

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0669T

IN THE MATTER OF THE 2014 APPLICATION OF QWEST CORPORATION, DOING
BUSINESS AS CENTURYLINK QC, REQUESTING COMMISSION APPROVAL OF
ADDITIONS TO NON-IMPAIRED WIRE CENTER LIST IN ACCORDANCE WITH
THE FCC’S TRIENNIAL REVIEW REMAND ORDER.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
AMENDING PROCEEDING CAPTION, CHANGING
PROCEEDING NUMBER, DEEMING THE
APPLICATION TO BE COMPLETE, SCHEDULING
PREHEARING CONFERENCE, NOTING
INTERVENTION BY RIGHT, GRANTING PETITION
TO INTERVENE, REQUIRING INTEGRA TO RETAIN
COUNSEL, ADDRESSING TREATMENT OF
INFORMATION FILED AS HIGHLY CONFIDENTIAL,
AND CONTAINING ADDITIONAL ADVISEMENTS**

Mailed Date: August 26, 2014

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I. STATEMENT

1. On June 20, 2014, Qwest Corporation, doing business as CenturyLink QC (Qwest or Applicant), filed (in one document) its 2014 Application for Commission Approval of Additions to Non-Impaired Wire Center List [Application] and Motion for Expedited Issuance of Protective Order [Motion for Protective Order]. That filing commenced this Proceeding.

2. On June 24, 2014, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period, which has expired.

3. On July 30, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Proceeding Caption and Proceeding Number.

4. The filing made on June 20, 2014 by Qwest had this caption: *In the Matter of the 2014 Petition of CenturyLink QC Requesting Commission Approval of Additional to Non-Impaired Wire Center List in Accordance with the FCC's Triennial Review Remand Order*. As a result, the Commission issued its Notice of Petition Filed with Qwest's caption, as slightly modified by the Commission, and with Proceeding No. 14M-0669T.

5. On July 1, 2014, Qwest filed what it designated as an Amended Application. In that filing, Qwest changes the caption of the document to read: *In the Matter of the 2014 Application of CenturyLink QC Requesting Commission Approval of Additional to Non-Impaired Wire Center List in Accordance with the FCC's Triennial Review Remand Order*. This is the only change. Qwest made this change "to reflect that this case is an Application as indicated in the title and text of the original application." July 1, 2014 Filing at 1 & note 1.

6. The ALJ agrees with Qwest that the caption of this Proceeding as shown on the June 24, 2014 Commission Notice is incorrect as it references a petition when Qwest filed an application. The ALJ will order the caption of this Proceeding changed to the caption that is set out above in this Interim Decision and will order the Commission Administrative Staff to make the appropriate changes to the Commission's records.

7. Changing the caption from petition to application necessitates a change in the Proceeding number from Proceeding No. 14M-0669T (which, in this instance, designated a petition) to Proceeding No. 14A-0669T (which designates an application). The ALJ will order the number of this Proceeding changed to the number that is set out above in this Interim Decision and will order the Commission Administrative Staff to make the appropriate changes to the Commission's records.

8. Future filings made in this Proceeding must contain the caption and Proceeding number set out above.

B. Application Deemed Complete and Time for Commission Decision.

9. This Proceeding is an application. As a result, the ALJ must determine whether the Application is complete within the meaning of § 40-6-109.5, C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1303(c).¹ An application is determined to be complete if it

meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.

Rule 4 CCR 723-1-1303(c)(I).

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

10. As this is a telecommunications application, Rule 4CCR 723-2-2002² applies. The ALJ finds that the Application is complete within the meaning of § 40-6-109.5, C.R.S., and Rule 4 CCR 723-1-1303(c). The Application is deemed complete as of **August 25, 2014**.

11. When it filed the Application, Applicant provided neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

12. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than 210 days from the date on which the Application is deemed (determined) to be complete. The Commission should issue its decision on the Application not later than **March 23, 2015**.

