

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

ADVANCED TELECOM, INC. d/b/a	)	DOCKET UT-111254
INTEGRA; ELECTRIC	)	
LIGHTWAVE, LLC d/b/a INTEGRA;	)	
ESCHELON TELECOM OF	)	ORDER 06
WASHINGTON, INC d/b/a INTEGRA	)	
TELECOM; OREGON TELECOM	)	
INC. d/b/a WASHINGTON	)	
TELECOM d/b/a INTEGRA;	)	INITIAL ORDER GRANTING JOINT
UNICOM f/k/a UNITED	)	MOTION FOR APPROVAL OF
COMMUNICATIONS, INC. d/b/a	)	SETTLEMENT AGREEMENT AND
INTEGRA; MCLEODUSA	)	DISMISSAL OF PROCEEDINGS WITH
TELECOMMUNICATIONS	)	PREJUDICE, APPROVING AND
SERVICES L.L.C. d/b/a PAETEC	)	ADOPTING SETTLEMENT
BUSINESS SERVICES; AND TW	)	AGREEMENT AS FULL RESOLUTION
TELECOM OF WASHINGTON LLC,	)	OF THE COMPLAINT, AND
	)	DISMISSING COMPLAINT WITH
Complainants,	)	PREJUDICE
	)	
v.	)	
	)	
QWEST CORPORATION AND	)	
CENTURYLINK, INC.,	)	
	)	
Respondents.	)	
	)	
.....	)	

1 **Synopsis.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, proposed Settlement Agreement between the Merged Company and Joint CLECs will be approved, and the complaint will be dismissed with prejudice.*

2 **PROCEEDING.** On July 12, 2011, Advanced Telecom, Inc. d/b/a Integra; Electric Lightwave, LLC d/b/a Integra; Eschelon Telecom of Washington, Inc. dba Integra Telecom; Oregon Telecom Inc. dba Washington Telecom dba Integra; Unicom f/k/a

United Communications, Inc. dba Integra<sup>1</sup>; McLeodUSA Telecommunications Services L.L.C. dba PAETEC Business Services (PAETEC); and tw telecom of Washington llc (tw telecom)<sup>2</sup> filed with the Washington Utilities and Transportation Commission (Commission) a complaint against Qwest Corporation (Qwest) and CenturyLink, Inc. (collectively with Qwest, the Merged Company). Joint CLECs alleged that the Merged Company has violated the terms of various settlement agreements approved in Order 14 in Docket UT-100820 regarding operational support systems (OSS) used for maintenance and repair.

- 3 **PARTY REPRESENTATIVES**<sup>3</sup>: Gregory R. Merz, Gray, Plant, Mooty, Mooty & Bennet, P.A., Minneapolis, Minnesota, represents Integra and PAETEC. Mark P. Trincherro, Davis Wright Tremaine LLP, Seattle, Washington, represents tw telecom. Lisa Anderl, in-house counsel, Seattle, Washington, and Timothy Goodwin, in-house counsel, Denver, Colorado, represent the Merged Company. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>4</sup>

### MEMORANDUM

- 4 **Background and Procedural History.** On July 12, 2011, Joint CLECs filed a formal complaint and petition against the Merged Company. Joint CLECs argued that the Merged Company violated the Commission's Order 14 in Docket UT-100820, as well as the settlement agreements approved and adopted by Order 14, and certain interconnection agreements. Specifically, Joint CLECs asserted that the Merged Company had commenced replacement of the legacy Qwest OSS, Customer

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<sup>1</sup> These companies are collectively referred to as Integra.

<sup>2</sup> Integra, PAETEC, and tw telecom are collectively referred to as Joint CLECs.

<sup>3</sup> The Commission granted the request to withdraw from the proceedings, filed by Cbeyond Communications LLC, in Order 04, entered October 18, 2011.

<sup>4</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Electronic Maintenance and Repair (CEMR) and Mediated Access Electronic Bonding Trouble Administration (MEDIACC) systems, with a new OSS, known as Maintenance Ticketing Gateway (MTG), contrary to the Merged Company's agreement to "use and offer to wholesale customers the legacy Qwest [OSS]" for thirty months.<sup>5</sup> Further, Joint CLECs explained that, even after the thirty month moratorium, the Merged Company is obligated to follow certain protocols contained within the settlement agreements prior to implementation of a new OSS, like MTG.<sup>6</sup> Joint CLECs contended that the Merged Company's proposed timeline for replacement of the legacy Qwest OSS does not comply with these protocols.<sup>7</sup>

- 5 Joint CLECs raised concerns with statements made on behalf of the Merged Company that indicate the Merged Company questioned the stability of the legacy Qwest OSS.<sup>8</sup> Joint CLECs cite to the testimony of CenturyLink witness, Mr. Michael Hunsucker, before the Arizona Corporation Commission on December 20, 2010, at which time Mr. Hunsucker stated:

And in my discussions with the Qwest folks that is a system [CEMR/MEDIACC] that is very unstable today. It was built in the late '90s, early 2000 time period. They can't find parts for it to replace that system and keep it up and running. And due to the instability of that system, they are looking to replace that system with a new system that will provide stability to the CLECs.<sup>9</sup>

- 6 On August 2, 2011, the Merged Company filed an answer to Joint CLECs' Complaint, generally denying the allegations in the Complaint. The Merged

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<sup>5</sup> Joint CLECs Complaint, ¶¶ 14, 84.

