

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0861T

IN THE MATTER OF THE APPLICATION OF CENTURYLINK QC RELINQUISHING PROVIDER OF LAST RESORT DESIGNATION IN 56 EFFECTIVELY COMPETITIVE WIRE CENTERS FOR WHICH CHCSM SUPPORT HAS BEEN ELIMINATED.

INTERIM DECISION REQUIRING BRIEFING ON APPLICATION AND REQUEST FOR WAIVER

Mailed Date: October 3, 2014
Adopted Date: October 1, 2014

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I. BY THE COMMISSION

A. Statement

1. On August 15, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink), filed an application for Commission approval to relinquish provider of last resort (POLR) designation in the 56 wire centers found to have effective competition and for which high cost support mechanism (CHCSM) funding has been eliminated pursuant to Commission

decisions in Proceeding No. 13M-0422T (Application). By this Decision, we: (a) deem the Application complete; and (b) require CenturyLink to brief issues of statutory changes resulting from House Bill (HB) 14-1331 and to clarify its Application.

B. Background

2. According to CenturyLink, the Commission has determined the facts necessary to support the relinquishment of CenturyLink's POLR obligations in the 56 wire centers through Proceeding Nos. 13M-0422T and 12R-862T. CenturyLink argues that, in Decision No. C14-0642, Proceeding No. 13M-0422T issued June 13, 2014, the Commission concluded effective competition exists throughout the 56 wire centers and, therefore, no areas within these wire centers are at risk due to a high cost to serve or a lack of competitive options. CenturyLink argues there is no longer a need to establish a POLR in the 56 wire centers.

3. CenturyLink further argues that there can be no "meritorious" objection or intervention to the Application given the Commission's finding that effective competition exists throughout the 56 wire centers and the elimination of CHCSM support. CenturyLink argues the elimination of POLR obligations in the 56 wire centers should be approved without a hearing.

4. CenturyLink also requests that it not provide notice to customers required under Rule 2186(e) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2. CenturyLink argues that, because it seeks neither to discontinue nor disrupt service in any of the 56 wire centers, and because the Application will not affect any prices for basic service, requiring consumer notice under Rule 2186(e) is not required and would be counterproductive. CenturyLink also argues that, because its POLR obligations in the 56 wire centers will cease as a matter of law without any

application or notice on July 1, 2016, regardless of the outcome of this Application, notice in this proceeding provides no real marginal benefit for consumers.

5. On August 19, 2014, the Commission issued a Notice of Application Filed. No petitions for intervention have been filed.

C. Completeness of the Application

6. On August 21, 2014, Staff of the Public Utilities Commission (Staff) sent a deficiency letter to CenturyLink highlighting three problems with the Application. First, Staff found that the Application lacked an attachment listing the 56 wire centers. Second, Staff found errors in the affidavit verifying the Application. Third, Staff stated that Rule 2186(e) requires the POLR to issue a written notice to customers and interconnecting providers in addition to the publication and notice to local elected representatives in the affected areas. Staff insisted that CenturyLink supplement the Application with the required notice or, in the alternative, submit a request for a waiver from Rule 2186(e).

7. On August 28, 2014, CenturyLink responded to Staff's deficiency letter. CenturyLink provided the list of 56 wire centers, submitting a copy of Attachment A to Decision No. R14-0190 issued in Proceeding No. 13M-0422T on February 21, 2014. CenturyLink also corrected problems with the affidavit by filing a supplemental affidavit. CenturyLink submitted a Request for Waiver of Rule 2186(e), which is the requirement to provide customer notice when POLR obligations are terminated.

8. We find that the application, as supplemented on August 28, 2014, meets the requirements prescribed by Commission rules and is complete pursuant to Rule 1303(c) of the Commission's Rules of Practice and Procedure 4 CCR 723-1, for purposes of § 40-6-109.5, C.R.S.

D. Brief on Application and Request for Waiver

9. HB 14-1331 amends § 40-15-401(1)(b)(III), C.R.S., and states:

Until July 1, 2016, each incumbent local exchange carrier remains subject to any obligations as provider of last resort, as established by the Commission under section 40-15-502 (6), throughout its service territory[.]

