

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13M-0881T

IN THE MATTER OF THE PETITION OF CENTURYLINK QC'S REQUESTING
COMMISSION APPROVAL OF ADDITIONS TO NON-IMPAIRED WIRE CENTER
LIST IN ACCORDANCE WITH THE FCC'S TRIENNIAL REVIEW REMAND ORDER.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
APPROVING JOINT MOTION FOR
RECLASSIFICATION OF CERTAIN WIRE
CENTERS AND GRANTING PETITION**

Mailed Date: April 24, 2014

I. STATEMENT

1. On September 23, 2013, Qwest Corporation, doing business as, CenturyLink QC (CenturyLink QC), filed a Petition for approval of adding CenturyLink QC's Denver North and Denver Southeast wire centers to Tier 1 Classification, and the Montebello and Durango wire centers to Tier 2 Classification for the Colorado non-impaired wire center list in accordance with the Federal Communication Commission's (FCC) *Triennial Review Remand Order (TRRO)*.¹

2. Additionally, CenturyLink QC requested a protective order based on a "model protective order" attached to the Application as Attachment A. CenturyLink QC represented that the model protective order was agreed upon and negotiated among CenturyLink QC (then Qwest Corporation) and the Joint CLECs prior to the initial *TRRO* Dockets as a basis for any protective order entered in future proceedings in order to allow Qwest Corporation to file

¹ Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005).

confidential wire center information regarding business line counts and the number of fiber-based collocators as defined in the FCC's *TRRO*.

3. The Commission provided notice of the application on September 25, 2013.

4. Timely intervenors in this proceeding include, Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom (Eschelon), Cbeyond Communications, LLC (Cbeyond), and Commission Trial Staff (Staff).

5. On November 6, 2013, the Commission deemed the application complete and referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

6. By Interim Decision No. R13-1451-I issued November 20, 2013, CenturyLink QC was required to file a Colorado-specific protective order since the proposed order it filed was based on Minnesota regulations and law. Additionally, a pre-hearing conference was scheduled for December 9, 2013.

7. On December 6, 2013, the parties filed a Joint Schedule Proposal in which they agreed that CenturyLink QC would provide the intervenors in this proceeding that had signed a non-disclosure agreement with confidential data to determine whether the parties had any objections to the proposed Tier changes. The Joint Schedule Proposal stated that the parties believed that the proposed procedural schedule could result in resolution of the issues raised by the Petition without the need for extensive litigation.

8. At the scheduled pre-hearing conference, the parties discussed the proposed procedural schedule and agreed to submit notification to the Commission of the absence of objections, or in the alternative, a proposed schedule to litigate the dispute in a filing due no later than February 7, 2014. By Interim Decision No. R13-1542-I issued December 13, 2013,

the proposed procedural schedule was adopted and the parties were further required to file a status update no later than January 23, 2014.

9. On January 13, 2014, Staff filed a Notice of Informational Filing. Staff represented that while it took no position on the Petition at that time, its audit concluded that in Staff's opinion, three out of the four wire centers at issue in this proceeding meet the FCC criteria for being non-impaired wire centers.

10. On January 13, 2014, Eschelon and Cbeyond (Joint CLECs) filed an Objection to CenturyLink Petition for Additions to the Non-Impaired Wire Center List. The Joint CLECs objected to the Tier 2 classification of the Denver Montbello wire center because there are not three fiber-based collocators in that office required to be classified as Tier 2. The Joint CLECs also objected to the Tier 1 classification of Denver North and the Tier 2 classification of Durango since the information available to Joint CLECs at that time was not clear as to whether each collocator listed by CenturyLink as being a fiber-based collocator has fiber that leaves the incumbent local exchange carrier (incumbent LEC) wire center premises. The Joint CLECs indicated that this was their position until final verification could be completed.

11. On January 23, 2014, CenturyLink QC, the Joint CLECs, and Staff filed a Joint Status Report. The parties agreed that as a result of discussions, there were no longer any objections to the classification of the Durango wire center as Tier 2 or Denver North as Tier 1. Nonetheless, at that time, some issues remained regarding the appropriate classification of the Denver Montbello wire center. The parties indicated that they would continue to work through the issues and would make a filing on February 7, 2014 regarding the remaining issues.

12. On February 7, 2014, the parties filed a Stipulation and Joint Motion to Approve Reclassification of Certain Wire Centers and Close Proceeding (Stipulation).