C. Intervention by Right and Petition to Intervene.

13. On July 21, 2014, Trial Staff of the Commission (Staff) filed (in one document) its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing. In its filing, Staff identified both litigation Staff and advisory Staff. Staff is a party in this matter. In its filing, Staff does not state whether it opposes, contests, or takes no position with respect to the Application.

14. On June 26, 2014, Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom (Integra), timely filed a Petition to Intervene (Petition). Integra seeks leave to intervene

² This Rule is found in the Rules Regulating Telecommunications Providers, Services, and Products, Part 2 of 4 *Code of Colorado Regulations* 723.

³ Pursuant to § 40-6-109.5(4), C.R.S., the Commission may extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

pursuant to Rule 4 CCR 723-1-1401(c). The time for filing a response to the Petition has expired, and no response was filed. The Petition is unopposed.

15. Whether to grant permission to intervene in a case is discretionary with the Commission.⁴ Rule 4 CCR 723-1-1401(c) establishes the standard for intervention by permission. That Rule states, in pertinent part, that a petition for leave to intervene

must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the [petitioner] (or those it may represent) and that the [petitioner's] interest would not otherwise be adequately represented. ... Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

(Emphasis supplied.)

16. Integra is a Competitive Local Exchange Carrier in the Qwest service territory in Colorado. Qwest and Integra have an interconnection agreement (ICA), the terms and conditions of which govern their network interconnection and various aspects of their business relationship. Integra states that the “outcome of this [Proceeding] could impact the availability of unbundled network elements obtain through” the ICA. Petition at ¶ 2. Integra has demonstrated a sufficient interest in the subject matter of this Proceeding and has shown that its interests will not be represented adequately by any other party. The ALJ will grant the Petition and will permit Integra to intervene. The ALJ notes that, in its Petition, Integra does not state whether it opposes, contests, or takes no position with respect to the Application.

17. The intervention period has expired. No other person has filed an intervention as of right or a motion for leave to intervene. In addition, as of the date of this Interim Decision, there is no pending motion for leave to intervene out-of-time.

⁴ Section 40-1-109(1), C.R.S., reflects this when it refers to “such persons, firms, or corporations as the commission *may* allow to intervene” (emphasis supplied).

18. Integra and Staff, collectively, are the Intervenors. Applicant and Intervenors, collectively are the Parties. Qwest is represented by legal counsel, and Staff is represented by legal counsel.

D. Integra to Retain Legal Counsel in this Proceeding.

19. Rule 4 CCR 723-1-1201(a) requires a party in a Proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent the interests of a closely-held entity provided the requirements in § 13-1-127, C.R.S., are met.

20. The Commission has held that, if the exception in Rule 4 CCR 723-1-1201(b)(II) does not apply, an entity must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing (including, in this case, the Petition to Intervene) made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

21. This is an adjudication before the Commission.

22. Integra is a corporation, is a party in this matter, and is not represented by an attorney in this Proceeding. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply because neither of the requirements in § 13-1-127, C.R.S., is met. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that Integra must be represented by an attorney in this case.

23. The ALJ will order Integra to obtain legal counsel in this Proceeding. Integra's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

24. Integra's attorney must enter an appearance in this Proceeding not later than **close of business on September 5, 2014.**

25. **Integra is advised, and is on notice, that** it will not be permitted to proceed in this matter without an attorney.

26. **Integra is advised, and is on notice, that** the ALJ will dismiss Integra from this Proceeding *unless* Integra's attorney enters an appearance in accordance with this Interim Decision.

E. Information Filed by Qwest as Highly Confidential.

27. On June 20, 2014, Qwest filed the Affidavit of Renee Albersheim (Albersheim Affidavit). Appended to the Albersheim Affidavit are four documents that are denominated Highly Confidential Attachment A, Highly Confidential Attachment B, Highly Confidential Attachment C, and Highly Confidential Attachment D (collectively, Highly Confidential Attachments).