10. CenturyLink claims that, before July 1, 2016, the Commission's authority over POLR obligations is expressly preserved through this language. Section 40-15-502(6)(a), C.R.S., directs the Commission to "designate at least one provider as the provider of last resort [in relevant geographic areas] and adopt procedures for changing or terminating such designations." CenturyLink points out that § 40-15-502(6), C.R.S., is unchanged by HB 14-1331. CenturyLink also states that Rule 2186, adopted in Proceeding No. 12R-862T, provides procedures for changing or terminating POLR designations in areas found to have effective competition and was also unchanged after HB 14-1331 went into effect.

11. We direct CenturyLink to file a brief interpreting the revisions in § 40-15-401(1)(b)(III), C.R.S., specifically the addition that a provider "*remains* subject to any obligations as provider of last resort" (emphasis supplied), and address whether the Commission is permitted by statute to allow relinquishment of POLR obligations in any area prior to July 1, 2016. CenturyLink shall address whether, under the rules of statutory construction, the more recent revisions to the statute in § 40-15-401(1)(b)(III), C.R.S., prevail over the Colorado Legislature's previous enactment of § 40-15-502(6), C.R.S., and over prior Commission rules.¹

¹ For example, legislative amendments either clarify or change existing law, and it is presumed that, by amending the law, the Colorado Legislature intended to change it. *City of Colo. Springs v. Powell*, 156 P3d 461, 465 (Colo. 2007). This presumption may be rebutted, however, by considering legislative history, reviewing the plain language of the statute, and assessing whether the provision was ambiguous. *Id.* See also § 2-4-206, C.R.S. ("If statutes enacted at the same or different sessions of the general assembly are irreconcilable, the statute prevails which is latest in its effective date.")

12. In addition, CenturyLink argues its filing is “solely to eliminate unnecessary regulation and associated regulatory burdens.”² Rule 2185 sets forth the obligations required by Commission rules for POLR and includes:

- (a) A POLR shall offer basic local exchange service to every customer who requests such service within a designated geographic area, regardless of the availability of facilities, unless said customer has an outstanding balance owing to the POLR and no agreement for repayment has been established;
- (b) A POLR shall be subject to the evolving definition of basic service developed by the Commission pursuant to § 40-15-502(2); and
- (c) A POLR shall advertise the availability of such service and charges using media of general distribution. At a minimum, a POLR shall have customer guide pages in the “White Pages” directory within the POLR’s geographic area. Such customer guide pages shall indicate that the provider will offer basic local exchange service to all who request such service within that area.

13. Because CenturyLink stated in support of its application that it is not seeking to discontinue or disrupt service in any of the 56 wire centers, we direct CenturyLink to clarify whether it is requesting an order relinquishing the obligation to provide basic service in the 56 wire centers, or not. CenturyLink also shall clarify which obligations it requests to relinquish that are set forth in the statute and Commission rules, including without limitation, obligations in Rule 2185 it seeks to eliminate.

14. If CenturyLink is requesting relinquishment of service obligations pursuant to Rule 2185(a), CenturyLink is directed to clarify the proposed effective date of the relinquishment.

15. CenturyLink shall file a brief on the issues raised by the Commission in this Decision no later than **October 31, 2014**.

² Application ¶ 10).

16. Due to the Commission’s interest in receiving clarification from CenturyLink and in further reviewing the POLR and request for waiver requirements pursuant to recently enacted revisions to § 40-15-401(1)(b)(III), C.R.S., we recognize that there may be good cause to grant late intervention. Requests for late intervention shall be considered consistent with Rule 1401.

II. ORDER

A. It Is Ordered That:

- 1. The Application filed on August 15, 2014, by Qwest Corporation, doing business as CenturyLink QC, (CenturyLink) and supplemented on August 28, 2014, is deemed complete.
- 2. CenturyLink shall file a brief in this proceeding by no later than **October 31, 2014**, consistent with the discussion above.
- 3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
October 1, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners