

Decision No. R14-1249-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0816T

IN THE MATTER OF ADVICE LETTER NO. 3138 FILED BY QWEST CORPORATION DBA CENTURYLINK QC TO IMPLEMENT AND INTRODUCE THE EXCHANGE AND NETWORK SERVICES TARIFF PURUSANT TO THE PASSAGE OF HB14-1331, TO BECOME EFFECTIVE SEPTEMBER 1, 2014.

PROCEEDING NO. 14AL-0882T

IN THE MATTER OF ADVICE LETTER NO. 113 FILED BY EL PASO COUNTY TELEPHONE COMPANY TO IMPLEMENT THE PASSAGE OF HB14-1331 BY THE WITHDRAWAL OF TARIFF NO. 7 IN ITS ENTIRETY TO BECOME EFFECTIVE OCTOBER 1, 2014.

PROCEEDING NO. 14AL-0887T

IN THE MATTER OF ADVICE LETTER NO. 14-03 FILED BY CENTURYTEL OF EAGLE AND CENTURYTEL OF COLORADO INC., DBA CENTURYLINK TO IMPLEMENT THE PASSAGE OF HB 14-1331 BY THE WITHDRAWAL OF TARIFF NO. 13 (MAPS) AND TARIFF NO. 14 IN THEIR ENTIRETY TO BECOME EFFECTIVE OCTOBER 1, 2014.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING JOINT MOTION TO CONSOLIDATE
PROCEEDINGS WITH CONDITIONS;
AMENDING PROCEDURAL SCHEDULE IN PART;
ADOPTING BRIEFING SCHEDULE; EXTENDING
PROPOSED EFFECTIVE DATE OF TARIFFS;
VACATING PRE-HEARING CONFERENCE;
AND WAIVING RESPONSE TIME TO JOINT MOTION**

Mailed Date: October 16, 2014

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I. STATEMENT

A. CenturyLink QC Advice Letter No. 3138 – Proceeding No. 14AL-0816T

1. On July 31, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC) filed Advice Letter No. 3138. The proposed effective date of the tariffs filed with Advice Letter No. 3138 is September 1, 2014.

2. CenturyLink QC explains that Colorado PUC Tariff No. 25 contains only the fully regulated services it will now offer as a result of the enactment of House Bill (HB) 14-1331. CenturyLink QC further states that the proposed tariff establishes a “new structure moving forward.” No supporting testimony was attached to Advice Letter No. 3138.

3. With respect to the tariff sheets filed under Advice Letter No. 3138, there are two sections within Colorado PUC Tariff No. 25 titled “Terms, Conditions, Rates and Charges.” In Section 1, CenturyLink QC identifies Emergency Reporting Service (911) as the sole regulated and tariffed services it offers in Colorado. The Section 1 sheet further states: “All Other Exchange and Network Services can be Found in the Exchange and Network Services Catalog or Local Terms of Service.” Colorado PUC Tariff No. 25 also addresses

Telecommunications Relay Services. Section 9 contains provisions governing Emergency Reporting Service (911).

4. Advice Letter No. 3138 was assigned Proceeding No. 14AL-0816T.

5. On August 20, 2014, Staff of the Colorado Public Utilities Commission (Staff) filed a protest letter in Proceeding No. 14AL-0816T regarding Advice Letter No. 3138. Staff states that Colorado PUC Tariff No. 25 is a replacement for CenturyLink QC's Exchange and Network Services Tariff Colorado PUC No. 23. Staff argues that the 30-day notice period for the tariff filing does not allow enough time for sufficient evaluation as the existing tariff consists of hundreds of pages. Staff also notes there is no reference to any basic local exchange service in the proposed tariff, its rates, terms, or conditions. While Staff states it understands that CenturyLink QC intends for this service to be identified in a catalog, it notes there is neither a filing of the catalog or presently any rules and procedures governing such documents. Staff therefore recommends that the Commission set the matter for hearing and suspend the tariffs to provide it with the opportunity to comprehensively review the filing.