<sup>6</sup> *Id.*, ¶ 14.

<sup>7</sup> *Id.*, ¶ 76.

<sup>8</sup> *Id.*, ¶¶ 40-41.

<sup>9</sup> *Id.*, ¶ 40 (citing to ACC Hearing Transcript, Docket No. T-10151B-10-0194, etc., Vol. II, p. 338, ll 19-25 (December 20, 2010). Joint CLECs noted that shortly thereafter Qwest claimed that the system is very stable. *Id.*, ¶ 71. (Citation omitted).

Company asserted that MEDIACC continues to be offered and remains available, as does CEMR.<sup>10</sup>

7 On October 14, 2011, the Merged Company and Joint CLECs filed their direct testimony. Commission Staff filed its direct testimony on November 30, 2011. The Merged Company and Joint CLECs filed their responsive testimony on December 15, 2011.

8 The Commission convened an evidentiary hearing on February 2-3, 2012, in Olympia, Washington, to receive evidence from the parties and to allow them an opportunity to conduct cross-examination of witnesses who prefiled testimony.<sup>11</sup>

9 On February 28, 2012, Joint CLECs filed a Notice of Supplemental Authority advising the Commission of an Order issued by the Minnesota Public Utilities Commission (MPUC) in a parallel proceeding. The MPUC's Order required the Merged Company and Joint CLECs to collectively select a third-party to review and test the Merged Company's failover and disaster recovery plans and file these plans with the Commission by May 1, 2012, for the MPUC's review and approval.<sup>12</sup> Further, the Order directed "the parties to explore how CenturyLink could facilitate the voluntary transition of each CLEC to CenturyLink's MTG prior to the expiration of the 30-month moratorium on changes to the legacy OSS..."<sup>13</sup>

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<sup>10</sup> Merged Company Answer, at 2-3.

<sup>11</sup> The evidentiary hearing was originally scheduled to convene January 18-20, 2012, but was rescheduled twice due to inclement weather.

<sup>12</sup> *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink and In the Matter of the Complaint by the Joint CLECs Against Qwest and CenturyLink Regarding OSS Implementation*, MPUC Docket Nos. P-421, *et al.*/ PA-10-456 and P-5340, 5643, 5323, 5981, 438, 465, 5986, 421/C-11-684, respectively, Order Requiring Retention of Technical Expert, Negotiations, and Compliance Filings, at 3 (February 27, 2012).

<sup>13</sup> *Id.*

- 10 On March 14, 2012, all parties filed initial post-hearing briefs. The Merged Company and Joint CLECs filed reply post-hearing briefs on April 4, 2012.<sup>14</sup>
- 11 The Commission issued Bench Request No. 2 on April 25, 2012. The Bench Request required CenturyLink to file its Minnesota-mandated failover plan and disaster recovery plan, the identity of its third-party expert, and an explanation of whether and to what extent this information might be applicable to CenturyLink's operations in Washington.
- 12 On May 2, 2012, CenturyLink filed a letter in response to Bench Request No. 2, explaining that the parties in the Minnesota proceeding have agreed to the terms of a settlement that would resolve all of the disputed issues in the Minnesota, Washington, and Colorado complaint cases.<sup>15</sup>
- 13 On June 5, 2012, the Merged Company and the Joint CLECs<sup>16</sup> filed the Joint Motion for Approval of Settlement Agreement and Dismissal of Proceedings with Prejudice (Joint Motion) and the Settlement Agreement. The Settling Parties assert that the Settlement Agreement resolves the complaint in Washington.<sup>17</sup> The Settling Parties maintain that the agreement is a one-time exception to the settlements reached in the Qwest/CenturyLink merger in Docket UT-100820.<sup>18</sup>

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<sup>14</sup> In a letter filed on April 3, 2012, Staff indicated that it would not be filing a reply brief and instead rests on its initial post-hearing brief.

<sup>15</sup> Bench Request No. 2 was issued, and its response filed, after the evidentiary hearing concluded in this matter. The Commission will admit the Response to Bench Request No. 2 as Exh. No. BR-2 absent objection received within three days of the date of this Order.

<sup>16</sup> The Merged Company and Joint CLECs will be referred to as the Settling Parties.

