

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

THE CENTURLINK COMPANIES –
QWEST CORPORATION; CENTURYTEL
OF WASHINGTON; CENTURYTEL OF
INTERISLAND; CENTURYTEL OF
COWICHE; AND UNITED TELEPHONE
COMPANY OF THE NORTHWEST

To be Regulated Under an Alternative Form of
Regulation Pursuant to RCW 80.36.135.

DOCKET NO. UT-130477

MOTION TO DISMISS SPRINT AS AN
INTERVENOR IN THIS DOCKET

I. INTRODUCTION

- 1 Pursuant to WAC 480-07-375(1)(a) CenturyLink moves the Commission to enter an order dismissing Sprint from this proceeding as an intervenor. Dismissal of an intervenor is allowed under WAC 480-120-355.¹
- 2 The basis for this motion is that the interests and issues that Sprint raised in its petition to intervene are not the interests and issues that Sprint is pursuing in this docket. Based on Sprint’s recent discovery requests to CenturyLink in this docket, and Sprint’s threatened

¹ WAC 480-120-355

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding after notice and a reasonable opportunity to be heard if the commission determines at any time that the intervenor has no substantial interest in the proceeding, or that the public interest will not be served by the intervenor's continued participation.

motion to compel, it is apparent that Sprint is pursuing a private agenda for its own gain, and Sprint's now-clarified interests in this proceeding are not ones that can properly be addressed in an AFOR proceeding. Sprint therefore has no substantial interest in the proceeding, and the public interest will not be served by Sprint's continued participation.

3 It is clear from Sprint's discovery requests that Commission and company resources will be wasted if Sprint is permitted to stay in the docket to attempt to extract competitive information from CenturyLink and to extort concessions from CenturyLink on VoIP interconnection issues that Sprint has not raised in negotiations, that are not within the scope of this docket, and that cannot be addressed in an AFOR proceeding.

II. SPRINT'S PETITION TO INTERVENE

4 Sprint's petition to intervene, filed with the Commission on April 29, 2013, stated the following as the basis for intervention:

- a. Sprint Nextel has a substantial interest in Petitioner's petition to be regulated under an alternative form of regulation pursuant to RCW 80.36.135. In order to serve its customers in Petitioners' territories, currently, Sprint Nextel relies on its ability to interconnect and seek associated services from them. Moreover, the Petitioners assess access charges to Sprint for intrastate access in Washington. In addition, Sprint Nextel competes with the enterprise services offered by Petitioners.
- b. Sprint Nextel desires to participate in this proceeding to protect its rights to obtain interconnection and related services from Petitioners under appropriate rates and conditions, which it relies upon to provide telecommunications services to Sprint Nextel's customers. Sprint Nextel is also concerned that Petitioners may not provide access services at appropriate rates, terms and conditions if its petition is approved.
- c. Sprint Nextel anticipates that the various issues and areas of concern that it raises, briefing and argument that it intends to set forth, as well as evidence that it may provide, will be of meaningful assistance to the Commission and the other parties to this proceeding when evaluating the proposed petition. Permitting Sprint Nextel leave to intervene will not result in a broadening of the issues already raised pursuant to the merits of Petitioners' petition, nor shall Sprint Nextel's participation cause a delay of these proceedings.

5 Based on these representations – essentially that Sprint was worried about maintaining
fair terms for interconnection agreements (ICAs) and worried about access charges –
CenturyLink did not object to the intervention. However, it now appears that Sprint has
another set of motives and that existing ICAs terms for Section 251 interconnection
and/or and access rates are not Sprint’s real concerns in this docket.

III. SCOPE OF THE AFOR DOCKET

6 The CenturyLink AFOR filing is a petition under RCW 80.36.135. Under that statute,
the Commission must consider whether the proposed plan meets certain criteria for
regulating the companies under an alternative form of regulation. Specific to wholesale
issues are requirements that the plan ensure adequate carrier-to-carrier service quality,
including service quality standards or performance measures for interconnection.²

7 The Commission is also required to consider whether the proposed plan will preserve or
enhance competition and protect against the exercise of market power.³

² (3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan. The plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.

³ RCW 80.36.135(2) [T]he commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;

(b) Improve the efficiency of the regulatory process;

(c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;

(d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;

(e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and

(f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

8 In light of these statutory provisions, CenturyLink does not dispute that competitive carriers such as Sprint may state an interest in an AFOR proceeding. However, CenturyLink's AFOR proposal does not impact carrier-to-carrier service quality, does not impact access rates, and does not impact current or future terms for local Section 251 interconnection. Therefore, Sprint's legitimate interests are not impacted by the AFOR.⁴

9 Sprint currently has an ICA with CenturyLink QC (the legacy Qwest Company) under Docket No. UT-043002; that ICA has been amended by agreement of the parties as recently as late last year. Pursuant to the AFOR petition, the AFOR does not impact CenturyLink's wholesale obligations under the Telecom Act, and does not impact existing ICAs (see Petition, ¶ 10). As such, there are no interconnection issues within the scope of this docket.

