

ISSUED: September 7, 2010

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1484

In the Matter of

CENTURYLINK, INC.,

Application for Approval of Merger
between CenturyTel, Inc., and Qwest
Communications International, Inc.

RULING

**DISPOSITION: MOTION DISMISSED AS MOOT IN PART AND
DENIED IN PART**

In this ruling, the Administrative Law Judge (ALJ) grants in part and denies in part the Motion to Compel Further Responses to Data Requests (Motion) filed by Sprint Nextel Corporation (Sprint).

BACKGROUND

On May 24, 2010, CenturyLink, Inc. (CenturyLink or Applicant), filed an Application for approval of merger between its wholly-owned subsidiary, CenturyTel, Inc., and Qwest Communications International, Inc., parent of Qwest Communications, Inc. (Qwest). A prehearing conference was held on June 8, 2010, at which time a schedule was adopted for the proceeding, including the establishment of June 22, 2010, as the suggested date for filing petitions to intervene. Sprint filed a Petition to Intervene on June 22, 2010, which was granted by Ruling of June 28, 2010.

On August 16, 2010, Sprint filed a Motion seeking additional information with respect to their data requests (DRs) numbers 5, 13, 14, and 41 propounded to Qwest Communications International, Inc. (Qwest), and CenturyLink, Inc. (Applicants), and requested expedited consideration.

Sprint notes that it is a CLEC, wireless carrier, and IXC and is thus both a customer and competitor to the Applicants, purchasing services from Qwest and CenturyLink pursuant to interconnection agreements, who will be affected by the

proposed merger.¹ Sprint's data requests seek access charge revenue information. Data Request (DR) 5 seeks total revenues for the Applicants, both intrastate (which Applicants provided) and interstate, which they did not. Sprint states that both numbers are relevant to determine the competitive impact of the merger.²

DR 13 and DR 14 seek interstate switched access charges and total special access charges that Applicants imposed upon each of their affiliated IXCs. Sprint claims this information is:

likely to lead to admissible evidence regarding the impact on competition at the wholesale and retail level.

* * * *

Any access savings can impact competition as QC and CenturyLink will be able to utilize the savings to develop and market competitive alternatives in the marketplace with which carriers like Sprint must compete. Moreover, an answer to this request will give specific insight into the calculation of synergies resulting from the transaction in Oregon. The fact that the Commission does not regulate interstate switched access charges and special access charges is not material * * * ."³

DR 41 seeks the number of local access lines and total revenues from those lines that Qwest and its affiliates have in CenturyLink's Oregon territories. Qwest provided what Sprint characterizes as "limited response" based upon Qwest's investigation; Sprint asserts that "Qwest should undertake the necessary investigation in the context of discovery * * * . It is not unduly burdensome * * * ."⁴

Qwest's and CenturyLink's Joint Response to Sprint's Motion to Compel Further Responses to Data Request Nos. 5, 13, 14, and 41 (Response) was filed on August 31, 2010. First, the Applicants note that they have conferred with Sprint and agree that they "have provided adequate responses to the request. Therefore, by agreement of the Parties, the Commission may disregard the arguments regarding No. 5 * * * and should not render a decision with respect to that request."⁵

Applicants continue to object to DR 13 and 14 regarding interstate switched and special access revenues that each applicant's ILEC entities obtained in Oregon from affiliated IXCs of each other. Applicants first argue that, as interstate services they are not subject to Commission regulation and are not relevant to a

¹ Motion at 2-3.

² *Id.* at 4.

³ *Id.* at 4-5.

⁴ *Id.* at 6.

⁵ Response at 1.

determination of any issue in dispute in the pending merger application. Applicants do not propose changes to access charge rates and, therefore, access charges are not relevant to the Commission's review of the merger. The Commission did not address access charges in either the CenturyLink/Embarq or Verizon/Frontier merger proceedings. It should apply especially here, where the focus is on interstate access charges.⁶

Applicants also assert that Sprint errs in stating that Qwest and CenturyLink entities will retain access charge payments because they are intracompany; Applicants respond that the transfer is only at the parent level and that all operating subsidiaries will have the requisite management, technical and financial capabilities and will act as they have done prior to the transaction's conclusion, charging each other as usual and receiving no synergistic benefits.⁷

Applicants state that DR 41 is moot because it argues that Qwest should undertake an investigation to determine if it serves customers in CenturyLink Oregon territory. Qwest asserts that it has "supplemented its response to state whether it has any customers * * * without the limitations that Sprint complains about. See Exhibit 3."⁸

DISCUSSION

Petitioners seek to compel the Applicants to provide data pursuant to OAR 860-014-0070(3) and (4) which provides in pertinent part "Every remedy available to a party using deposition procedures must be available to a party using data requests." OAR 860-014-0065(5) states in pertinent part:

A party may examine a deponent on any matter not privileged which appears reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding,
* * *

The Applicants have asserted, without contradiction by Sprint, that they have satisfied data requests DR 5 and DR 41. Consequently, the Sprint Motion with respect to DR 5 and 41 is dismissed as moot. What remains is the proper application of the requirements of OAR 860-014-00065(5) to DR 13 and DR 14, which seek to discover the interstate switched access charges and total special access charges that Applicants imposed upon each of their affiliated IXCs. This information, Sprint claims, is likely to lead to admissible evidence regarding the impact on competition at the wholesale and retail level. The implication is that these expenses, becoming intra-entity account entries rather than a true expenditure of funds, will provide the competitive affiliates with a cost advantage not available to their competitors, thereby foreclosing competition in the CLEC market.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

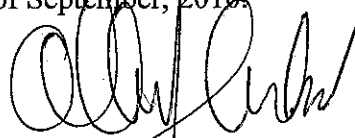
⁸ *Id.* at 3-4.

Historically, this issue has been addressed and was resolved many years ago by the requirement that ILECs place their competitive operations in fully separated subsidiaries with separate management, technical and financial staffs and operations, so that the access charges which they pay to their ILEC affiliate will have the same economic impact upon their operations as they would to an unaffiliated CLEC competitor. Evidence regarding the amount of these special and interstate access charges that the Applicants' ILECs charge each others' CLEC affiliates is therefore not "reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding."

RULING

The Sprint Nextel Corporation Motion to Compel Full Responses to Data Requests is dismissed as moot to the extent indicated and is denied in all other respects.

Dated at Salem, Oregon, this 7th day of September, 2010.



Allan J. Arlow
Administrative Law Judge