

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Complaint by the Joint  
CLECs Against the Joint Applicants  
Regarding OSS for Maintenance and Repair

DOCKET UT-111254

INITIAL POST-HEARING BRIEF  
OF COMMISSION STAFF

**I. INTRODUCTION**

1 Staff of the Washington Utilities and Transportation Commission (Staff) submits this initial post-hearing brief pursuant to the briefing schedule established at the close of the evidentiary hearing at the Washington Utilities and Transportation Commission (Commission) on February 3, 2012. At the commencement of this proceeding, Staff initially focused its investigation and analysis on understanding the Qwest Corporation d/b/a CenturyLink (Qwest/CenturyLink) Operational Support Systems (OSS) at issue. While Qwest/CenturyLink's planning and communications concerning their OSS have fostered mistrust among the Competitive Local Exchange Carriers (CLECs), from Staff's perspective CenturyLink is not currently violating the Commission's final order conditionally approving the merger between CenturyLink, Inc. and Qwest Communications International Inc (together "Joint Applicants").<sup>1</sup>

2 Because of the risks to CLECs and end-users of failure of the current repair OSS, which have come to light in this proceeding, the replacement of Qwest/CenturyLink's repair OSS is an important issue independent of the Merger Order and the associated commitments. Staff's position in this proceeding reflects Staff's ultimate focus on moving

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<sup>1</sup> *In Re Joint Application of Qwest Communications International Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.*, Docket UT-100820, Order 14, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (March 14, 2011) ("Merger Order").

forward, addressing the possibility of a repair OSS failure, and allowing Qwest/CenturyLink to develop and implement the replacement OSS.

## II. BACKGROUND

3 The dispute in this case arises from conditions attached to several settlements filed in Docket UT-100820 in conjunction with the Commission's review of the petition of Joint Applicants for approval of their merger. The relevant settlements are as follows:

- 1) Joint Applicants with Integra Telecom (Integra), filed November 10, 2010 ("Integra Agreement");
- 2) Joint Applicants with Staff and the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel), filed December 23, 2010 ("Staff/PC Agreement"); and
- 3) Joint Applicants with tw telecom of washington llc (tw), filed February 11, 2011 ("tw Agreement").

The Commission adopted these settlements in its Merger Order.

4 All three settlements contain the language that is at the heart of this dispute:

In legacy Qwest ILEC service territory, after the Transaction closes, CenturyLink will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Transaction's closing, with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, CenturyLink will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures. . . .<sup>2</sup>

5 The Integra Agreement's Condition 12 and the Staff/PC Agreement's Condition 23 contain nearly identical language as filed. In the Merger Order, however, the Commission specifically adopted the formulation in the Staff/PC Agreement, that is, Condition 23.<sup>3</sup>

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<sup>2</sup> Staff/PC Agreement, Condition 23, "OSS – Wholesale" ("Condition 23").

<sup>3</sup> Merger Order at p. 69, ¶ 124.

When tw settled with the Joint Applicants, it opted into the Integra Agreement and, therefore, the tw Agreement also contains the language quoted above.

6           The Commission extended the two-year term of Condition 23/Condition 12 to 30 months.<sup>4</sup> While the Commission incorporated the 30-month term from a settlement filed at the Minnesota Public Utilities Commission by Joint Applicants and various CLECs, and took administrative notice of the agreement,<sup>5</sup> this “Minnesota Joint CLEC Settlement”<sup>6</sup> was never filed in Washington or adopted by this Commission. McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services (PAETEC) was one of the CLEC parties to the Minnesota Joint CLEC Settlement. The Minnesota Joint CLEC Settlement, like the tw Agreement, adopts the Integra Agreement and contains various additional provisions presumably specific to the interests of the parties to that agreement.

7           The event that precipitated this proceeding was Qwest Corporation’s decision to replace its current repair OSS, “MEDIACC,” with a new repair OSS, “MTG,” in 2011. If Qwest/CenturyLink had proceeded with this plan, the company, in Staff’s view, would have violated both the Integra Agreement and the Staff/PC Agreement.<sup>7</sup>

8           MEDIACC is a B2B interface that allows Qwest wholesale customers to submit electronic requests for repair using their own computer systems.<sup>8</sup> CLECs that do not use a B2B interface use a Qwest/CenturyLink OSS interface called “CEMR” to submit repair requests via a GUI Interface on the Internet. According to Qwest/CenturyLink, if MEDIACC were to fail after MTG had been developed and implemented, CEMR users

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<sup>4</sup> *Id.* at p. 66, ¶ 116; and at p. 53, ¶ 86.

<sup>5</sup> *Id.* at pp. 52-53, ¶ 86.

<sup>6</sup> Exh. No. BJJ-5.

<sup>7</sup> Williamson, Exh. No. RTW-1T 12:1-7.

<sup>8</sup> Williamson, Exh. No. RTW-1T 9:21-23.

would, within a relatively short amount of time, be able to submit repair requests that would run over MTG.<sup>9</sup>

9 In November 2010, just days after entering into the Integra Agreement, Qwest Corporation notified CLECs that it planned to replace MEDIACC with MTG in 2011.<sup>10</sup> After CLECs objected to the replacement of this OSS on the basis that such an OSS change was prohibited before the end of the 30-month term of Condition 12 of the Integra Agreement, Qwest/CenturyLink withdrew the plan to retire MEDIACC prior to the end of the 30 months.<sup>11</sup> Qwest/CenturyLink retained the plan, however, to implement MTG as an optional OSS before the end of the 30-month period,<sup>12</sup> asserting that MEDIACC was at risk for system failure.<sup>13</sup>

10 Three CLECs, Integra, PAETEC, and tw (together the “Joint CLECs”) filed a formal complaint and petition with the Commission July 13, 2011, against Qwest/CenturyLink, alleging that the plan to implement the new repair OSS breaches the Integra Agreement, the Staff/PC Agreement, the tw Agreement, and the Minnesota Joint CLEC Settlement; violates the Merger Order by breaching various settlement agreements; breaches interconnection agreement terms requiring nondiscrimination; and breaches the duty of nondiscrimination arising under the Telecommunications Act of 1996.<sup>14</sup> The Joint CLECs, Qwest/CenturyLink, and Staff filed written testimony and participated in a two-day evidentiary hearing. Joint CLECS alleged and testified that they are seeking enforcement of not only the three settlement agreements adopted by the Merger Order but also of the

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<sup>9</sup> Albersheim, Exh. No. RA-1T 24:5-10; Albersheim, TR. 330:4-20.

<sup>10</sup> See Denney, Exh. No. DD-1T 55:17-25.

<sup>11</sup> See Albersheim, Exh. No. RA-2; Albersheim, Exh. No. RA-1T 14:19-15:4.

<sup>12</sup> See Albersheim, Exh. No. RA-1T 8:8-10.

<sup>13</sup> See Albersheim, Exh. No. RA-1T 6:3-10.

<sup>14</sup> Joint CLECs’ Formal Complaint and Petition at p. 32, ¶¶ 84-85; pp. 33-37.

Minnesota Joint CLEC Settlement.<sup>15</sup> At the close of the hearing, Judge Friedlander specifically asked the parties to address in their briefing the issue of whether the Commission could enforce the Minnesota Joint CLEC Settlement, which the Commission neither accepted nor adopted.<sup>16</sup>

11           Regarding the allegations of breach of the settlement agreements, the focus of the allegations is on the language of Condition 12 of the Integra Agreement (Condition 23 of the Staff/PC Agreement). Staff's understanding of this language, and the relevant OSS, as well as Staff's recommendations, are set forth in the prefiled written testimony of Robert T. Williamson.<sup>17</sup> Essentially Staff believes that Joint Applicants are not in violation of Condition 23/Condition 12 because CenturyLink will not be retiring the repair OSS prior to the end of the 30-month period.<sup>18</sup>

### III. ARGUMENT

12           The Commission lacks authority to enforce any of the terms of the Minnesota Joint CLEC Settlement that this Commission has not adopted. Regarding the Staff/PC and the Integra agreements, Qwest/CenturyLink has not violated Condition 23/12 because it has no plans to retire the current repair OSS before the end of the settlement period. Furthermore, implementing and offering a new repair OSS on an optional basis before the end of the settlement period would not violate Condition 23/12 and is reasonable given the risk of failure of the current repair OSS.

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<sup>15</sup> Compl. at p. 32, ¶ 84, and at p. 34, ¶ 95; Hansen, Exh. No. CH-4T 2:11-17; Denney, TR. 227:8-229:25.

<sup>16</sup> TR. 351:5-16.

<sup>17</sup> Williamson, Exh. No. RTW-1T.

<sup>18</sup> Williamson, Exh. No. RTW-1T 12:18-13:5; Williamson, Exh. No. RTW-1T 16:9-17.

**A. THE COMMISSION LACKS AUTHORITY TO ENFORCE MINNESOTA JOINT CLEC SETTLEMENT TERMS NOT ADOPTED BY THE COMMISSION**

13 The Washington State Legislature’s general grant of authority to the Commission empowers the Commission to “[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.”<sup>19</sup> Telecommunications companies provide utility service to the public for compensation.<sup>20</sup> The public service laws administered by the Commission that apply to telecommunications companies are located primarily in Title 80 of the Revised Code of Washington (RCW). State law defines “telecommunications company” as including “every corporation, company . . . and person . . . operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.”<sup>21</sup> Accordingly, the Commission has regulatory jurisdiction over telecommunications companies in this state to the extent of their provision of service *within this state*. The Commission does not have jurisdiction over a telecommunications company’s provision of service or the performance of other acts in another state. Its jurisdiction extends only to the four corners of this state.

14 Likewise, the Commission generally does not have authority to enforce agreements a telecommunications company files in another state or jurisdiction. The Commission’s enforcement power is limited to the legislative mandate set forth in Titles 80 and 81 RCW. The Commission’s general authority under chapter 80.04 RCW to fine telecommunications

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<sup>19</sup> RCW 81.01.040.

<sup>20</sup> The definition of “‘public service company’ includes every . . . telecommunications company.” RCW 81.04.010.

<sup>21</sup> RCW 81.04.010.

companies provides guidance on which matters are subject to enforcement before the Commission. Under RCW 80.04.380, for example, the Commission may impose penalties for violation of “any provision of this title,” or for violation of “any order, rule, or any direction, demand or requirement of the commission.” Under RCW 80.04.405, the Commission may assess penalties for “violation of any provision of this title or any order, rule, regulation or decision of the commission.” If a settlement between two public service companies has not been adopted as part of the Commission’s order, and the term allegedly breached does not implicate the Commission’s rules or the statutes administered by the Commission, then the Commission generally would not have a basis for enforcement action such as assessing penalties. Accordingly, the Commission is not empowered to enforce terms of the Minnesota Joint CLEC Settlement that the Commission has not adopted and that lack another basis for enforcement.

**B. QWEST/CENTURYLINK IS NOT IN VIOLATION OF CONDITION 23 OF THE STAFF/PC AGREEMENT OR CONDITION 12 OF THE INTEGRA AGREEMENT BECAUSE IT DOES NOT PLAN TO RETIRE MEDIACC BEFORE THE END OF THE 30-MONTH PERIOD**

15 Condition 23/12 provides that in “legacy Qwest ILEC service territory, after the Transaction closes, CenturyLink will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least [thirty months].” Because Qwest/CenturyLink continues to provide MEDIACC, asserting that it will continue to do so until the end of the 30-month period, the company is not violating its commitment at this time to use and offer legacy Qwest OSS throughout the 30-month period.

16 Condition 23/12 also provides that “[a]fter the period noted above, CenturyLink will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures.” In Staff’s view, this provision has not yet

been triggered because Qwest/CenturyLink does not currently have a plan with a timeline to replace MEDIACC.<sup>22</sup> Replacement of MEDIACC will not occur until it is retired and no longer available.<sup>23</sup> This means that, so long as MEDIACC is available, Qwest/CenturyLink can develop and implement MTG without violating Condition 23/12.

**C. GIVEN THE RISK OF MEDIACC FAILURE, QWEST/CENTURYLINK SHOULD BE PERMITTED TO IMPLEMENT MTG AS AN OPTIONAL OSS**

17 There is a serious risk of MEDIACC failure because the hardware and software no longer are completely supported.<sup>24</sup> Because Qwest/CenturyLink can develop and implement MTG without violating Condition 23/12, as discussed above, it is common sense that Qwest/CenturyLink should be allowed to implement MTG. If MTG is available, CLECs can opt to avoid the risk of MEDIACC failure and move to MTG before the 30-month period has elapsed. At the very least, MTG would be available as a backup for CEMR users in the event of any type of MEDIACC failure.

18 If the Commission permits Qwest/CenturyLink to implement MTG, Staff recommends additional reporting on the implementation. Staff also recommends that Qwest/CenturyLink more frequently update its Disaster Recovery Plan for MEDIACC. These recommendations are set forth in greater detail on pages 24 to 25 of Mr. Williamson's direct prefiled testimony.<sup>25</sup>

#### IV. CONCLUSION

19 Staff recommends that the Commission deny the Joint CLECs' request to stop development of MTG; that the Commission allow Qwest/CenturyLink to implement MTG and optionally offer it to CLECs; and that the Commission order Qwest/CenturyLink to

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<sup>22</sup> See Albersheim, TR. 284:24-285:9.

<sup>23</sup> Williamson, Exh. No. RTW-1T 16:9-17.

<sup>24</sup> *Id.* at 16:19-17:-2.

<sup>25</sup> Williamson, Exh. No. RTW-1T.



maintain access to MEDIACC throughout the 30-month period and until such time as it can be retired after all of the requirements of Condition 23/12, as modified by the Merger Order, have been met. In addition, Staff proposes that the Commission adopt Staff's other recommendations as set forth in Mr. Williamson's direct prefiled testimony.

DATED this 14<sup>th</sup> day of March 2012.

Respectfully submitted,

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