IV. SPRINT'S INTERESTS CANNOT BE ADDRESSED IN THIS DOCKET

10 Sprint's true interests are now revealed to be interests associated with forcing VoIP interconnection, (which is not an issue in this docket, and is not even a formal request from Sprint), as opposed to concerns about preserving competition and preserving carrier-to-carrier service quality. This is clear from the text of a letter sent by Sprint in furtherance of the resolution of certain discovery disputes between Sprint and CenturyLink.

11 Sprint has requested a great deal of information from CenturyLink regarding VoIP interconnection. CenturyLink has responded to some requests, but has objected to many of them. In clarifying what its interests are in this docket, Sprint has stated:

Your responses to the DRs discussed herein fail to provide information relevant to the current competitive telecommunications environment. ***
At this point in time, VoIP interconnection is critical to a competitor's

⁴ Intrastate switched access charges will remain tariffed under the AFOR and are not impacted by this proceeding. Intrastate special access or private line services purchased by Sprint do not constitute a significant interest in this proceeding. The legacy Qwest services of this type are already competitively classified, and have been for years. Sprint does not appear to take issue with that classification. Sprint purchases *de minimus* amounts of intrastate private line services from the legacy Embarq company, and only those services would be impacted by the AFOR.

ability to compete. Therefore the [CenturyLink ILECs'] refusal to recognize this form of interconnection as a section 251(c) wholesale obligation impairs the CLEC's competitive abilities, while it provides a competitive advantage to CenturyLink affiliates. The [CenturyLink ILECs] have called into question the entire competitive environment they face in Washington and thus they have made impairment to one category of competitors a relevant issue. VoIP interconnection is not a narrow technical issue to be resolved through private commercial agreements, but is a policy issue; namely, whether the Commission will order the [CenturyLink ILECs] to recognize VoIP interconnection as a section 251(c) wholesale obligation.

12 These are not interests that can be addressed in this proceeding. Because VoIP services are interstate services, it is not clear that a state commission even has jurisdiction to impose any requirements associated with them in any proceeding. However, by invoking the claim that VoIP interconnection is a Section 251 issue, Sprint has conceded that this issue needs to be resolved by the FCC to determine if it does in fact fall within the scope of the Telecom Act.

13 Importantly, there is not even a pending request from Sprint regarding VoIP interconnection. As such, any ruling from the Commission on the issue of a carrier's obligation to offer VoIP interconnection would be an impermissible declaratory ruling under state law.

V. PRIOR COMMISSION RULINGS SUPPORT DISMISSING SPRINT FROM THIS PROCEEDING

14 The Commission has previously decided issues regarding the participation of intervenors, and has indicated that a party participating for private gain, as opposed to furthering the public interest, does not meet the requirements for participation.

15 In the CenturyLink/Embarq merger proceeding (Docket No. UT-082119), in a pleading filed regarding the request by some intervenors to withdraw, the Staff quoted from the Commission's Eighth Supplemental Order in Docket UT-991358, the Qwest/US West merger proceeding, and the Commission included that quote in Order 05, paragraph 59, as follows:

Corporations are expected to be good citizens as well as good companies. When corporations elect to participate in proceedings such as this one, we expect them to fulfill their good citizenship obligation by bringing forth evidence and making sound argument that will assist us to make a reasoned decision in the public interest. As a corollary, the Intervenors are encouraged to engage with other parties in settlement discussions that may produce negotiated results to be presented to the Commission as a means to resolve in the public interest the previously contested issues in the case.

Here, the Intervenors purported to enter the proceedings to further public interest considerations, but now they seek to withdraw from the proceedings based on their private interests. They have abdicated their broader responsibility to be good citizens in favor of pursuing their own narrower commercial interests. This threatens to undermine the integrity and credibility of the Commission's adjudicatory process. With respect to the arrangements between Joint Applicants and AT&T, between U S WEST and MetroNet, and between U S WEST and McLeodUSA, these Intervenors to have asked our leave to intervene in the public interest and then agreed privately to withdraw under a veil of confidentiality when offered a concession in what they characterize as a private dispute that is wholly unrelated to the matters before us. Although Level 3 Communications ultimately waived its initial claim of confidentiality, we regard its agreement to withdraw in exchange for a cash payment in the same light.

The side-agreements between U S WEST and the remaining Intervenors who seek to withdraw pursuant to their agreements (i.e., Rhythms Links, Covad Communications, NEXTLINK, and SBC), **do touch on some of the issues raised in the merger proceeding. But these private agreements are not intended to, and do not, assist the Commission in its duty to ensure the merger between U S WEST and Qwest is consistent with the public interest. Instead, these agreements promote the narrower commercial ends of those who entered into them.** Indeed, the agreements arguably raise the question whether they are contrary to the public interest, to the extent an individual corporate participant in the telecommunications sector gains advantages for itself relative to other corporate participants in the same industry [bold emphasis added].⁵

16 Sprint is seeking only to promote its narrower commercial interests via its participation in this proceeding, and will not only delay the proceeding by injecting extraneous issues, but will also fail to assist the Commission as it considers the public interest issues of the

⁵ In Re Application of US WEST, Inc. and Qwest Communications International, Inc., Docket UT-991358, Eighth Supp. Order ¶¶57-66 (June 19, 2000).

