

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSION SECRETARY  
LEGAL  
WORKING FILE

**FROM:** CAROLEE HALL

**DATE:** DECEMBER 6, 2011

**RE:** APPLICATION FOR APPROVAL OF AN INTERCONNECTION  
AGREEMENT BETWEEN QWEST CORPORATION DBA  
CENTURYLINK QC ("CENTURYLINK QC") AND GEILS  
COMMUNICATIONS, INC. ("GEILS"). CASE NO. QWE-T-11-14.

### APPLICATION

On September 29, 2011, this Commission received an Application from CenturyLink QC requesting approval of its Interconnection Agreement with Geils Communications, Inc. See Case No. QWE-T-11-14.

### BACKGROUND

Under the provision of the federal Telecommunications Act of 1996, interconnection agreements must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission may reject an agreement adopted by negotiations only if it finds that the agreement: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). As the Commission noted in Order No. 28427, companies voluntarily entering into interconnection agreements "may negotiate terms, prices and conditions that do not comply with either the FCC rules or with the provision of Section 251 (b) or (c)." Order No. 28427 at 11 (emphasis in original). This comports with the FCC's statement that "a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of [Part 51]." 47 C.F.R. § 51.3.

## DISCUSSION

In the filing CenturyLink QC indicated that Geils had “opted out of Exhibit K to this Agreement.” Exhibit K is the Performance Assurance Plan (PAP), which is a self executing remedy plan where the CLEC is provided payments if CenturyLink does not meet specific standards to ensure it provides the same service to the CLEC that it provides to its own retail customers, or CenturyLink fails to meet applicable benchmarks as set forth in the Service Performance Indicator Definitions (PIDs) or Exhibit B of the Interconnection Agreement.

Staff contacted Geils regarding the opting out of the PAP and explained its connection to the performance benchmarks in Exhibit B, which was included in the Application. After a discussion of how the two exhibits worked together, the Company indicated it did want to retain the Exhibit K of the Interconnection Agreement between the parties. Staff contacted CenturyLink a number of times regarding the resubmission of the Exhibit K. Geils Communications also contacted CenturyLink asking that Exhibit K be added back into the Agreement between the parties. Finally, on November 30, 2011, CenturyLink filed an Amendment to the original Interconnection Agreement with Geils. The Amendment contained the Third Revised, Seventh Amended Exhibit K dated December 17, 2010.

On March 17, 2009, this Commission issued Order No. 30750 in Case QWE-T-08-04 allowing Qwest to withdraw its Statement of Generally Available Terms and Conditions (SGAT), but leaving in place the PIDs and PAP until a review by the Regional Oversight Committee (ROC) was completed.<sup>1</sup> The final ROC report was submitted on June 30, 2009.

On April 22, 2010, CenturyLink (at this point still legally known as CenturyTel, Inc.) announced it would acquire Qwest in a stock-for-stock transaction. The FCC issued its Memorandum Opinion and Order for the transaction on March 18, 2011. As a part of the Merger Agreement, CenturyLink agreed to, “assume all of Qwest’s existing contractual commitments, including its interconnection agreements. In addition, CenturyLink has committed to allow any competitive LEC to use its current interconnection agreement as the starting point for renewal contract negotiations, and to extend its current agreement for up to 36 months.”<sup>2</sup> Accordingly, for the remaining 36-month agreement period, all interconnection agreements must be filed with

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<sup>1</sup> IPUC Order No. 30750, Case No. QWE-T-08-04, “. . . Qwest’s Motion to Withdraw its SGAT is granted. Withdrawal of the SGAT shall not alter the status and effectiveness of exhibits to the SGAT including Exhibit A (price list), Exhibit B (PIDs) and Exhibit K (PAP).” Emphasis Added.

<sup>2</sup> FCC 11-47, WC Docket No. 10-110 *para.* 24; *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control.*

the appropriate Exhibits B and K (PIDs/PAP), unless the CLEC knowingly determines to forego the advantages of the PAP.

Staff acknowledges that companies can negotiate all terms and conditions of Interconnection Agreements; however, Staff believes that a thorough discussion regarding the association between the PIDs and PAP must be clearly addressed so that the CLEC can make an informed business decision.

### **STAFF ANALYSIS**

Staff has reviewed the Application and Amendment for the Interconnection Agreement between the parties. Staff believes the Interconnection Agreement with the Amendment meets the terms and conditions of this Commission and is consistent with the pro-competitive policies of this Commission and the Idaho Legislature. Staff recommends that the Interconnection Agreement, supplemented with the Exhibit K, be approved.

### **COMMISSION DECISION**

Does the Commission agree?



Carolee Hall

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