Jason D. Topp
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October 10, 2014

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: In the Matter of Digital Telecommunications, Inc. Complaint against Qwest Corporation
Docket No. P-5681, 421/C-09-302

In the Matter of the Application of Qwest Corporation for Expedited Approval to Discontinue Physical Connection with Digital Telecommunications, Inc.
Docket No. P-5681, 421/M-08-1443

Dear Dr. Haar:

Enclosed for filing please find Qwest Corporation dba CenturyLink QC's Response to Request for Reconsideration filed by the Minnesota Department of Commerce regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosure

cc: Service List

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

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Dianne Barthel hereby certifies that on the 10th day of October, 2014, she e-filed a true and correct copy of Qwest Corporation dba CenturyLink QC's Response to Request for Reconsideration filed by the Minnesota Department of Commerce by posting it on www.edockets.state.mn.us. Said document was also served via U.S. mail and e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission.

/s/ Dianne Barthel
Dianne Barthel

Subscribed and sworn to before me
this 10th day of October, 2014.

/s/ LeAnn M. Cammarata
Notary Public

My Commission Expires Jan 31, 2015

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QWEST CORPORATION DBA CENTURYLINK QC'S RESPONSE TO REQUEST FOR RECONSIDERATION FILED BY THE MINNESOTA DEPARTMENT OF COMMERCE

INTRODUCTION

Qwest Corporation dba CenturyLink QC ("CenturyLink" or "Qwest")[1] submits this response to the request for reconsideration filed by the Minnesota Department of Commerce ("Department") on September 30, 2014. CenturyLink understands the Department's position as seeking clarifications to the legal analysis and record references in the Order Denying Relief dated September 20, 2014 ("Order") but not to challenge the Commission's ultimate conclusion denying SAWT, Inc.'s ("SAWT") relief.

To the extent the Department's request seeks to clean up the Order, rather than change its conclusion, CenturyLink does not generally oppose the Commission making modifications to its Order to clarify its legal analysis and the factual basis for its conclusions.

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[1] Qwest Corporation underwent a name change during the course of this proceeding. In order to maintain consistency with prior filings, these comments will continue to use the name Qwest when referring to the historical actions at issue in the case and CenturyLink when referring to the company's current litigation activities.

The Supplemental Record Analysis filed by staff on December 9, 2013 provides a legal analysis on the merits[2] and an overview of the record that amply supports the Commission's decision. It also addresses the issues identified by SAWT. Incorporating that analysis into a final Commission Order may more effectively set forth the decision the Commission has reached.

Nonetheless, CenturyLink believes many of the changes proposed by the Department are inaccurate or unnecessary. These comments will address each of the Department's proposals.

DISCUSSION

1. The Department's proposed change in the discussion of enterprise switching in the TRO need not be made.

The Department's first concern relates to a statement that, as a result of the TRO, "Qwest no longer had the obligation to offer enterprise switching to DTI."[3] The Department points out certain resale obligations that continue and suggests inserting the term "at cost-based rates" to clarify the Commission's intent.

The Department's proposed change is accurate but unnecessary. Page four of the Order explicitly sets forth the meaning of the TRO and TRRO and makes the distinction that the Department suggests:

> Prior to these FCC decisions related to the availability of ILEC switching as a UNE, a number of CLECs had been leasing what was referred to as UNE-P at the TELRIC rates set by the Commission. UNE-P consisted of the ILEC's local loop, transport and switching facilities as a single package of network elements. Given the FCC's conclusion that § 251 no longer required ILECs to provide switching to CLECs, ILECs were no longer required to offer UNE-P at cost-based rates.

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[2] CenturyLink disagrees with the Supplemental Record Analysis with respect to jurisdictional issues and preserves all rights to appeal such rulings.

[3] Department Request for Reconsideration ("Department Request"), p. 1 (quoting p. 18 of the Order).

> When a given element no longer qualifies as a § 251 UNE, the FCC directed the incumbent and the competitor to negotiate how to convert the UNE to some other arrangement. To convert its elements a competitor may change the physical equipment employed to serve its customers, or may continue to use the existing equipment but at a higher price, or both.
>
> The FCC established a one-year transition period -- from March 11, 2005 to March 11, 2006 -- for competitors to convert their § 251 UNEs to "alternative facilities or arrangements, including self-provided facilities, alternative facilities offered by other carriers, or tariffed services offered by the incumbent...." The FCC specified that "[a]t the end of the twelve-month period, requesting carriers must transition all of their affected high-capacity loops to alternative facilities or arrangements."[4]

The Order continues to extensively discuss the FCC orders in a manner that makes clear it is correctly interpreting them.[5] It explicitly states, "Following implementation of the TRO and TRRO, competitors retained the discretion to purchase Qwest's finished services under § 251 at the Commission-set wholesale discount and resell those services. Competitors could also seek to lease elements at market rates from incumbents or other competitors if available, or could use their own facilities if they had such facilities."[6] CenturyLink does not believe that this issue warrants reconsideration but has no opposition if the Commission desires to make this suggested change.

2. The Department misinterprets the Order when it challenges a small portion of its discussion of the duty to negotiate in good faith.

The Department suggests that the Order inaccurately defines the duty to negotiate in good faith in the following language:[7]

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[4] Order, p. 4 (footnotes omitted).
[5] *See* Order, pp. 5-6 (discussing the impact of the TRO and TRRO on the negotiations between the parties).
[6] Order, p. 13 (citing TRO, ¶¶ 163, 180, 195).
[7] Department Request, pp. 2-4.

> The duty to negotiate in good faith does not require Qwest to sacrifice its own interests to promote the interests of a competitor. Rather, it requires all parties to engage in an act of creative entrepreneurship, seeking out opportunities for *mutual* gain relative to the status quo.[8]

CenturyLink views this language in the Order as commentary related to a specific allegation in the case (that Qwest negotiated in bad faith because it did not offer to compromise on its original position) rather than a comprehensive definition of the duty.

The Order analyzes the obligation of the duty of good faith in the context of the allegations made in the case rather than provide an overall legal analysis of what that duty entails. In addition to the provisions challenged by the Department, the Order discusses the obligation when evaluating jurisdiction,[9] when evaluating the fact that Qwest did not offer a QPP type product for enterprise customers,[10] when evaluating allegations that Qwest violated its good faith by not offering a bridge agreement similar to what it offered Eschelon,[11] and when evaluating allegations that Qwest violated the obligation when it transitioned DTI's services to month-to-month services.[12]

The Commission's analysis is consistent with the authority the Department cites. However, if the Commission wishes to include within its order a complete legal analysis of the obligation of good faith as it applies to this case, CenturyLink recommends the Commission adopt Sections 43-51 of the Supplemental Record Analysis.

3. The reference to the change management process could be changed, and the reference to the disconnection process should remain.

The Department expresses concern about a clause in the Order that refers to "negotiation as provided in their interconnection agreement's change management

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[8] Order, p. 23.
[9] Order, pp. 10-11.
[10] Order, pp. 13-14.
[11] Order, p. 24.
[12] Order, p. 25.

process."[13] CenturyLink agrees that the term, "change management process," is not the ideal language in the Order because change management process is a defined term of art in the interconnection agreement related to updates to ordering and provisioning systems. The Order clearly refers to the agreement's change of law provisions. To avoid any confusion, the Commission may want to change this language.

The Department also complains about a reference in the Order concluding that Qwest's failure to seek disconnection of DTI evidences Qwest's good faith. The provision states:

> Second, whatever the ambiguity of section 5.1.2.2.2, no party has alleged ambiguity regarding the preceding provision, section 5.1.2.2.1: "[A]bsent CLEC transition by the ninety-first day or by March 10, 2006, whichever is earlier, Qwest will disconnect any remaining services on or after this date." Qwest's choice to begin charging DTI higher prices in lieu of initiating the process of disconnecting service undermines any suggestion that Qwest acted with ill will or anticompetitive intent toward DTI.[14]

The Department's challenge to this paragraph is without merit. Qwest clearly could have sought to disconnect DTI in 2006 pursuant to Section 5.1.2.2.1 but did not. To the extent Qwest was driven by a desire to drive DTI out of business, as the complaint in this case suggests, it stands to reason Qwest would have taken such action at that time.

The Department expresses concern that if this paragraph of the Order stands, it will encourage companies to not bring disputes to the Commission. That concern is misplaced. The record establishes that Qwest suggested that the parties go to the Commission to arbitrate the amendment on multiple occasions.[15] In addition, when Qwest did seek to disconnect DTI several years later, it did go to the Commission with a petition for

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[13] Department Request, pp. 4-5.
[14] Order, p. 25.
[15] *See* Paragraph 55 of the Supplemental Record Analysis, Ex. 32, Apr. 28, 2006 email from Christensen to Terek and Ex. 32, May 9, 2006 email from Christensen to Terek.

disconnection, a petition that gives rise to one of the dockets involved in this proceeding.[16] Accordingly, the analysis of this issue in the Order is sound and should remain in the ultimate Commission decision in this case. This provision of the Order is well supported by the record and should remain.