13. According to the Stipulation, the parties stipulated that the Denver North wire center may be classified as Tier 1, the Denver Southeast wire center may be classified as Tier 1, and Denver Montbello may be classified as Tier 2, consistent with the application standards set forth in FCC orders and regulations. However, CenturyLink QC withdraws its application without prejudice regarding the Durango wire center. As a result, the parties stipulate that the Durango wire center should not be reclassified pursuant to CenturyLink's Petition filed in this proceeding.

II. FINDINGS AND CONCLUSIONS

14. Section 251(d)(2) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat 56 (1996) authorizes the FCC to require unbundled access to certain network elements when the failure to provide such access would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." A wire center is unimpaired for particular network elements when it meets competitive requirements set forth by the FCC in regulations implementing its decision in the TRRO.

15. Under 47 *Code of Federal Regulations* (C.F.R.) § 51.319(d)(3), incumbent LEC wire centers are to be classified into three tiers. Under subsection (e)(3)(i), a Tier 1 or fully unimpaired wire center is defined as:

... those incumbent LEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 wire centers also are those incumbent LEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs.

16. Under subsection (3)(ii), a Tier 2 or partially unimpaired wire center is defined as:

...those incumbent LEC wire centers that are not Tier 1 wire centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both.

17. A “fiber-based collocater” is defined in 47 C.F.R. § 51.5 as:

any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that

- (1) Terminates at a collocation arrangement within the wire center;
- (2) Leaves the incumbent LEC wire center premises; and
- (3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocaters in a single wire center shall collectively be counted as a single fiber-based collocater. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

18. In its Notice of Intervention, Staff raised the issue of whether CenturyLink had satisfied its burden of proof that the Denver North and Denver Southeast wire centers met the requirements for a Tier 1 classification, and that Montbello and Durango met the requirements of a Tier 2 classification in accord with the FCC’s TRRO. However, Staff subsequently reported that pursuant to its audit of the wire centers at issue, Staff was satisfied that three out of the four wire centers met the FCC criteria for being non-impaired wire centers.

19. The Joint CLECs objected to the classification of the Montbello wire center as Tier 2, and to the Tier 1 Classification of Denver North and the Tier 2 Classification of Durango based on the information available at that time. The Joint CLECs did not object to the classification of Denver Southeast as Tier 1.

20. Due to the exchange of additional information among the parties and Staff’s audit results, the objections of the Joint CLECs were satisfied and the parties were able to stipulate that no objection remained regarding the classification of the Durango wire center as Tier 2 or Denver North as Tier 1. In addition, any questions and disputes raised by the Joint CLECs were

also satisfied regarding the Montbello wire center classification as Tier 2. As stated above, the Durango wire center application was withdrawn by CenturyLink QC.

21. Given the stipulation of the parties to this proceeding regarding the remaining wire center designations, good cause is found to grant the Joint Motion and approve the Petition of CenturyLink QC to reclassify the wire centers at issue, with the exception of the Durango wire center, as requested.

22. It is found that the reclassification of the Denver North and Denver Southeast wire centers to Tier 1 Classification and the Montbello wire center to Tier 2 Classification comports with the FCC's TRRO, as well as the Commission's reclassification methodologies as set forth in Commission Proceeding Nos. 06M-080T and 07A-249T and is therefore in the public interest. In addition, the reclassification of those wire centers is consistent with the Settlement Agreement between CenturyLink QC (previously Qwest) and a coalition of competitive local exchange carriers CLECs which was reviewed in the Commission's TRRO proceedings identified above.

23. As a result, the Denver North wire center will be reclassified as Tier 1; the Denver Southeast wire center will be reclassified as Tier 1; and the Montbello wire center will be reclassified as Tier 2.

24. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Reclassification of Certain Wire Centers is granted.

2. The Petition of Qwest Corporation, doing business as CenturyLink QC (Century Link QC) Requesting Commission Approval of Additions to Non-Impaired Wire Center List in Accordance with the FCC's Triennial Review Remand Order is approved consistent with the stipulation among CenturyLink QC, Trial Staff of the Commission, Cbeyond Communications, LLC, and Eschelon Telecom of Colorado, Inc., doing business as Integra and the discussion above.

3. The Denver North wire center shall be reclassified as Tier 1 Classification.

4. The Denver Southeast wire center shall be reclassified as Tier 1 Classification.

5. The Montbello wire center shall be reclassified as Tier 2 Classification.

6. The request to withdraw the reclassification of the Durango wire center is granted.

7. This proceeding is now closed.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by §40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of §40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in §40-6-113, C.R.S.

If notranscript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director