

Decision No. C14-1163

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14M-0947T

IN THE MATTER OF COMMISSION CONSIDERATION OF EFFECTIVE COMPETITION FOR BASIC SERVICE UNDER § 40-14-207, C.R.S., IN CERTAIN AREAS SERVED BY QWEST CORPORATION, DOING BUSINESS AS CENTURYLINK QC, EL PASO COUNTY TELEPHONE COMPANY, CENTURYTEL OF COLORADO, INC., AND CENTURYTEL OF EAGLE, INC.

**DECISION OPENING PROCEEDING
TO DETERMINE AREAS WITH AND
WITHOUT EFFECTIVE COMPETITION**

Mailed Date: September 23, 2014
Adopted Date: September 17, 2014

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. In May, 2014, Governor Hickenlooper signed into law five bills revising Article 15, Title 40, of the Colorado Revised Statutes governing the provision of telecommunications services in the state.¹

2. House Bill (HB) 14-1331 revises, in part, § 40-15-401, C.R.S., by deregulating basic service subject to certain exceptions, including, without limitation, that the Commission shall continue to regulate providers in areas where the Commission provides high cost support for basic service.² HB14-1331 also revises § 40-15-208, C.R.S. (Section 208), to specify that the

¹ The bills include: House Bill (HB) 14-1327, HB14-1328, HB14-1329, HB14-1330, and HB14-1331.

² Section 40-15-401(1)(b), C.R.S. (revised May 9, 2014).

high cost support mechanism (HCSM) established by the Commission is to provide financial assistance to local exchange providers “in areas without effective competition....” Consistent with this revision in Section 208, § 40-15-502(5)(a), C.R.S., is revised as follows:

In order to accomplish the goals of universal basic service...the commission shall create a system of support mechanisms to assist in the provision of basic service in high-cost areas *that are without effective competition for basic service, applying the factors stated in Section 40-15-207*; except that support provided in a particular geographic support area is not affected until the commission makes a finding applying the factors listed in Section 40-15-207.

(emphasis added).

3. Section 40-15-207, C.R.S. (Section 207), was unchanged by the recent legislation and provides, in part:

- (b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:
- (I) The extent of economic, technological, or other barriers to market entry and exit;
 - (II) The number of other providers offering similar services in the relevant geographic area;
 - (III) The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;
 - (IV) The ability of any provider of such telecommunications service to affect prices or deter competition; and
 - (V) Such other factors as the commission deems appropriate.³
- (c) In determining geographic areas under paragraph (b) of this subsection (1), the commission shall not be unduly restrictive.

4. We open this proceeding on our own motion to make findings pursuant to Section 207 as to whether basic service in certain areas of Colorado are subject to effective

³ Section 40-15-207(1)(b)(I) - (V), C.R.S.

competition or are “without effective competition” for purposes of Sections 208 and 502. As discussed below, we shall review the 104 wire center serving areas listed in Attachment A.

B. Determination of Areas with Effective Competition

5. In Proceeding No. 12R-862T (Rulemaking Proceeding), the Commission revised its Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2 (Basic Service Competition Rules). These revisions included a framework and a process for determining where effective competition for basic service exists pursuant to Section 207. This framework included: consideration of multiple, facilities-based providers offering basic and similar services pursuant to Rule 2213(d)(I); and, a wire center serving area as the relevant geographic area pursuant to Rule 2213(d)(II).

6. In Proceeding No. 13M-0422T, the Commission implemented the process established in the Rulemaking Proceeding and reviewed 56 of the 283 wire center serving areas in Colorado. The Commission found these 56 wire center serving areas to have effective competition for basic services pursuant to Section 207 by Decision Nos. R14-0190 issued February 21, 2014 and C14-0434 issued April 28, 2014. The Commission applied the restriction found in revised Sections 208 and 502 to the 56 wire centers and eliminated high cost funding in the 56 wire centers. The approach taken to determine effective competition areas in the 56 wire centers will serve as a model for effective competition determinations in this proceeding, subject to consideration of different testimony and arguments presented by the parties.

7. For any geographic area, the Commission shall continue to consider offerings from multiple, non-affiliated, facilities-based entities through the technologies as set forth in Rule 2213(d)(I) when determining whether effective competition for basic service exists. As stated in Decision No. R14-0190, ¶ 27, Proceeding No. 13M-0422T, we interpret and apply

Rule 2213(d)(I) to require the presence of multiple, facilities-based providers as a condition to finding effective competition; however, this Rule does not foreclose the Commission from also considering basic and similar service offerings by a provider that does not own the facilities used to deliver those services.

8. A threshold issue is a determination of the relevant geographic area. Rule 2213(d)(II) establishes wire centers as the relevant geographic areas, and we applied this rule in Proceeding No. 13M-0422T. For purposes of identifying the areas under review in this proceeding, we will examine wire centers in which an incumbent provider and one or more other facilities-based providers are offering basic service.⁴ Parties to the 56 wire center proceeding indicated their intent to request waivers of Rule 2213(d)(II) in subsequent Section 207 proceedings. The Commission's use of wire centers in Proceeding No. 13M-0422T is not dispositive of the relevant geographic area in other effective competition proceedings, though parties requesting different geographic areas must provide evidence and reasoning for why the Commission should depart from the wire center designation adopted in the Rulemaking Proceeding.