AFOR petition.

17 Later in that same Order 05, para. 69, the Commission discussed the intervention and request for withdrawal of the IBEW:

[T]he language of the side-agreement and IBEW's own arguments show beyond peradventure that the union used its status as a party in this proceeding principally, if not exclusively, to extract labor concessions from the Applicants. While union-management negotiations are important, and we would not want to interfere with them in any way, their insertion in the regulatory process can undermine the integrity of our processes. **The Commission is charged in proceedings such as this one with furthering the public interest. If parties dwell on issues outside the Commission's regulatory purview, then it is possible that the timeliness of our proceedings, and their substance, may be impacted to the detriment of the greater public interest we must promote.** [bold emphasis added]

18 Sprint's interests in this proceeding are essentially focused on asking the Commission to rule on an issue that is outside the scope of this proceeding, i.e., IP interconnection.

While this is admittedly a closer call than the IBEW issue (the Commission might be able to address the IP interconnection issue in an appropriate proceeding, while labor negotiations would never be brought before the Commission under any circumstances), it is nevertheless outside of the scope of this docket and outside of the consideration of the public interest.

19 As such, and in order to maintain the integrity and proper scope of this docket, Sprint's intervention should be dismissed.

VI. DECLARATORY RULINGS ARE PROHIBITED UNLESS DONE UNDER THE APA

20 By requesting a ruling on VoIP interconnection, Sprint is asking the Commission to enter a ruling on an issue that is not raised by the AFOR and which would not affect the relationship between CenturyLink and Sprint.

21 A ruling by the Commission or a court that declares the rights of the parties, whether or
not other or further relief may be sought is a declaratory ruling.⁶ RCW 34.05.250 and
WAC 480-07-930 require a party requesting a declaratory order to petition the
Commission.⁷ Sprint has not filed a petition, so a declaratory ruling cannot be entered.

22 Further, declaratory rulings may not be entered if a respondent objects to such a ruling,
supported by affidavit, and asserts that its rights would be prejudiced. WAC 480-07-
930(3). If the Commission were to entertain a petition for declaratory ruling on Sprint's
issues, CenturyLink would file such an affidavit, asserting prejudice on the basis that the
action would violate provisions of Washington law as discussed herein.

23 Guidance on this issue is provided by the Washington state case law arising under the
Uniform Declaratory Judgments Act. See RCW 7.24.010 et seq. Cf. Super. Ct. R. 57.
The Washington Supreme Court has consistently held that to be a justiciable claim for
declaratory judgment, "a controversy must be an actual, present and existing dispute, not
possible, dormant, or hypothetical." *Federal Way School Dist. No. 210 v. State*, 219 P.3d
941, 949 (Wash. 2009) (individual plaintiffs' claims challenging school employee salary
figures under state education law were "hypothetical and nonjusticiable"). See also,
Branson v. Port of Seattle, 101 P.3d 67, 74 - 75 (Wash. 2004) (dispute was "potential,
theoretical, abstract or academic," where plaintiff and the Port of Seattle were not
genuinely opposed to the Revised Airport Act).

24 Also a claim cannot "rest[] on a speculative factual basis" or "on hypothetical facts."
Seattle Newspaper-Web Pressmen's Union Local No. 26 v. City of Seattle, 604 P.2d 170,
174 (Wash. App. 1979) (claim by labor union that required "hypothesiz[ing] different
facts . . . [regarding a potential] reverse discrimination case for [potential plaintiffs']

⁶ RCW 7.24.010 governs civil actions and RCW 34.05.250 governs administrative proceedings.

⁷ WAC 480-07-930(1) **Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW [34.05.240](#).

exclusion from a presently non-existent apprenticeship program,” “presuppos[ing] the creation of such an apprenticeship program, was not justiciable). See also, *Moran v. State*, 568 P.2d 758, 760 (Wash. 1977). (“The injury or threat of injury must be both ‘real and immediate’ not ‘conjectural’ or ‘hypothetical.’”).

25 Sprint’s claim here rests on the “speculative factual basis” that the CenturyLink ILEC has the technical ability to offer IP interconnection, which, as CenturyLink has informed Sprint numerous times, it does not. Accordingly, Sprint’s “hypothetical” claim for access to this nonexistent interconnection cannot be adjudicated by the Commission and must be dismissed.

VII. CONCLUSION

26 In conclusion, CenturyLink believes that Sprint’s intervention impermissibly seeks to broaden the issues in this proceeding, and seeks private commercial gain as opposed to furtherance of the public interest. For those reasons, Sprint’s intervention should be dismissed.

Respectfully submitted this 29th day of July, 2013.

CENTURYLINK

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