015

Note: Rate elements shaded in yellow appear in the Hutchinson ICA, Table 1. Rate elements shaded in blue have been replaced by Bill & Keep in the Hutchinson ICA, Table 1. ICB = Individual Case Based

KEY CODES		Embarq - Minnesota		December 2015
MRC	NRC	ICA Elements		
		<b>Account Establishment Charge</b>	MRC	NRC
		Account Establishment		\$0.00
		<b>Customer Service Record Search</b>	MRC	NRC
		CSR - Manual		\$12.34
		CSR - Automated		\$0.00
		<b>Resale Discounts</b>	MRC	NRC
		Other than Operator / DA	17.66%	
		Op Assist / DA	22.38%	
		<b>Usage File Charges</b>	MRC	NRC
		Message Provisioning, per message	\$0.000684	
		Data Transmission, per message	\$0.000000	
		Media Charge - per CD (Price reflects shipping via regular U.S. Mail)		\$18.00
		<b>Other Charges</b>	MRC	NRC
		Temporary Suspension of Service for Resale - <b>SUSPEND</b>		\$0.00
		Temporary Suspension of Service for Resale - <b>RESTORE</b>		\$21.00
		PIC Change Charge, per change		Per Tariff
		Operator Assistance / Directory Assistance Branding		ICB
		<b>UNE Loop, Tag &amp; Label / Resale Tag &amp; Label</b>	MRC	NRC
I0005		Tag and Label on a reinstall loop or an existing loop or resale		\$10.55
		<b>Trip Charge</b>	MRC	NRC
I0007		Trip Charge		\$21.91
		<b>Service Order / Installation / Repair</b>	MRC	NRC
I0008		Manual Service Order NRC (excludes ASR)		\$16.50
I0009		Manual Service Order - Listing Only		\$16.50
I0010		Manual Service Order - Change Only (excludes ASR)		\$16.50
I0011		Electronic Service Order (excludes ASR)		\$9.13
I0012		Electronic Service Order - Listing Only		\$9.13
I0013		Electronic Service Order - Change Only (excludes ASR)		\$9.13
I0014		2-Wire Loop Cooperative Testing		\$46.17

I0015	4-Wire Loop Cooperative Testing		\$56.71
I0016	Trouble Isolation Charge		\$66.86
	LNP Coordinated Conversion (Hot Cut) - Lines 1 -10		\$74.17
	LNP Coordinated Conversion (Hot Cut) - Each additional line		\$4.10
	LNP Conversion - 10 Digit Trigger		\$0.00
	<b>Custom Handling</b>		
	Expedite Charges per Access Tariff		Special Access Tariff
	Time and Materials		ICB
	<b>UNE to Special Access or Special Access to UNE Conversions or Migrations (includes EEL)</b>		
I0018	DS1 Loop, per circuit		\$84.16
I0019	DS1 Transport, per circuit		\$84.16
	DS3 Loop, per circuit		ICB
	DS3 Transport, per circuit		ICB
	<b>Unbundled Network Elements (UNE)</b>		
	<b>Stand Alone NID</b>		
		MRC	NRC
	2 Wire	\$1.43	
	4 Wire	\$2.86	
	Other NID Sizes	ICB	
	NID Outside Facilities Connection		ICB
	<b>Pre-Order Loop Qualification</b>		
		MRC	NRC
I0236	Loop Make-Up Information		\$11.16
	<b>Loops (Rates Include NID Charge)</b>		
		MRC	NRC
	<b>2-Wire Analog</b>		
I0020	Band 1	\$24.78	
I0021	Band 2	\$55.12	
I0022	Band 3	\$94.88	
I0027	First Line		\$96.03
I0028	Second Line and Each Additional Line (same time)		\$29.07
I0029	Re-install (Cut Thru and Dedicated/Vacant)		\$47.30
I0030	Disconnect		\$52.22
	<b>4-Wire Analog</b>		
I0031	Band 1	\$48.20	
I0032	Band 2	\$109.04	
I0033	Band 3	\$187.94	
I0038	First Line		\$115.79
I0039	Second Line and Each Additional Line (same time)		\$48.83
I0040	Re-install (Cut Thru and Dedicated/Vacant)		\$64.42
I0041	Disconnect		\$52.22
	<b>2-Wire xDSL - Capable Loop</b>		
I0042	Band 1	\$24.78	
I0043	Band 2	\$55.12	



