

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
NOTING WITHDRAWAL OF STAFF
INTERVENTION, GRANTING APPLICATION
UNDER MODIFIED PROCEDURE, AND
RECLASSIFYING CERTAIN WIRE CENTERS**

Mailed Date: September 17, 2014

I. STATEMENT

1. On June 20, 2014, Qwest Corporation, doing business as CenturyLink QC (Qwest), filed (in one document) its verified 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).

4. On August 26, 2014, by Decision No. R14-1037-I, the ALJ determined that this Proceeding is an application; amended the Proceeding caption to reflect that fact; amended the Proceeding number to reflect that fact; and deemed the Application to be complete as of

August 25, 2014. Pursuant to § 40-6-109.5, C.R.S., the Commission should issue its decision in this Proceeding not later than March 23, 2015.

5. On June 26 2014, Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom (Integra), timely filed a Petition to Intervene. On August 26, 2014, by Decision No. R14-1037-I, the ALJ permitted Integra to intervene in this Proceeding. On September 11, 2014, by Decision No. R14-1116, the ALJ granted Integra's Motion to Withdraw Intervention and dismissed Integra from this Proceeding.

6. 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. On September 10, 2014, Staff filed (in one document) its Notice of Withdrawal of Intervention, Appearance and Notice of No Further Participation in Proceeding and Non-Opposition to Motion to Withdraw of Eschelon Telecom of Colorado, Inc. (Staff Filing). By that filing, Staff "withdraws its intervention from [this Proceeding] and states that it will no longer participate." Staff Filing at ¶ 5.

7. By Decision No. R14-1037-I and as relevant here, the ALJ scheduled a September 26, 2014 prehearing conference in this Proceeding. On September 12, 2014, by Decision No. R14-1122-I, the ALJ vacated that prehearing conference because Qwest is the sole remaining party in this Proceeding.

8. On June 20, 2014, Qwest filed the Affidavit of Renee Albersheim (Albersheim Affidavit). Appended to the Albersheim Affidavit are four documents that Qwest denominated as Highly Confidential Attachment A, Highly Confidential Attachment B, Highly Confidential Attachment C, and Highly Confidential Attachment D. On September 12, 2014 and

for the reasons stated in that Interim Decision, the ALJ changed the designation of these four documents from highly confidential to confidential.

9. The Application is neither contested nor opposed.

10. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403, the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The verification of the Application and the Albersheim Affidavit together provide the evidentiary support required by Rule 4 CCR 723-1-1403(a).¹ In this case, the ALJ finds it appropriate to consider the Application under the Commission's modified procedure and without a formal hearing.

II. DISCUSSION AND CONCLUSION

11. In the Application, Qwest seeks Commission approval to add the Aurora Main and the Denver South wire centers to Tier 1 Classification for the Colorado non-impaired wire center list in accordance with the *Triennial Review Remand Order* (TRRO)² of the Federal Communications Commission (FCC).

12. Section 251(d)(2) of the Federal Telecommunications Act of 1996³ 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

¹ In order for Commission to determine an application under the modified procedures, this Rule requires that the application be "accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing."

² *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533 (2005).

³ The Federal Telecommunications Act of 1996 is codified in numerous sections of title 47 of the United States Code.

services that it seeks to offer.” A wire center is unimpaired for particular network elements when it meets competitive requirements established by the FCC in its regulations implementing its decision in the TRRO.

13. Pursuant to 47 *Code of Federal Regulations* (CFR) § 51.319(d)(3), an incumbent Local Exchange Carrier’s (LEC) wire centers are to be classified into three tiers. As pertinent here, 47 CFR § 51.319(e)(3)(i) defines Tier 1 or fully unimpaired wire centers 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.

14. Section 51.5 of 47 CFR defines a “fiber-based collocator” 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 collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

15. In previous Proceedings, the Commission approved the reclassification method to be used in Colorado. *See* Proceedings No. 06M-080T,⁴ No. 07A-249T,⁵ and No. 13M-0881T.⁶

16. Based on the verified Application and the information provided in the Albersheim Affidavit, the ALJ finds that the reclassification of the Aurora Main wire Center and the Denver South wire center to the Tier 1 Classification comports with the FCC's TRRO and with the Commission's reclassification method and is in the public interest. In addition, the ALJ finds that the reclassification of these two wire centers is consistent with the Settlement Agreement that was entered into between Qwest and a coalition of competitive LECs and that the Commission reviewed and discussed in Proceedings No. 06M-080T and No. 07A-249T. As a result, the ALJ will grant the Application; will order that the Aurora Main wire center be reclassified and be added as a Tier 1 Classification wire center; and will order that the Denver South wire center be reclassified and be added as a Tier 1 Classification wire center.

17. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Staff of the Commission is dismissed as a party in this Proceeding.

⁴ This Proceeding was *In the Matter of the Joint Competitive Local Exchange Carriers' Request Regarding the Status of Impairment in Qwest Corporation's Wire Centers and the Applicability of the Federal Communications Commission's Triennial Review Remand Order*. The Decisions issued in this Proceeding were: Decision No. R08-0164 (issued February 19, 2008); Decision No. C08-0969 (issued on September 17, 2008); and Decision No. C08-1164 (issued on November 6, 2008), subsequent history on review by the U.S. Court of Appeals for the 10th Circuit omitted.

⁵ This Proceeding was *In the Matter of Qwest Corporation's Application for Commission Approval of 2007 Additions to Non-Impaired Wire Center List*. The Decision issued in this Proceeding was Decision No. C13-1011 (issued on August 19, 2013).

⁶ This Proceeding was *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*. The Decision issued in this Proceeding was Decision No. R14-0430-I (issued on April 24, 2014).

2. Consistent with the discussion above, the verified Application for Commission Approval of Additions to Non-Impaired Wire Center List, which Application was filed on June 20, 2014 by Qwest Corporation, doing business as CenturyLink QC, is granted.

3. The Aurora Main wire center is reclassified and is added to the Tier 1 Classification on the Colorado non-impaired wire center list in accordance with the *Triennial Review Remand Order* of the Federal Communications Commission.

4. The Denver South wire center is reclassified and is added to the Tier 1 Classification on the Colorado non-impaired wire center list in accordance with the *Triennial Review Remand Order* of the Federal Communications Commission.

5. 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.

6. 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 no transcript 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.

7. 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

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director