6. By Decision No. C14-1056, issued August 29, 2014, the effective date of the proposed tariffs attached to Advice Letter No. 3138 was suspended pursuant to § 40-6-111(b), C.R.S., for 120 days or through December 30, 2014. The Commission noted that the effective date may be suspended an additional 90 days for a maximum of 210 days, or through March 30, 2015. Decision No. C14-1056 also referred this matter to an Administrative Law Judge (ALJ) for an evidentiary hearing on the proposed tariffs and a Recommended Decision. The matter was subsequently assigned to the undersigned ALJ.

7. The Commission, also by Decision No. C14-1056, set an intervention period in this proceeding for any party to file a pleading seeking to intervene by September 29, 2014.

8. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing. Staff opposes Advice Letter No 3138 and indicates it intends to raise several issues. Staff seeks to address uncertainties pursuant to HB14-1331 and other telecommunications reform legislation regarding whether certain products and services, terms and conditions, and rates may be eliminated by the withdrawal of existing Exchange and Network Services Tariff Colorado PUC No. 23 and replacement with Exchange and Network Services Tariff Colorado PUC No. 25.

9. On September 29, 2014, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right and Entry of Appearance. The OCC states that it intervenes in this proceeding to ensure that the proposed action is compliant with the provisions of HB14-1331, to determine how CenturyLink QC customers will receive notice of changes in the Local Terms of Service, if approved, and to address any other issues which may arise as a result of the advice letter filing.

10. The intervenors in Proceeding No. 14AL-0816T are OCC and Staff.

B. El Paso County Telephone Advice Letter No. 113 – Proceeding No. 14AL-0882T

11. On August 22, 2014, El Paso County Telephone Co., doing business as CenturyLink (El Paso County Telephone) filed Advice Letter No. 113. According to El Paso Telephone, the purpose of the filing is to implement the passage of HB14-1331 by withdrawing El Paso Telephone’s PUC Tariff No. 7 in its entirety. The proposed effective date of the tariff withdrawal is October 1, 2014.

12. Advice Letter No. 113 was assigned Proceeding No. 14AL-0882T.

13. On August 25, 2014, Staff filed a Protest Letter objecting to the proposed tariff revisions. Staff's objections to Advice Letter No. 113 are similar to its objections to Advice Letter No. 3138 in Proceeding No. 14AL-0816T.

14. On September 9, 2014, the Commission issued Decision No. C14-1092 which set a 30-day intervention period and suspended the effective date of the withdrawal of CenturyLink's PUC Tariff No. 7 for 120 days or until January 29, 2015, and referred the matter to an ALJ for hearing and disposition of the matter.

15. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

16. On October 6, 2014, the OCC filed its Notice of Intervention of Right and Entry of Appearance in this proceeding.

17. Staff and OCC raised the same issues here as in Proceeding No. 14AL-0816T. The intervention period is closed. The intervenors in Proceeding No. 14AL-0882T are Staff and OCC.

C. CenturyLink Advice Letter No. 14-03 – Proceeding No. 14AL-0887T

18. On August 22, 2014, CenturyTel of Eagle and CenturyTel of Colorado, Inc., doing business as CenturyLink (CenturyLink) filed Advice Letter No. 14-03. According to CenturyLink, the purpose of the filing is to implement the passage of HB14-1331 by withdrawing the CenturyLink PUC Tariff No. 13 (Maps) and PUC Tariff No. 14 in their entirety. The proposed effective date of the tariff withdrawal is October 1, 2014.

19. Advice Letter No. 14-03 was assigned Proceeding No. 14AL-0887T.

20. On August 29, 2014, Staff filed a Protest Letter objecting to the proposed tariff revisions. Staff's objections to Advice Letter No. 14-03 are similar to its objections to Advice Letter No. 3138 in Proceeding No. 14AL-0816T.

21. On September 9, 2014, the Commission issued Decision No. C14-1094 which set a 30-day intervention period and suspended the effective date of the withdrawal of CenturyLink's PUC Tariff Nos. 13 and 14 for 120 days or until January 29, 2015, and referred the matter to an ALJ for hearing and disposition of the matter.

22. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

23. On October 6, 2014, the OCC filed its Notice of Intervention of Right and Entry of Appearance in this proceeding.

24. Staff and OCC raised the same issues here as in Proceeding Nos. 14AL-0816T and 14AL-0882T. The intervention period is closed. The intervenors in Proceeding No. 14AL-0887T are Staff and OCC.

D. Procedural Status

25. By Interim Decision No. R14-1200-I issued October 1, 2014 in Proceeding No. 14AL-0816T, a pre-hearing conference was scheduled for October 15, 2014.

26. On October 10, 2014, Staff, OCC and CenturyLink (for purposes of the pleading consisting of Qwest Corporation, CenturyTel of Eagle, CenturyTel of Colorado, Inc., and El Paso County Telephone) (collectively, the Joint Parties) filed a Joint Motion to: (1) Consolidate Proceedings; (2) Propose Procedural Schedule; (3) Request by Staff and OCC to further Suspend Effective Date of Tariffs an Additional 90 Days; and, (4) to Waive Response Time (Joint Motion).

27. Regarding the motion to consolidate Proceeding Nos. 14AL-0816T, 14AL-0882T, and 14AL-0887T, the Joint Parties argue that consolidation is appropriate because the issues in the three proceedings relate to the effect HB14-1331 will have on CenturyLink’s tariffs. The Joint Parties further state that consolidation is appropriate as it will reduce litigation and expense, and the Joint Parties will be able to prepare for a single consolidated proceeding in order to address all issues simultaneously.

28. The Joint Parties also propose a procedural schedule which would eliminate the need for an evidentiary hearing. The Joint Parties state that since the implementation of HB14-1331 and its effect on the modifications and withdrawals of tariffs as proposed all contain threshold legal questions, it is best to address those matters through the filing of legal briefs. The Joint Parties agree that there are no issues of fact to resolve in the three proceedings. Rather, the Joint Parties put forth two legal questions which they state are at issue.

29. Issue 1 addresses the extent of the Commission’s jurisdiction over the services, and terms, and conditions included in CenturyLink’s existing tariffs given the implementation of HB14-1331.

30. Issue 2 addresses what regulatory mechanisms the Commission may exercise over CenturyLink and the services, terms, and conditions that CenturyLink provides if the Commission has jurisdiction over certain CenturyLink services, terms, and conditions.

31. The Joint Parties propose the following briefing schedule:

CenturyLink Opening Brief dueOctober 31, 2014
Staff and OCC Response Briefs due.....November 21, 2014
CenturyLink Reply Brief December 5, 2014

32. While the Joint Parties propose that an evidentiary hearing is unnecessary (as well as the attendant procedures), in the event that the ALJ wishes to conduct a hearing on the legal briefs, the Joint Parties suggest December 15, 2014 for any such hearing.

33. Staff and OCC also request that the effective date of the tariffs in each proceeding be suspended an additional 90 days pursuant to § 40-6-111(1), C.R.S. CenturyLink does not join in this request.

34. Finally, the Joint Parties request that response time to the Joint Motion be waived since all parties to the proceedings have joined in the motion.

II. FINDINGS

35. It is found that the Joint Parties have met their burden with respect to the requirements of Rule 4 *Code of Colorado Regulations* 723-1-1402 of the Commission's Rules of Practice and Procedure. Based on the filings made in each proceeding, it is found that consolidation is warranted because the issues in the three proceedings are substantially similar. Consolidation will not prejudice any party to the three proceedings as demonstrated by the lack of opposition to the proposal to consolidate the proceedings. It is additionally found that consolidation will result in significant litigation and administrative efficiencies for, and will conserve the resources of, the Commission and the Joint Parties.

36. By this Decision, subject to the conditions discussed below, the request to consolidate will be granted; the three proceedings will be consolidated; the prehearing conference in Proceeding No. 14AL-0816T will be vacated; and no evidentiary hearing and accompanying procedural schedule will be set.