I0044		Band 3	\$94.88	
	I0049	First Line		\$98.24
	I0050	Second Line and Each Additional Line (same time)		\$31.28
	I0051	Re-install (Cut Thru and Dedicated/Vacant)		\$47.30
	I0052	Disconnect		\$52.22
		<b>2-Wire Digital Loop</b>		
I0064		Band 1	\$24.78	
I0065		Band 2	\$55.12	
I0066		Band 3	\$94.88	
	I0071	First Line		\$98.24
	I0072	Second Line and Each Additional Line (same time)		\$31.28
	I0073	Disconnect		\$52.22
		<b>2-Wire ISDN-BRI Digital Loop</b>		
I0074		Band 1	\$42.84	
I0075		Band 2	\$88.00	
I0076		Band 3	\$164.30	
	I0081	First Line		\$98.24
	I0082	Second Line and Each Additional Line (same time)		\$31.28
	I0083	Disconnect		\$52.22
		<b>Digital 56k/64k Loop</b>		
I0094		Band 1	\$41.87	
I0095		Band 2	\$52.08	
I0096		Band 3	\$65.70	
	I0101	First Line		\$258.87
	I0102	Second Line and Each Additional Line (same time)		\$191.91
	I0103	Disconnect		\$52.22
		<b>DS1 Service</b>		
I0104		Band 1	\$134.02	
I0105		Band 2	\$76.47	
I0106		Band 3	\$149.99	
	I0111	First Line		\$347.96
	I0112	Second Line and Each Additional Line (same time)		\$281.00
	I0113	Disconnect		\$52.22
		<b>DS3 Service</b>		
		Add DS3 to existing fiber system	\$2,446.29	\$152.57
		Disconnect		\$24.20
		<b>Sub Loops (Rates Include NID Charge)</b>	<b>MRC</b>	<b>NRC</b>
		Sub-Loops Interconnection (Stub Cable)		ICB
		<b>2 Wire Voice Grade and Digital Data Distribution</b>		
I0114		Band 1	\$11.40	
I0115		Band 2	\$20.49	
I0116		Band 3	\$27.83	
	I0121	First Line		\$99.23
	I0122	Second Line and Each Additional Line (same time)		\$32.27
	I0123	Disconnect		\$57.02

		<b>Loop Conditioning</b>	<b>MRC</b>	<b>NRC</b>
		<b>Load Coil Removal</b> for all Digital UNE and xDSL-Capable loops that are <b>less than 18,000 feet in length - per line conditioned</b> (No Engineering or Trip charges - price reflects 25 pair economies)		<b>\$0.32</b>
		<b>Load Coil Removal: Loops 18kft or longer</b>		
I0219		Conditioning Engineering Charge - per loop		<b>\$78.07</b>
I0220		Conditioning Trip Charge - per loop		<b>\$18.67</b>
I0221		Unload cable pair, per Underground location		<b>\$185.18</b>
I0222		Unload Addt'l cable pair, UG same time, same location and cable		<b>\$1.13</b>
I0223		Unload cable pair, per Aerial Location - First Pair		<b>\$76.59</b>
I0224		Unload Addt'l cable pair, AE or BU, same time, location and cable		<b>\$1.13</b>
I0225		Unload cable pair, per Buried Location - First Pair		<b>\$108.74</b>
		<b>Bridged Tap or Repeater Removal - Any Loop Length</b> (The following charges apply to all loops of any length that require Bridged Tap or Repeater removal.)		
I0232		Remove Bridged Tap or Repeater, per Underground Location		<b>\$185.48</b>
I0226		Remove each Addt'l Bridged Tap or Repeater, UG same time, location and cable		<b>\$1.43</b>
I0227		Remove Bridged Tap or Repeater, per Aerial Location - First Pair		<b>\$76.90</b>
I0228		Remove each Addt'l Bridged Tap or Repeater, AE or BU same time, location and cable		<b>\$1.43</b>
I0231		Remove Bridged Tap or Repeater, per Buried Location - First Pair		<b>\$109.05</b>
		<b>UNE Dedicated Interoffice Transport</b>	<b>MRC</b>	<b>NRC</b>
DMN00	DS1		<b>Refer to Dedicated Transport Price List</b>	<b>\$83.06</b>
	DS1 Disconnect			<b>\$24.20</b>
DMN01	DS3		<b>Refer to Dedicated Transport Price List</b>	<b>\$83.06</b>
	DS3 Disconnect			<b>\$24.20</b>
		<b>UNE Multiplexing</b>	<b>MRC</b>	<b>NRC</b>
		<b>Multiplexing elements are only relevant in conjunction with UNE transport.</b>		
I0134	I0135	Multiplexing - DS1-DS0 (per DS1) - (Shelf only, rate does not include cards)	<b>\$207.16</b>	<b>\$83.06</b>
		DS1-DS0 Disconnect		<b>\$24.20</b>
I0136	I0137	Multiplexing - DS3-DS1 (per DS3)	<b>\$232.50</b>	<b>\$83.06</b>
		DS3-DS1 Disconnect		<b>\$24.20</b>
		<b>Unbundled Dark Fiber Transport</b>	<b>MRC</b>	<b>NRC</b>
		<b>Dark Fiber Application &amp; Quote Preparation Charge</b>		<b>\$257.66</b>
		Note: These elements are calculated and billed manually using one price per USOC and COS. Detail is provided by the DFA form returned to the customer.		
		<b>Transport</b>		
		Interoffice, per foot per fiber - Statewide Average	<b>\$0.0060</b>	

		<b>Additional Charges Applicable to Transport</b>			
		Fiber Patch Cord, per fiber		\$0.91	
		Fiber Patch Panel, per fiber		\$0.91	
		Central Office Interconnection, 1-4 Patch Cords per CO - Install or Disconnect			\$213.48
		Dark Fiber End-to-End Testing, Initial Strand			\$74.24
		Dark Fiber End-to-End Testing, Subsequent Strand			\$20.75
		<b>EEL Combinations</b>		<b>MRC</b>	<b>NRC</b>
		<b>Enhanced Extended Link (EEL) is a combination of Loop, Transport and Multiplexing (when applicable). Refer to the specific UNE section (transport, loop, multiplexing) in this document to obtain pricing for each specific element.</b>			
		<b>See Rate Element / Service Order / Installation/Repair Center section of this price sheet for EEL Conversion Charges.</b>			
		<b>INTERCARRIER COMPENSATION</b>			
		<b>Interconnection Facilities</b>		<b>MRC</b>	<b>NRC</b>
		<b>Local Interconnection Entrance Facility</b>			
		<b>DS1 Service</b>			
I0236	I0244	Band 1		\$134.02	\$347.96
I0237	I0244	Band 2		\$76.47	\$347.96
I0238	I0244	Band 3		\$149.99	\$347.96
	I0246	Disconnect			\$52.22
		<b>DS3 Service</b>			
		Add DS3 to existing fiber system		\$2,446.29	\$152.57
		Disconnect			\$24.20
		<b>Interconnection Facilities - Direct Trunk Transport</b>		<b>MRC</b>	<b>NRC</b>
	DMN00	DS1		Refer to Dedicated Transport Price List	\$83.06
		Disconnect			\$24.20
	DMN01	DS3		Refer to Dedicated Transport Price List	\$83.06
		Disconnect			\$24.20
		<b>Interconnection Facilities - Multiplexing</b>		<b>MRC</b>	<b>NRC</b>
I0136	I0137	DS3-DS1 (per DS3)		\$232.50	\$83.06
		Disconnect			\$24.20
		<b>Reciprocal Compensation for Local Traffic</b>			
		<b>End Office and Tandem Switching (Per MOU)</b>		<b>End Office - per Minute of Use</b>	<b>Tandem Switching - per Minute of Use</b>
		<b>Plan Year and Date Range</b>			
		Current - June 30, 2012		\$0.007025	\$0.002416
		Plan Year 1: July 1, 2012 - June 30, 2013		\$0.005504	\$0.001374

	Plan Year 2: July 1, 2013 - June 30, 2014	\$0.003983	\$0.000331
	Plan Year 3: July 1, 2014 - June 30, 2015	\$0.002889	\$0.000331
	Plan Year 4: July 1, 2015 - June 30, 2016	\$0.001794	\$0.000331
	Plan Year 5: July 1, 2016 - June 30, 2017	\$0.000700	\$0.000331
	Plan Year 6: July 1, 2017 - June 30, 2018	\$0.00	\$0.000700
	Effective July 1, 2018	\$0.00	\$0.00
		Common Transport - per Minute of Use	Common Transport for Indirect Traffic - per Minute of Use
	<b>Common Transport and Common Transport for Indirect Traffic (Per MOU)</b>		
	<b>Plan Year and Date Range</b>		
	Current - June 30, 2012	\$0.000340	\$0.000340
	Plan Year 1: July 1, 2012 - June 30, 2013	\$0.000340	\$0.000340
	Plan Year 2: July 1, 2013 - June 30, 2014	\$0.000340	\$0.000340
	Plan Year 3: July 1, 2014 - June 30, 2015	\$0.000340	\$0.000340
	Plan Year 4: July 1, 2015 - June 30, 2016	\$0.000340	\$0.000340
	Plan Year 5: July 1, 2016 - June 30, 2017	\$0.000340	\$0.000340
	Plan Year 6: July 1, 2017 - June 30, 2018	\$0.00	\$0.000340
	Effective July 1, 2018	\$0.00	\$0.000340
	<b>ISP - Bound Traffic</b>		
	ISP - Bound Traffic	Bill and Keep	
	<b>VNXX Traffic</b>		
	VNXX Traffic -CTL Originating Access Rates	Per Tariff	
	<b>Transit Service</b>		
	Transit Service Charge - per MOU	\$0.005000	
	<b>Toll VOIP-PSTN Traffic</b>	MRC	NRC
	Toll VoIP-PSTN Traffic	CenturyLink's Appropriate Access Tariff	CenturyLink's Appropriate Access Tariff
	Facility PVU	0%	
	<b>Database</b>	MRC	NRC
	Local Number Portability query (LNP)	Per Interstate Tariff	Per Interstate Tariff
	Toll Free Code query (TFC) - Simple	Per Interstate Tariff	Per Interstate Tariff
	Toll Free Code query (TFC) - Complex Additive	Per Interstate Tariff	Per Interstate Tariff
	Line Information Database query (LIDB)	Per Interstate Tariff	Per Interstate Tariff
	Line Information Database query transport (LIDB)	Per Interstate Tariff	Per Interstate Tariff
	<b>Directory Services</b>	MRC	NRC
	Directory - Premium & Privacy Listings	Refer to Applicable Retail Tariff	

		Ad Hoc (Each Additional ) Galley		\$150.00
		Directory Listings - (if CLEC not purchasing UNE Loops or Resale Services)	\$0.00	
<b>911 And E911 Transport and Termination</b>				
<b>911 Facilities</b>				
		DS1: Muxing requirement determined by CenturyLink and varies by SR	Refer to Local Interconnection Entrance Facility and Direct Trunk Transport Rates	Refer to Local Interconnection Entrance Facility and Direct Trunk Transport Rates
		Multiplexing: DS1-DS0 when combined with Direct Trunk Transport (shelf only, rate does not include cards); (where required by CenturyLink, varies by SR)	Refer to UNE Multiplexing Rates	Refer to UNE Multiplexing Rates
<b>911 Selective Router Ports</b>				
I0233	I0234	DS0 911 Trunk Port - per port (minimum of two ports required)	\$85.88	\$258.87
<b>911 Transit Service</b>				
		DS0 charge for 911 transit service per port (min of two ports required)	\$40.00	
<b>911 Database</b>				
		MSAG Report- per report requested, applicable to the territory governed by this agreement		\$250.00
		Manual 911 ALI record upload, per record- only available upon CenturyLink approval		\$25.00
<p><b>In addition to the charges listed above, other charges in applicable wholesale 911 tariffs may apply as determined by CenturyLink on an ICB basis per geographic serving area.</b></p>				
<b>Routine Modification Of Facilities</b>				
<b>Rearrangement of Cable</b>				
		Rearrangement of Up to 3 Pairs per UNE Loop Ordered	N/A	Included in Loop NRC
		Rearrangements Requiring More Than 3 Pairs per UNE Loop Ordered	N/A	ICB
<b>Repeater/Doubler Installation Cost (incl. 4 slot housing and 1 card), per location</b>				
<b>1. Repeater Equipment Case w/ Repeater Card (for T-1 applications):</b>				
		Where Special Construction Does Not Apply (Card Installation Only)	Included in Loop MRC	Included in Loop NRC
I0229		Where Special Construction Applies, Non Recurring Charge		\$2,127.74
<b>2. Doubler Equipment Case w/ Doubler Card (for HDSL applications)</b>				
		Where Special Construction Does Not Apply (Card Installation Only)	Included in Loop MRC	Included in Loop NRC
I0230		Where Special Construction Applies, Non Recurring Charge		\$2,381.75
<b>Smart Jack</b>				
			Included in Loop MRC	Included in Loop NRC
<b>Line Card Installation</b>				
			Included in Loop MRC	Included in Loop NRC

		<b>Multiplexing</b>	<b>Included in Loop MRC</b>	<b>Included in Loop NRC</b>
		Note: Multiplexer pricing available through Enhanced Extended Loop (EELs) facility leases		
		<b>Bona Fide Request (BFR)</b>	<b>MRC</b>	<b>NRC</b>
		<b>Processing Fee</b>		<b>\$1,585.07</b>

Source: CenturyLink-Embarq Rates, Minnesota Rate Table, Minnesota TEA Price List Tab, [http://www.centurylink.com/wholesale/clec\\_contract\\_templates.html](http://www.centurylink.com/wholesale/clec_contract_templates.html), accessed February 8, 2016.

## Attachment 2

### CenturyLink EQ Dedicated Transport Price List, December 2015

Dedicated Transport Price List								Embarq - Minnesota - December 2015	
Key Codes		Rate Band	Route (CLLI to CLLI)		Route (Exchange to Exchange)		Dedicated DS1 Rate	Dedicated DS3 Rate	
DS1	DS3		Originating	Terminating	Originating	Terminating			
D0013	D1013	13	ALTRMNXARS0	LSTNMNXADS0	Altura	Lewiston	\$36.49	\$692.14	
D0026	D1026	26	ALTRMNXARS0	RLNGMNXR689	Altura	Rollingstone	\$34.38	\$633.06	
D0024	D1024	24	ALXNMNXADS0	CARLMNXCRS8	Alexandria	Carlos	\$36.49	\$692.14	
D0025	D1025	25	ALXNMNXADS0	HMCYMNXHRS8	Alexandria	Holmes City	\$34.38	\$633.06	
D0001	D1001	1	ATKNMNXADS0	BNVLMNXBRS0	Aitkin	Bennetville	\$44.93	\$928.45	
D0033	D1033	33	BFLKMNXBRS0	STWTMNXSR0	Buffalo Lake	Stewart	\$34.38	\$633.06	
D0028	D1028	28	BNVLMNXBRS0	CRSBMNXCDS0	Bennetville	Crosby	\$40.71	\$810.30	
D0029	D1029	29	BNVLMNXBRS0	DRWDMNXDRS0	Bennetville	Deerwood	\$36.49	\$692.14	
D0030	D1030	30	BOVLMNXBRS5	LNPRMNXLRS7	Browerville	Long Prairie	\$36.49	\$692.14	
D0031	D1031	31	BRTNMNXBRS0	GLCOMNXGRS0	Brownton	Glencoe	\$42.82	\$869.37	
D0032	D1032	32	BRTNMNXBRS0	STWTMNXSR0	Brownton	Stewart	\$34.38	\$633.06	
D0035	D1035	35	CARLMNXCRS8	HMCYMNXHRS8	Carlos	Holmes City	\$49.15	\$1,046.61	
D0057	D1057	57	CARLMNXCRS8	LKCYMNXLRS0	Carlos	Lake City	\$403.62	\$10,971.73	
D0036	D1036	36	CHSKMNXCDS0	CLGNMNXCRS4	Chaska	Cologne	\$40.71	\$810.30	
D0133	D1133	133	CHSKMNXCDS0	HSNGMNXHDS0	Chaska	Hastings	\$97.68	\$2,405.40	
D0132	D1132	132	CHSKMNXCDS0	MPGVMNXADS0	Chaska	Maple Grove	\$70.25	\$1,637.39	
D0037	D1037	37	CHSKMNXCDS0	NRWDMNXNRS4	Chaska	Norwood	\$53.37	\$1,164.77	
D0002	D1002	2	CHSKMNXCDS0	OSSEMNXODS0	Chaska	Osseo	\$72.36	\$1,696.47	
D0038	D1038	38	CHSKMNXCDS0	VCTAMNXVRS4	Chaska	Victoria	\$30.16	\$514.91	
D0023	D1023	23	CHSKMNXCDS0	WACNMNXWRS4	Chaska	Waconia	\$40.71	\$810.30	
D0041	D1041	41	CLGNMNXCRS4	NRWDMNXNRS4	Cologne	Norwood	\$34.38	\$633.06	
D0042	D1042	42	CLGNMNXCRS4	WACNMNXWRS4	Cologne	Waconia	\$32.27	\$573.98	
D0039	D1039	39	COKTMNXCRS0	DSSLMNXDRS0	Cokato	Dassel	\$32.27	\$573.98	
D0014	D1014	14	COKTMNXCRS0	HWLKMNXHRS0	Cokato	Howard Lake	\$34.38	\$633.06	
D0044	D1044	44	CRSBMNXCDS0	DRWDMNXDRS0	Crosby	Deerwood	\$25.94	\$396.75	
D0047	D1047	47	ELGNMNXERS0	EYOTMNXERS0	Elgin	Eyota	\$40.71	\$810.30	
D0048	D1048	48	ELGNMNXERS0	MLVLMNXM798	Elgin	Millville	\$38.60	\$751.22	
D0046	D1046	46	ELGNMNXERS0	PLVVMNXPDS0	Elgin	Plainview	\$30.16	\$514.91	
D0051	D1051	51	GLCOMNXGRS0	LSPRMNXLRS0	Glencoe	Lester Prairie	\$40.71	\$810.30	
D0134	D1134	134	GLCOMNXGRS0	OSSEMNXODS0	Glencoe	Osseo	\$112.45	\$2,818.95	
D0052	D1052	52	GLCOMNXGRS0	PLATMNXPRS0	Glencoe	Plato	\$32.27	\$573.98	
D0005	D1005	5	GLCOMNXGRS0	SLLKMNXSR0	Glencoe	Silver Lake	\$40.71	\$810.30	
D0058	D1058	58	HMCYMNXHRS8	LKCYMNXLRS0	Holmes City	Lake City	\$412.06	\$11,208.04	
D0053	D1053	53	HSNGMNXHDS0	NRWDMNXNRS4	Hastings	Norwood	\$131.44	\$3,350.65	
D0131	D1131	131	HSNGMNXHDS0	OSSEMNXODS0	Hastings	Osseo	\$99.79	\$2,464.48	
D0016	D1016	16	LKCYMNXLRS0	MLVLMNXM798	Lake City	Millville	\$51.26	\$1,105.69	
D0059	D1059	59	LKCYMNXLRS0	ZMFLMNXZRS0	Lake City	Zumbro Falls	\$49.15	\$1,046.61	
D0061	D1061	61	LSPRMNXLRS0	PLATMNXPRS0	Lester Prairie	Plato	\$36.49	\$692.14	

D0062	D1062	<b>62</b>	LSPRMNXLRS0	SLLKMNXSRS0	Lester Prairie	Silver Lake	<b>\$38.60</b>	<b>\$751.22</b>
D0085	D1085	<b>85</b>	LSPRMNXLRS0	STWTMNXSRS0	Lester Prairie	Stewart	<b>\$72.36</b>	<b>\$1,696.47</b>
D0064	D1064	<b>64</b>	LSTNMNXADS0	RLNGMNXR689	Lewiston	Rollingstone	<b>\$38.60</b>	<b>\$751.22</b>
D0067	D1067	<b>67</b>	MLVLMNXM798	PLVWMNXPDS0	Millville	Plainview	<b>\$36.49</b>	<b>\$692.14</b>
D0068	D1068	<b>68</b>	MLVLMNXM798	ZMFLMNXZRS0	Millville	Zumbro Falls	<b>\$36.49</b>	<b>\$692.14</b>
D0065	D1065	<b>65</b>	MPGVMNXADS0	NRWDMNXNRS4	Maple Grove	Norwood	<b>\$91.35</b>	<b>\$2,228.17</b>
D0022	D1022	<b>22</b>	MPGVMNXADS0	OSSEMNXODS0	Maple Grove	Osseo	<b>\$25.94</b>	<b>\$396.75</b>
D0073	D1073	<b>73</b>	NRWDMNXNRS4	OSSEMNXODS0	Norwood	Osseo	<b>\$93.46</b>	<b>\$2,287.25</b>
D0071	D1071	<b>71</b>	NRWDMNXNRS4	PLATMNXPRS0	Norwood	Plato	<b>\$32.27</b>	<b>\$573.98</b>
D0130	D1130	<b>130</b>	NRWDMNXNRS4	RGRSMNXRRS0	Norwood	Rogers	<b>\$91.35</b>	<b>\$2,228.17</b>
D0084	D1084	<b>84</b>	NRWDMNXNRS4	STMCMNXSRS0	Norwood	St Michael	<b>\$91.35</b>	<b>\$2,228.17</b>
D0087	D1087	<b>87</b>	NRWDMNXNRS4	VCTAMNXVRS4	Norwood	Victoria	<b>\$51.26</b>	<b>\$1,105.69</b>
D0072	D1072	<b>72</b>	NRWDMNXNRS4	WACNMNXWRS4	Norwood	Waconia	<b>\$38.60</b>	<b>\$751.22</b>
D0069	D1069	<b>69</b>	NWLDMNXNRS0	WDRFMNXW239	New Richland	Waldorf	<b>\$42.82</b>	<b>\$869.37</b>
D0088	D1088	<b>88</b>	VCTAMNXVRS4	WACNMNXWRS4	Victoria	Waconia	<b>\$34.38</b>	<b>\$633.06</b>

Source: CenturyLink-Embarq Rates, Minnesota Rate Table, Dedicated Transport Tab,  
[http://www.centurylink.com/wholesale/clec\\_contract\\_templates.html](http://www.centurylink.com/wholesale/clec_contract_templates.html), accessed February 8, 2016.