9. Additionally, in Proceeding No. 13I-0097T (Workshop Proceeding), we noted that grouping of wire center serving areas by incumbent provider may allow for additional efficiencies.⁵ Qwest Corporation, doing business as CenturyLink QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. (collectively, CenturyLink), is the largest incumbent provider of basic service in Colorado and shall be the

⁴ We necessarily exclude the 56 wire centers where the Commission has already made a finding pursuant to Section 207.

⁵ Transcript, Proceeding No. 13I-0097T, at p. 24 ln 6-10.

incumbent provider serving the areas reviewed in this proceeding. These wire center serving areas are listed in Attachment A to this Decision.⁶

10. Consistent with Decision Nos. C14-0642 issued June 13, 2014 and C14-0908 issued August 4, 2014 in Proceeding No. 13M-0422T, and as required under HB14-1331, the Basic Service Competition Rules are no longer applicable for purposes of reclassification of services as set forth in Rules 2213(e) and 2214, or for application of continued funding pursuant to Rule 2215 in areas found to have effective competition under Section 207.⁷

C. Procedures

11. In this proceeding, the Staff of the Colorado Public Utilities Commission (Staff) will present direct testimony that includes data-specific information showing which wire center serving areas listed in Attachment A are subject to effective competition or are “without effective competition” for basic service, applying the criteria in Section 207.

12. Staff is directed to update the data used in the Rulemaking Proceeding for Amended Exhibit 2 and the coverage maps for the specific wire center serving areas listed in Attachment A. Specifically, the data shall be updated to address changes in coverage offered by providers in the relevant areas and to include directives set forth in this Decision, including that Staff shall organize data by wire center serving area and listing facilities-based providers of basic service.

⁶ The list in Attachment A includes wire center serving areas where the recent data provided by Staff in its Amended Staff Exhibit 2 filed October 2, 2012, in the Rulemaking Proceeding (Amended Exhibit 2) indicate that CenturyLink is the incumbent provider and one or more facilities-based providers are present and offering service in the serving area, with the exclusion of the 56 wire center serving areas already found to have effective competition.

⁷ See Proceeding No. 13M-0422T, Decision No. C14-0642, ¶¶ 11, 12.

13. While we note that compilations of data in charts or matrices are beneficial for review especially when considering data specific to a particular wire center serving area, we request that Staff (and subsequently CenturyLink and other parties) file as exhibits the data underlying any such compilations. We also encourage Staff to present data in a similar manner to how information was provided in Proceeding No. 10M-565T (TAG Proceeding), such as maps illustrating the presence of provider service coverage and offerings.

14. The wire centers listed in Attachment A shall serve as a starting point for Staff's review and update of relevant data. Staff may find through its research, review, and revision of data that certain unlisted wire center serving areas should be included in in this proceeding, or certain listed wire centers should be excluded. Staff's direct testimony shall recommend including or excluding areas in this proceeding with data indicating that CenturyLink and at least one other facilities-based provider are present and offering service in the serving area. If Staff recommends the Commission review as the relevant geographic area an area more granular than a wire center serving area, it shall present data and information supporting that conclusion in its direct testimony.

15. CenturyLink and other parties may present evidence and arguments in support of, or rejecting, Staff's positions as set forth in its direct testimony.

16. We refer this proceeding to an Administrative Law Judge (ALJ) to make findings and issue one or more recommended decisions indicating which areas listed in Attachment A should be found to be subject to effective competition or are "without effective competition," pursuant to Section 207 and this Decision. Pursuant to statute, only areas found to be

“without effective competition” are eligible for future HCSM support, subject to compliance with other statutory and rule requirements.⁸

17. For wire center serving areas where evidence of competition is abundant, the Commission may be able to expedite consideration of the relevant factors. We invite parties to stipulate agreement to information provided in reports, charts, graphs, and other documents presented in Staff’s direct testimony. Parties also should consider entering into stipulations that address the criteria listed in Section 207. We further instruct parties to indicate contested data and provide support for why such data may be unreliable or inaccurate. We instruct the ALJ to expedite consideration of areas where there is agreement among the parties and where the evidence indicates effective competition.

18. The Commission provides notice of this proceeding on September 23, 2014. Consistent with Rule 1401(a) of the Rules of Practice and Procedure, 4 CCR 723-1, any person may file a notice of intervention as of right or a motion to intervene by permission on or before **5:00 p.m. on October 23, 2014**. Staff of the Commission and CenturyLink are deemed interested parties in this proceeding and need not intervene to participate.

II. ORDER

A. The Commission Orders That:

1. The Commission opens this proceeding to make findings pursuant to § 40-15-207, C.R.S., to determine whether the areas of Colorado listed in Attachment A are subject to effective

⁸ In Proceeding No. 13M-0877T, the Commission has directed the assigned ALJ to provide recommended HCSM rules necessary to comply with the recent statutory amendments. We anticipate that determinations of future HCSM support shall be pursuant to statute, current rules, and rule revisions promulgated from information in Proceeding No. 13M-0877T.

competition or are without effective competition for basic local exchange service, consistent with the discussion above.

2. We refer this matter to an Administrative Law Judge.

3. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, by **5:00 p.m. on October 23, 2014**.

4. Staff of the Colorado Public Utilities Commission and Qwest Corporation, doing business as CenturyLink QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. are deemed interested parties in this proceeding and need not file motions to intervene.

5. All persons who file a notice of intervention as of right, motion to permissively intervene, or any other pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEELY MEETING
September 17, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners