

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF CenturyLink) REGULATORY DIVISION
QC's Petition for Elimination of the)
Qwest Performance Assurance Plan) DOCKET NO. 2021.07.102
and Performance Indicator Definitions) ORDER NO. 7813a

DEFAULT ORDER

PROCEDURAL HISTORY

1. Qwest Corporation d/b/a CenturyLink QC's ("CenturyLink") filed a Petition for the Elimination of the Qwest Performance Assurance Plan and Performance Indicator Definitions ("Petition") with the Montana Public Service Commission ("Commission") on July 13, 2021.

2. The Commission issued a Notice of Petition and Opportunity to Intervene on July 30, 2021. The Commission received a request for intervention from Electric Lightwave, LLC ("Allstream") on August 27, 2021, and Montana Consumer Counsel ("MCC") on August 30, 2021.

3. On October 25, 2021, Commission staff issued a Notice of Staff Action Granting Intervention ("NAID"). The NAID granted intervention to the MCC and held Allstream's request for intervention in abeyance, pending Allstream's representation by counsel licensed to practice law in the State of Montana. Allstream did not retain Montana counsel, and did not further participate in this docket.

4. On October 26, 2021, the Commission issued Procedural Order No. 7813, that established a deadline of November 29, 2021, for parties to issue discovery to CenturyLink, and a deadline of December 13, 2021, for intervenors to provide testimony or request additional process. On November 8, 2021, Commission staff issued discovery requests to CenturyLink. CenturyLink provided responses to Commission discovery on December 6, 2021. No parties requested additional process, nor filed intervenor testimony.

5. During a regularly scheduled business meeting on March 15, 2022, the Commission approved CenturyLink's Petition, as discussed below.

DISCUSSION

6. The Telecommunications Act of 1996 (the “Act”) was enacted by Congress, in part, to increase the level of competition within the telecommunication industry. As part of that effort, the Act set forth a path for exchange carriers which had a monopoly on the local market, known as Regional Bell Operating Companies (RBOCs”), the opportunity to obtain approval from the Federal Communications Commission (“FCC”) to enter into the InterLATA long-distance telecommunications market as a competitive provider. 47 U.S.C. § 271. Such a request to the FCC is commonly referred to as a “271 application.”

7. FCC approval of a 271 application is contingent upon the RBOC demonstrating it has made its local exchange network accessible for interconnection to local competitors. 47 U.S.C. § 271(c)(2). One way an RBOC could demonstrate it has met this requirement is by setting forth a statement of generally available terms and conditions (“SGAT”) for interconnection which complies with certain competitive criteria the FCC has outlined in federal statute. Prior to approval of a 271 application, the FCC consults with the relevant state authority to ensure the RBOC has mechanisms in place to ensure its SGAT complies with federal requirements for local interconnection. 47 U.S.C. § 271(d)(2)(B).

8. In 2000, the Regional Oversight Committee (“ROC”), a cooperative group of state regulatory commissions in the Qwest local service region, including Montana, was formed. The purpose of the ROC was to initiate a multi-state collaborative process to examine Qwest’s SGAT, so the states could consult the FCC on its determination for approval of Qwest 271 applications. Following the ROC process, the Commission recommended approval of the Qwest 271 application for Montana. *In re Qwest Corporation Section 271 Application*, FCC WC Docket No. 02-189 (Aug. 1, 2002). In 2002, the FCC approved Qwest’s 271 application to provide long-distance service originating in Montana. *See In re Qwest Communications In-Region InterLATA Application*, WC Docket No. 02-314, Memorandum Opinion and Order, FCC 02-332 (Dec. 23, 2002).

9. The PID and PAP—at issue in this docket—were established as part of the SGAT that was reviewed by the ROC. The PID and PAP are included as Exhibits B and K, respectively, of the standard ICAs that CenturyLink executes with interconnecting CLECs. The Commission has the authority to approve or reject telecommunication ICAs. Mont. Code Ann. § 69-3-839.

10. The PAP is a self-effectuating plan that monitors CenturyLink’s performance for interconnection procedures. The PAP requires CenturyLink to meet certain performance

benchmarks that are defined in the PID. If CenturyLink fails to meet those benchmarks or provide interconnection access to CLECs that is on par with its own, CenturyLink is penalized through payments it must make to the affected CLEC (“Tier 1 payments”).

11. In October 2020, the FCC issued an order (“2020 Order”) which reduced the number of products CenturyLink is required to offer to CLECs for interconnection in counties which the FCC has deemed competitive. *In re Modernizing Unbundling and Resale Requirements*, FCC WC Docket No. 19-308 (Oct. 28, 2020). The 2020 Order grants forbearance for nearly all products in competitive counties—leaving LIS Trunks as the only remaining product that CenturyLink is required to offer under the PID/PAP in competitive counties beginning February 2023. *Id.*

12. The Petition states the automatic reporting metrics CenturyLink currently uses to calculate parity with CLECs is common for all states. PSC-003. The 2020 Order relieves CenturyLink of offering certain products for interconnection on a county-specific basis. CenturyLink asserts that modifying its automated reporting system to track performance on a county-specific level would require significant architectural changes to multiple data warehouse structures and be overly expensive. *Id.*

13. CenturyLink argues the PID and PAP have become less relevant since their inception in the early 2000s. Petition, at 4-6. The Petition states Tier 1 payments to CLECs under the PAP have declined from \$99,769 in 2003 to \$0 in 2020. The Petition asserts the number of orders CenturyLink receives for products offered under the PAP continue to decline, and CLECs rarely log in to the PAP to review performance. *Id.* at 5-6.

14. CenturyLink has notified all impacted CLECs of its proposal to eliminate the PID and PAP. *Id.* at 3. Additionally, it has reached out to the CLECs with the highest volume and/or payments under the current PAP and received no objections related to the state of Montana. *Id.* at 4. The Petition reports that both South Dakota and Iowa have already approved similar petitions for CenturyLink in those states. *Id.* at 1.

15. Due to the declining interest from CLECs for products offered under the PID and PAP, and considering the cost that would be required for CenturyLink to update its automated reporting system following the FCC’s 2020 Order, CenturyLink requests the Commission issue an order eliminating the PID and PAP from CenturyLink ICAs with CLECs in Montana.

16. The Commission approves CenturyLink’s request. The 2020 Order would remove performance tracking for all products apart from LIS trunks in nearly every county that CenturyLink operates within Montana. If the Commission grants this Petition, CenturyLink will not

track performance metrics for LIS Trunks, but LIS Trunks will still be available to CLECs for interconnection. The Commission will also continue to maintain its authority to mediate ICAs, should CenturyLink and an interconnecting CLEC fail to reach terms of an agreement.

17. No party, including the Montana Consumer Counsel, has offered the Commission any testimony or evidence which opposes the Petition. CenturyLink has notified all impacted CLECs of the Petition and has not received any objection to it.

CONCLUSIONS OF LAW

18. The Commission has jurisdiction over CenturyLink pursuant to the Montana Telecommunications Act generally, and the power to approve interconnection agreements specifically. Mont. Code Ann. §§ 69-3-801 through -870, and -839.

19. The Commission has provided sufficient public notice of this proceeding and an opportunity for interested persons to be heard, and concludes that no evidentiary hearing is necessary to resolve this docket. Mont. Code Ann. §§ 2-4-601, 69-3-104. Procedural due process requires that parties are provided reasonable notice and a reasonable opportunity to be heard. *Anaconda Pub. Schs v. Whealon*, 2012 MT 12, ¶ 15, 363 Mont. 344, 268 P.3d 1258 (quoting *In re Peila*, 249 Mont. 272, 815 P.2d 139 (1991)). Those requirements align with Mont. Code Ann. § 2-4-601 (“In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.”) and Mont. Code Ann. § 2-4-612(1) (“Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.”). *Id.* However “due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute.” *Id.*; see also *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1968) (“However, the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing. The precedents establish, for example, that no evidentiary hearing is required when there is no dispute on the facts and the agency proceeding involves only a question of law.”). Because there are no contested issues of fact regarding the rates and conditions in the Agreement, no hearing is required.

20. This Order is not final for purposes of judicial review under Mont. Code Ann. § 2-4-702(1)(a)-(b) until parties have exhausted their administrative remedies and issues under the Commission’s reconsideration process permitted under Mont. Admin. R. 38.2.4806.

ORDER

21. CenturyLink's Application is APPROVED.

DONE AND DATED this 15th day of March, 2022.

BY THE MONTANA PUBLIC SERVICE COMMISSION

JAMES BROWN, President

BRAD JOHNSON, Vice President

TONY O'DONNELL, Commissioner

RANDALL PINOCCI, Commissioner

JENNIFER FIELDER, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 16th day of March, 2022, a true and accurate copy of the foregoing document was served by email to the following:

CENTURYLINK

peter@scott-law.com

office@scott-law.com

For Applicant CenturyLink

MONTANA CONSUMER COUNSEL

jbrown4@mt.gov

ssnow@mt.gov

For Montana Consumer Counsel

LIST(S)

General Telecommunication Services

Commission Orders

/s/ Tarin Slayton _____

Tarin Slayton

Commission Paralegal