<sup>17</sup> Joint Motion, ¶ 4. The Settlement Agreement was filed after the evidentiary hearing concluded in this matter. The Commission will admit the Settlement Agreement as Exh. No. 4 absent objection received within three days of the date of this Order.

<sup>18</sup> *Id.* While Staff did not sign on to the Settlement Agreement, it also did not file comments on the document.

- 14 The Commission issued Bench Request No. 3 on June 11, 2012, seeking a breakdown of the amounts the Merged Company pledged to pay Joint CLECs under the Settlement Agreement. Joint CLECs filed a response to the Bench Request, under confidential seal, on June 19, 2012.<sup>19</sup>
- 15 On June 14, 2012, the Settling Parties filed a letter modifying the choice of law provision within the Settlement Agreement. Paragraph 7 of the Settlement Agreement had provided for the interpretation of the document “in accordance with the laws of the state of Minnesota.”<sup>20</sup> The new language, proposed by the parties, provides for interpretation of the Settlement Agreement “in accordance with the laws of any state in which the agreement is approved.”<sup>21</sup>
- 16 **SETTLEMENT AGREEMENT.** On June 5, 2012, the Settling Parties filed the Joint Motion, the Settlement Agreement, and CenturyLink’s *MTG Implementation Guidelines*. According to the Settlement Agreement, CenturyLink will make a single payment to each of the three Joint CLECs totaling in the aggregate \$250,000.<sup>22</sup> Joint CLECs have agreed amongst themselves to a distribution plan and have provided that plan to the Commission.<sup>23</sup> CenturyLink has supplied Joint CLECs with its automatic failover capability for MTG and a failover and disaster recovery plan for MEDIACC.<sup>24</sup> CenturyLink agrees that it will perform development, implementation, and on-boarding of MTG using an open and transparent process, including the use of

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<sup>19</sup> Bench Request No. 3 was issued, and its response filed, after the evidentiary hearing concluded in this matter. The Commission will admit the Response to Bench Request No. 3 as Exh. No. B-3C absent objection received within three days of the date of this Order.

<sup>20</sup> Exh. No. 4, ¶ 7 (June 5, 2012).

<sup>21</sup> Letter from the Settling Parties, dated June 14, 2012. The letter modifying the paragraph 7 of the Settlement Agreement was filed after the evidentiary hearing concluded in this matter. The Commission will admit the letter as Exh. No. 5 absent objection received within three days of the date of this Order.

<sup>22</sup> Exh. No. 4, ¶ 1(a).

<sup>23</sup> *Id.* See Exh. No. B-3C, filed under confidential seal (June 19, 2012).

<sup>24</sup> Exh. No. 4, ¶ 1(b).

Qwest Change Management Process procedures, as well as the use of procedures consistent with CenturyLink's *MTG Implementation Guidelines* document.<sup>25</sup>

- 17 In exchange for CenturyLink's commitments, the Joint CLECs agree to: (1) support the Settlement Agreement, and (2) if all CLECs have migrated from MEDIACC and CEMR to other CenturyLink repair management systems prior to October 1, 2013, join in a motion with CenturyLink asking the Commission to modify its order in Docket UT-100820 to permit CenturyLink to retire MEDIACC prior to the end of the 30-month moratorium.<sup>26</sup> Commission Staff takes no position on the Settlement Agreement.<sup>27</sup>
- 18 The Settling Parties argue that the public interest is satisfied because CenturyLink: (1) pledges its intent to maintain MEDIACC until the merger commitments have been satisfied or all carriers have been migrated to MTG, and (2) assures the Commission that the risks associated with MEDIACC are mitigated without delay and no non-parties are adversely affected.<sup>28</sup> The Settling Parties also contend that agreement satisfies Joint CLECs' interests since it "facilitates the implementation of the newer repair OSS, MTG, while making clear that the underlying merger commitments are unaffected by this one-time exception for MTG."<sup>29</sup> CenturyLink benefits from the transaction due to its ability to deploy MTG without the risks associated with ongoing litigation.<sup>30</sup> Finally, the Settlement Agreement also allows requesting carriers, who

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<sup>25</sup> *Id.* With regard to Section 2.5.4 of CenturyLink's *MTG Implementation Guidelines*, the Settling Parties clarify that: (1) CenturyLink will maintain, update, and post the question log, and (2) for responses CenturyLink provides in Implementation meetings, by telephone, or by email, CenturyLink will also promptly post the responses in the question log. *Id.* at 3.

<sup>26</sup> *Id.* at 3-4.