28. Qwest entitled the Application filed on June 20, 2014 as follows: CenturyLink QC's 2014 Application for Commission Approval of Additions to Non-Impaired Wire Center List *and* Motion for Expedited Issuance of Protective Order. (Emphasis supplied.) In the body of the Application, however, Qwest stated: "The Commission declined to issue the requested protective order in Proceeding No. 13M-0881T, so [Qwest] does not request such an order in this proceeding." Application at ¶ 4 and note 4.

29. As of the date of this Interim Decision, Qwest has not filed a motion seeking extraordinary protection of the Highly Confidential Attachments. Rule 4CCR 723-1-1101(b). Information is neither highly confidential nor afforded extraordinary protection as highly confidential information unless and until there is a decision that designates the information as

highly confidential and establishes the extraordinary protections to be afforded to that information. Thus, Qwest's designation notwithstanding, the information in the Highly Confidential Attachments is not highly confidential. The information, however, is confidential and is subject to the procedures in Rules 4 CCR 723-1-1100 and 723-1-1101.

30. As a result of Qwest's designation when it filed the documents, the Highly Confidential Attachments, at present, are treated as highly confidential. To provide Qwest with the opportunity to have the ALJ designate the Highly Confidential Attachments as highly confidential and establish extraordinary protection for those documents, the ALJ will permit the Highly Confidential Attachments to be treated as highly confidential until the prehearing conference scheduled by this Interim Decision.

31. If Qwest seeks to have the Highly Confidential Attachments designated as highly confidential and to have extraordinary protection for those documents, Qwest must file, not later than **September 9, 2014**, a motion pursuant to Rule 4 CCR 723-1-1101(b).

32. **Qwest is advised, and is on notice, that**, if a motion for extraordinary protection is filed, the Highly Confidential Attachments will continue to be treated as highly confidential pending ruling on the motion.

33. **Qwest is advised, and is on notice, that** if a motion for extraordinary protection is not filed as required by this Interim Decision, then on **September 10, 2014**, the Highly Confidential Attachments will be treated as confidential information in accordance with Rules 4 CCR 723-1-1100 and 723-1-1101.

F. Prehearing Conference.

34. A prehearing conference is necessary to discuss the matters identified below and to establish a procedural schedule and hearing dates in this matter. The ALJ will schedule a prehearing conference in this matter for **September 26, 2014**.

35. *At the prehearing conference*, Integra and Staff each must be prepared to state whether it supports, contests, opposes, or takes no position with respect to the Application.

36. *At the prehearing conference*, assuming that a hearing will be necessary because at least one intervenor opposes or contests the Application, the Parties must be prepared to discuss: (a) the date by which Applicant will file its direct testimony and exhibits; (b) the date by which each intervenor will file its answer testimony and exhibits; (c) the date by which Applicant will file its rebuttal testimony and exhibits; (d) the date by which each intervenor will file cross-answer testimony and exhibits;⁵ (e) the date by which each party will file its corrected testimony and exhibits; (f) the date by which each party will file its prehearing motions;⁶ (g) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (h) the date by which the Parties will file any stipulation or settlement reached;⁷ (i) the date(s) for the evidentiary hearing; and (j) the date by which each party will file its post-hearing statement of position, to which no response will be permitted absent further order.

37. In considering hearing dates, the Parties are reminded that, absent a further enlargement of time or waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue not later than March 23, 2015. To allow time for filing statements of position,

⁵ Cross-answer testimony may address and respond to only the answer testimony of other intervenors.

⁶ This date **must** be at least seven days before the final prehearing conference or, if there is no final prehearing conference, **must** be at least ten days before commencement of the hearing.

⁷ This date can be no later than least three business days before the first day of hearing.

issuance of a recommended decision, filing exceptions, filing responses to exceptions, and issuance of a Commission decision on exceptions, the **hearing in this matter must be concluded not later than the week of December 15, 2014.**

38. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 4 CCR 723-1-1405 are not sufficient.

39. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate. This discussion will include the treatment of information for which Qwest has filed a motion for extraordinary protection.

40. *At the prehearing conference*, a party may raise any additional issue.

41. The ALJ expects the Parties to come to the prehearing conference with proposed dates for the procedural schedule and evidentiary hearing. The Parties must consult prior to the prehearing conference with respect to the matters to be discussed at the prehearing conference. The ALJ encourages the Parties to present, if possible, a procedural schedule and hearing date(s) that are satisfactory to all Parties. The ALJ requests Qwest to coordinate the discussion.

42. **The Parties are advised, and are on notice, that** failure to attend or to participate in the prehearing conference will be a waiver of objection to the decisions made, the procedural schedule established, and the hearing date(s) established at the prehearing conference.

G. Additional Advisements.

43. **The Parties are advised, and are on notice, that** the Parties must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at dora.colorado.gov/puc.

44. The ALJ calls counsel's attention to Rule 4 CCR 723-1-1202(d), which requires that

[e]very pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, and attorney registration number.

(Emphasis supplied.) **The Parties are advised, and are on notice, that** filings must comply with this requirement.⁸

45. **The Parties are advised, and are on notice, that** filing with the Commission occurs on the date that the Commission *receives* a document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the filing is *not* timely.

46. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER**A. It Is Ordered That:**

1. The caption of this Proceeding is changed to the caption set out in this Interim Decision.

⁸ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of rulings. The ALJ will make such notifications by electronic mail and will rely solely on signature blocks for the appropriate addresses. Thus, if no electronic mail address is provided, counsel may not receive notice of rulings.

2. The Proceeding number is changed to the Proceeding number set out in this Interim Decision.

3. Administrative Staff of the Commission shall change Commission records to reflect the caption of this Proceeding and the Proceeding number set out in this Interim Decision.

4. Pursuant to § 40-6-109.5(2), C.R.S., the Application in this Proceeding is deemed completed as of August 25, 2014.

5. Trial Staff of the Commission is a party in this Proceeding.

6. The Petition to Intervene filed on June 26, 2014 by Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom, is granted.

7. Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom, is a party in this Proceeding.

8. Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

9. Not later than September 5, 2014, legal counsel for Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom, shall enter an appearance in this proceeding.

10. Failure of Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom's legal counsel to enter an appearance as required by Ordering Paragraph No. 9 shall result in the dismissal of Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom, from this Proceeding.

11. If Qwest Corporation, doing business as CenturyLink QC, seeks to have the Highly Confidential Attachments appended to the Affidavit of Renee Albersheim filed on

June 20, 2014 designated as highly confidential and to have extraordinary protection for those documents, Qwest Corporation, doing business as CenturyLink QC, shall file, not later than September 9, 2014, a motion pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1101(b).

12. If Qwest Corporation, doing business as CenturyLink QC, does not file a motion as required in Ordering Paragraph No. 11, then on September 10, 2014, the Highly Confidential Attachments appended to the Affidavit of Renee Albersheim filed on June 20, 2014 shall be treated as confidential information in accordance with Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101.

13. A prehearing conference in this matter is scheduled as follows:

DATE: September 26, 2014

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

14. The matters identified above will be discussed at the prehearing conference. Those attending the prehearing conference must be prepared to discuss the matters identified above and must have authority to agree to a procedural schedule and evidentiary hearing date(s).

15. Failure to attend or to participate in the prehearing conference is a waiver of objection to the decisions made, the procedural schedule established, and the hearing date(s) established at the prehearing conference.

16. The Parties shall consult prior to the prehearing conference with respect to the matters identified above. The Administrative Law Judge requests that Qwest Corporation, doing business as CenturyLink QC, coordinate the discussion.

17. The Parties are held to the advisements in this Interim Decision.

18. This Interim Decision is effective immediately.



Doug Dean

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge