

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of Qwest Communications Company, LLC to Amend its Certificate of Public Convenience and Necessity No. 2204	Docket No. 13-2204-01 SETTLEMENT STIPULATION
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I. INTRODUCTION

1. This Settlement Stipulation (“Stipulation”) is entered into by Qwest Communications Company, LLC d/b/a CenturyLink QCC (“QCC”), Carbon/Emery Telcom, Inc. (“Carbon/Emery”), and the Division of Public Utilities (the “Division”) (collectively referred to as the “Parties” and individually referred to as a “Party”).

2. The Public Service Commission (“Commission”) conducted a technical conference on May 21, 2013.

3. Immediately following the technical conference the Parties participated in settlement discussions, and reached a resolution.

4. The Commission was advised of the settlement at the scheduling conference, and scheduled a hearing on the settlement for June 11, 2013.

5. The Parties represent that this Stipulation is just and reasonable, and recommend that the Commission approve the Stipulation.

II. BACKGROUND

1. On March 21, 2013, QCC filed a Petition to Amend (“Petition”) its Certificate of Public Convenience and Necessity No. 2204 (“CPCN 2204”).

2. Specifically, QCC seeks to amend CPCN 2204 to permit it to provide local exchange services in the same manner as other competitive local exchange carriers (“CLECs”).

3. QCC seeks to provide service “throughout Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.”¹

4. On April 12, 2013, the Division recommended approval of QCC’s Petition. The Division states that “public interest will be promoted by recommending” approval of QCC’s Petition “under the same terms and conditions allowed in other CPCNs.”²

5. On April 22, 2013, Carbon/Emery filed a Petition to Intervene.

6. Carbon/Emery provides local exchange service to the Price, Utah Exchange, which is an exchange with more than 5,000 access lines.³

7. The Commission granted Carbon/Emery’s intervention.

8. At the technical conference Carbon/Emery expressed its concern that if QCC competes as a CLEC in Price, Utah it may have an impact on the amount of money Carbon/Emery claims it may need from the Utah Universal Service Fund.

9. Further, Carbon/Emery stated that although its non-regulated affiliate, Emery Telecommunications & Video, Inc., (a certificated CLEC with authorization to provide local exchange service throughout the State of Utah except in exchanges with fewer than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the State) is authorized to provide local exchange service in Price, Utah, it has heretofore voluntarily refrained from competing in Price. However, it is under no obligation to refrain from providing local exchange service pursuant to its CPCN, and in the event QCC, or another competitor

¹ Petition, ¶3.

² Division Recommendation, p. 1.

³ Carbon/Emery Petition to Intervene, ¶3.

competes as a CLEC in Price, Emery Telecommunications & Video, Inc. would likely begin providing local exchange service in Price, subject to applicable law, at a rate competitive with the competitor's rate, which is likely to be lower than the affordable base rate.⁴ Carbon/Emery expressed concern that this would impact the Utah Universal Service Fund.

10. UBTA-UBET Communications, Inc. dba Strata Networks ("Strata") provides local exchange service to the Vernal, Utah exchange, which is an exchange with more than 5,000 access lines. Strata did not intervene in this docket. However, as a compromise and in an effort to avoid challenges to this Stipulation, the Parties have agreed to certain restrictions on QCC's CPCN in Vernal, Utah as set forth below.

11. The Commission has previously granted other CLEC applications that permit carriers to operate in exchanges that have more than 5,000 access lines, including the Price and Vernal exchanges.⁵

12. QCC acknowledged Carbon/Emery's concerns, and wanted to help the Parties reach a resolution without having to go through a contested hearing.

III. TERMS OF THE STIPULATION

1. Subject to Commission approval and for purposes of this Stipulation only, the Parties agree as follows.

2. The Parties agree that CPCN 2204 shall permit QCC to provide service throughout Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state subject to the terms of this Stipulation.

⁴ Petition to Intervene, ¶7.

⁵ See, for example, Order Granting the CPCN of Zayo Group (Docket No. 11-2536-01), Teltrust Corp.(Docket No. 11-2537-01), and Windstream NuVox (Docket No. 11-2538-01). The Commission has granted numerous other CPCNs as well.

3. CPCN 2204 shall be effectively immediately upon Commission approval, but shall have a delayed implementation date for Price and Vernal as set forth in this Stipulation.

4. CPCN 2204 shall not be implemented in Price, Utah until April 1, 2017. Nothing in this Stipulation shall prohibit QCC from seeking an implementation date prior to April 1, 2017, for CLEC operations in Price, Utah provided it files a petition with the Commission, with notice to Carbon/Emery, and such Petition is granted by the Commission.

5. CPCN 2204 shall not be implemented in Vernal, Utah until April 1, 2015. Nothing in this Stipulation shall prohibit QCC from seeking an implementation date prior to April 1, 2015, for CLEC operations in Vernal, Utah provided it files a petition with the Commission, with notice to Strata, and such Petition is granted by the Commission.

6. The delayed implementation dates of CPCN 2204 in Price and Vernal gives Carbon/Emery and Strata an opportunity to evaluate the impacts of the FCC's Transformation Order⁶, and to possibly seek legislative changes they believe may be needed as a result of that Order.

7. QCC acknowledges its competitive entry in Price or Vernal shall be subject to any applicable legislative, statutory, or rule changes that occur prior to the implementation dates of CPCN 2204 in Price and Vernal.

8. This Stipulation does not impact QCC's ability operate anywhere in Utah for services that do not require a CPCN.

IV. GENERAL TERMS AND CONDITIONS

⁶ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rate for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Mobility Fund; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011).*

1. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable. The Parties agree that this Stipulation as a whole is just and reasonable with respect to QCC's Petition. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to, any issues not specifically called out and settled herein.

2. The Parties agree to support this Stipulation at the hearing.

3. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the Division, the phrase "use its best efforts" means that it shall do so in a manner consistent with its statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review opposed to the Stipulation.

4. Except with regard to the obligations of the Parties under the three immediately preceding paragraphs, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

5. This Stipulation is an integrated whole, and any Party may withdraw from it and may file comments if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within ten business days

of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

6. This Stipulation is made upon the express understanding that it constitutes a negotiated settlement. The provisions of this Stipulation shall not be construed as or deemed to be a precedent by any party or the Commission with respect to any issue, principle, or interpretation or application of law and regulations, for any purpose or in connection with any proceeding before a court of law or any state or federal government regulatory body.

7. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

V. RELIEF REQUESTED

Based on the foregoing, the Parties request that the Commission approve QCC's Petition to Amend CPCN 2204 consistent with the terms set forth in this Stipulation.

RESPECTFULLY SUBMITTED: June, 2013

Qwest Communications Company, LLC d/b/a CenturyLink
QCC

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