<sup>27</sup> Joint Motion, ¶ 8. In its Initial Post-Hearing Brief, Staff indicated its belief that the Merged Company has not violated the Commission's Order in Docket UT-100820 or the settlement agreements since it has not replaced the legacy OSS with MTG. Staff's Brief, ¶ 11. In addition, Staff contends that, even had the Merged Company begun "implementing and offering a new repair OSS on an optional basis before the end of the settlement period [this] would not violate [the settlements] and is reasonable given the risk of failure of the current repair OSS." *Id.*, ¶ 12.

<sup>28</sup> Joint Motion, ¶ 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

are not parties to this proceeding, the ability to choose one of CenturyLink's three repair OSS on their own time, and if desired, facilitates early implementation of MTG for these same carriers.<sup>31</sup>

19 **Discussion and Decision.** Pursuant to WAC 480-07-750(1), settlements will be approved “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the [C]ommission.” We find that the Settlement Agreement fulfills each of these requirements.

20 Joint CLECs raised several concerns with the Merged Company's alleged premature migration from CEMR/MEDIACC to MTG. One main example of this was Joint CLECs' anxiety over a possibly unstable MEDIACC. CenturyLink subsequently provided Joint CLECs with both the MEDIACC failover and disaster recovery plans. Further, the Settling Parties have “agree[d] on procedures to facilitate the adoption and implementation of MTG,”<sup>32</sup> a newer repair OSS, by Joint CLECs. The Merged Company has gone to great lengths to describe this as a one-time exception to the merger commitments approved by the Commission in Docket UT-100820.

21 We are satisfied that the Settlement Agreement provides sufficient benefit for us to conclude that, when viewed in total, it is a reasonable compromise in terms of its end results and supported by the record before us. The Commission finds that the Joint Motion for Approval of Settlement Agreement and Dismissal of Proceedings with Prejudice should be granted, the Settlement Agreement should be approved and adopted as full resolution of the complaint, and Joint CLECs' complaint dismissed with prejudice.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, ¶4.



**FINDINGS OF FACT**

22 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

23 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.

24 (2) On March 14, 2011, the Commission entered Order 14, authorizing CenturyLink to acquire indirect control of Qwest in Docket UT-100820, subject to several multiparty settlement agreements and additional Commission-imposed conditions.

25 (3) One of the multiparty agreements was a settlement stipulation between the Merged Company, Staff, and Public Counsel. This agreement, coupled with the Commission's incorporation of a condition agreed to in the Minnesota proceedings, provides for a 30-month moratorium on the modification or replacement of the Qwest legacy OSS post-merger closing. A second settlement agreement, signed by the Merged Company and Integra, contained a similar provision.

26 (4) On July 12, 2011, Joint CLECs filed a complaint against the Merged Company alleging that the Merged Company had violated Order 14 in Docket UT-100820 and the terms of various settlement agreements by integrating a new OSS, MTG, prior to the expiration of the 30-month moratorium.

27 (5) On June 5, 2012, Joint CLECs and the Merged Company filed a Joint Motion for Approval of Settlement Agreement and Dismissal of Proceedings with Prejudice. Included with this filing are the Settlement Agreement and

CenturyLink's *MTG Implementation Guidelines*. The Joint Motion requests dismissal of the proceedings with prejudice.

- 28 (6) The Settlement Agreement provides that: (1) CenturyLink will make a one-time payment to Joint CLECs; (2) CenturyLink is responsible for the development, implementation, and on-boarding of MTG; and (3) if all CLECs have migrated to the MTG repair OSS prior to the expiration of the 30-month moratorium, Joint CLECs will file a joint motion with CenturyLink requesting that the Commission allow CenturyLink to retire MEDIACC ahead of the moratorium.

### **CONCLUSIONS OF LAW**

29 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 30 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 31 (2) WAC 480-07-750(1) governs the Commission's standard of review for settlement agreement and requires finding that: (1) approval of the settlement is lawful, (2) the settlement terms are supported by an appropriate record, and (3) the result is consistent with the public interest in light of all the evidence available to the Commission.
- 32 (3) The Settlement Agreement, as amended on June 14, 2012, is supported by an appropriate record and is consistent with the public interest. In addition, approval of the Settlement Agreement is lawful.
- 33 (4) The Joint Motion for approval of the Settlement Agreement and dismissal of proceedings with prejudice should be granted.

- 34 (5) The Settlement Agreement, as amended on June 14, 2012, should be approved and adopted as full resolution of the complaint.
- 35 (6) The Joint CLECs' complaint should be dismissed with prejudice.

**ORDER**

**THE COMMISSION ORDERS That:**

- 36 (1) The Joint Motion filed by Joint CLECs and the Merged Company seeking approval of the Settlement Agreement and dismissal of the proceedings with prejudice is granted.
- 37 (2) The Settlement Agreement is approved and adopted as full resolution of the complaint.
- 38 (3) The Joint CLECs' complaint is dismissed with prejudice.

Dated at Olympia, Washington, and effective July 9, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge

## NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250