4. CenturyLink does not oppose the Department's proposed change to language related to paragraph 586 of the Order.

The Department next challenges a portion of the Order that discusses paragraph 586 of the *TRO*.[17] CenturyLink does not concede that the Department is correct in its analysis, but it also believes that the analysis is not critical to the Commission's decision and therefore does not oppose the changes the Department suggests.

5. The Department's suggested changes to a discussion of the Eschelon Bridge Agreement should be rejected.

The Department suggests that the Commission's analysis at page 24 of the Order that "Qwest entered into a bridge agreement with Eschelon within the context of an arbitration proceeding"[18] is invalid. In support, it cites the date of the bridge agreement and points out that the bridge agreement was entered into before the arbitration proceeding commenced.[19]

The Order cites the testimony of Mr. Easton that explains the procedural posture at the time the agreement was reached:

> These issues arose in the midst of the parties' ongoing multi-state negotiations of a replacement interconnection agreement. There were numerous issues of the TRRO that the parties disagreed on, and it was obvious that the issues would have to be arbitrated by the Commissions. The parties could have chosen to arbitrate the TRRO amendment before the various state commissions but, knowing that the replacement interconnection agreements were ultimately going to be arbitrated by the

[16] Docket No. P-5681, 421/M-08-1443.
[17] Department Request, pp. 5-6.
[18] Order, p. 24.
[19] Department Request, pp. 6-7.

commissions, they chose to settle the TRRO issues as part of the interconnection agreement arbitrations.[20]

While it is true that the bridge agreement was reached before the arbitration proceeding commenced in Minnesota, the Department's clarification is unnecessary.

6. The Order correctly characterizes Qwest's negotiating position regarding rates for replacement services.

The Department challenges a portion of the Order claiming it "incorrectly refers to the retail tariff rates having prices to 'renegotiate.'"[21] It is unclear what language the Department is referring to. The relevant language from that portion of the Order provides:

> But Qwest offered no comparable proposal for elements serving enterprise customers. Instead, as early as January 2006 Qwest stated its intent to make its enterprise services such as switching with PRI and DSS available to DTI for resale, applying the Commission-established resale discount to various retail rates. The discount would even apply to rates associated with contracts specifying a minimum amount DTI would commit to buying – that is, *individual case based (ICB) pricing.* In response to DTI's request for different terms, Qwest stated that the duty to charge non-discriminatory rates precluded Qwest from offering special terms solely to DTI. Qwest also told DTI that it had no duty to offer "wholesale prices" for DSS or PRI switching, and that Qwest would not renegotiate the retail rate for DSS or PRI switching posted in Qwest's price catalog or the resale discount ordered by the Commission.[22]

The Department claims that this analysis misstates the record and, in particular, misstates Paragraph 4 of Qwest's Answer. It does not. The relevant portion of the Answer states:

> With respect to the allegation in Paragraph 8, after long delays, and only when finally faced with termination of Mass Markets UNE-P services as the result of the FCC Order on Remand, FCC 04-290, adopted December 15, 2004 and released February 4, 2005, DTI entered into negotiations of a TRO/TRRO amendment. During those negotiations, Qwest told DTI that it would not negotiate the retail DSS/PRI rates posted in the price catalog or the Resale Discount ordered by the Commission. Qwest states that there is no requirement for "wholesale pricing" for DSS/PRI services. Qwest denies the remaining allegations in Paragraph 8.

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[20] Ex. 57 (Easton Supplemental), 2:9-16.
[21] Department Request, p. 7.
[22] Order, pp. 5-6 (footnotes omitted).

The Order accurately captures Qwest's answer and accurately reflects extensive evidence establishing that Qwest repeatedly relayed potential pricing options to DTI and made the wholesale discount available on those options.[23] The Department's proposed modification is not necessary. The Commission may want to adopt the suggested findings in the Supplemental Record Analysis, ¶¶ 54 and 57, to further clarify its findings in this area.

CONCLUSION

The Department's proposed changes to the Order are not necessary. However, as is discussed in these comments, the Commission might want to consider incorporating portions or the entirety of the analysis in Staff's Supplemental Record Analysis to clarify its legal reasoning and the factual record upon which it relied in issuing its Order.

Dated this 10th day of October, 2014.

QWEST CORPORATION dba
CENTURYLINK QC

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[23] Supplemental Record Analysis, ¶¶ 54 and 57 (citing the extensive record establishing such proposals).