37. As set out *supra*, the effective date of Advice Letter No. 3138 in Proceeding No. 14AL-0816T was originally set for September 1, 2014, which would require a

final Commission Decision based on a 210-day schedule no later than March 30, 2015. However, Advice Letter No. 113 in Proceeding No. 14AL-0882T and Advice Letter No. 14-03 in Proceeding No. 14AL-0887T each have proposed effective dates of October 1, 2014, which would require a final Commission Decision based on a 210-day schedule no later than April 29, 2015 in those two proceedings.

38. Because of the tight timeframes to issue a final Commission Decision in these proceedings, especially in Proceeding No. 14AL-0816T, and in order to synchronize all three proceedings, it is necessary to require CenturyLink QC to agree to extend the effective date of Proceeding No. 14AL-0816T to October 1, 2014 in order to consolidate all three proceedings.¹

39. Granting the Motion to Consolidate in full is conditioned upon CenturyLink QC filing no later than October 20, 2014, an amended Advice Letter No. 3138 that amends the effective date of the proposed tariffs to October 1, 2014. Failure to agree to this condition will void the consolidation and proposed schedule as it applies to Proceeding No. 14AL-0816T.

40. The briefing schedule proposed by the Joint Parties as set out above in Paragraph No. 30 will be approved and adopted. However, a date for oral arguments, if necessary, will be determined at a later date.

41. The pre-hearing conference scheduled for October 15, 2014 is vacated.

42. Pursuant to § 40-6-111(1), C.R.S., the effective date of the tariffs filed with Advice Letter No. 3138 in Proceeding No. 14AL-0816T is extended an additional 90 days or until March 30, 2015.

¹ Should CenturyLink not agree to file an amended Advice Letter extending the effective date of Advice Letter No. 3138 to October 1, 2014, it would be necessary then to exclude Proceeding No. 14AL-0816T from the consolidated proceedings and treat it as a stand-alone proceeding with its own timelines.

43. Pursuant to § 40-6-111(1), C.R.S., the effective dates of the tariffs filed with Advice Letter No. 113 in Proceeding No. 14AL-0882T and with Advice Letter No. 14-03 in Proceeding No. 14AL-0887T are each extended an additional 90 days or until April 29, 2015.

44. Response time to the Joint Motion will be waived.

III. **ORDER**

A. **It Is Ordered That:**

1. The intervention of Trial Staff of the Commission in these consolidated proceedings is noted.

2. The intervention of the Colorado Office of Consumer Counsel in these consolidated proceedings is noted.

3. The Joint Motion to: (1) Consolidate Proceedings; (2) Propose Procedural Schedule; (3) Request by Staff and OCC to further Suspend Effective Date of Tariffs an Additional 90 Days; and, (4) to Waive Response Time (Joint Motion) is granted in part consistent with the discussion above and subject to the conditions below.

4. Consistent with the discussion above and subject to the conditions stated below, the Joint Motion to Consolidate Proceedings is granted.

5. Consistent with the discussion above and subject to the conditions stated below, Proceeding Nos. 14AL-0816T, 14AL-0882T, and 14AL-0887T are consolidated for all purposes.

6. The parties in each proceeding are parties in the consolidated proceeding.

7. Proceeding No. **14AL-0816T** is designated as the primary proceeding.

8. All proceeding numbers and captions in the consolidated proceeding shall be listed on all future filings, as show above in this Decision. Proceeding No. **14AL-0816T** shall appear first.

9. The consolidation ordered in Ordering Paragraph No. 4 is conditioned as follows: No later than October 20, 2014, Qwest Corporation, doing business as CenturyLink QC shall make a filing in Proceeding No. 14AL-0816T that amends Advice Letter No. 3138 by extending the effective date of the underlying tariffs to October 1, 2014. Failure to comply with this condition shall void the consolidation as it applies to Proceeding No. 14AL-0816T.

10. The pre-hearing conference scheduled for October 15, 2014 is vacated.

11. The briefing schedule proposed in the Joint Motion is adopted, except that the proposed hearing scheduled for December 15, 2014 will not be adopted.

12. Response time to the Joint Motion is waived.

13. The Parties shall be held to the advisements in this Decision.

14. This Decision shall be effective immediately.

(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