

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
QWEST CORPORATION DBA CENTURYLINK) CASE NO. QWE-T-11-14
QC FOR APPROVAL OF ITS)
INTERCONNECTION AGREEMENT WITH)
GEILS COMMUNICATIONS, INC. PURSUANT) ORDER NO. 32415
TO 47 U.S.C. § 252(e))
_____)**

In this case the Commission is asked to approve an Interconnection Agreement between Qwest Corporation dba CenturyLink QC and Geils Communications, Inc. With this Order, the Commission approves the parties' Interconnection Agreement.

BACKGROUND

Under the provisions of the federal Telecommunications Act of 1996, interconnection agreements, including amendments thereto, must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission may reject an agreement adopted by negotiations only if it finds that the agreement: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). As the Commission noted in Order No. 28427, companies voluntarily entering into interconnection agreements “may negotiate terms, prices and conditions that do not comply with either the FCC rules or with the provision of Section 251(b) or (c).” Order No. 28427 at 11 (emphasis in original). This comports with the FCC’s statement that “a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of [Part 51].” 47 C.F.R. § 51.3.

THE APPLICATION

On September 29, 2011, the Commission received an Application from CenturyLink requesting approval of its Interconnection Agreement with Geils. In its filing, CenturyLink indicated that Geils had “opted out” of the Company’s Performance Assurance Plan (PAP), Exhibit K/Attachment 1 of the Agreement. The PAP is a self-executing remedy plan wherein the CLEC is entitled to compensation if CenturyLink does not meet specific standards to ensure it provides the same service to the CLEC that it provides to its own retail customers or

CenturyLink fails to attain applicable benchmarks set forth in the Service Performance Indicator Definitions (PIDs), Exhibit B of the Interconnection Agreement.

Subsequently, Staff contacted Geils regarding the PAP and explained its connection to the performance benchmarks in Exhibit B of the Application. Geils indicated to Staff that it wished to retain Exhibit K of the Interconnection Agreement. Staff and Geils then notified CenturyLink of Geils' intent to include Exhibit K as part of their Interconnection Agreement. On November 30, 2011, CenturyLink filed an Amendment to its original Application which contained the Third Revised, Seventh Amended Exhibit K dated December 17, 2010.

On March 17, 2009, the Commission issued Order No. 30750, Case QWE-T-08-04, allowing Qwest to withdraw its Statement of Generally Available Terms and Conditions (SGAT) but leaving in place the PIDs and PAP until a review by the Regional Oversight Committee (ROC) was completed.¹ The final ROC report was submitted on June 30, 2009.

On April 22, 2010, CenturyLink (f/k/a CenturyTel, Inc.) announced it would acquire Qwest in a stock-for-stock transaction. The FCC issued its Memorandum Opinion and Order for the transaction on March 18, 2011. As a part of the merger Agreement, CenturyLink agreed to the following:

assume all of Qwest's existing contractual commitments, including its interconnection agreements. In addition, CenturyLink has committed to allow any competitive LEC to use its current interconnection agreement as the starting point for renewal contract negotiations, and to extend its current agreement for up to 36 months.²

Accordingly, for the remaining 36-month agreement period, all interconnection agreements must be filed with the appropriate Exhibits B and K (PIDs/PAP), unless the CLEC knowingly waives the inclusion of the PAP.

In its comments, Staff acknowledged that companies should be permitted to negotiate all terms and conditions of their Interconnection Agreements. However, Staff also believes that a thorough discussion regarding the relevance of the PIDs and PAP must be clearly addressed in order to allow the CLEC to make an informed business decision.

¹ IPUC Order No. 30750, Case No. QWE-T-08-04: “. . . Qwest's Motion to Withdraw its SGAT is granted. Withdrawal of the SGAT shall not alter the status and effectiveness of exhibits to the SGAT including Exhibit A (price list), Exhibit B (PIDs) and Exhibit K (PAP).” Emphasis added.

² FCC 11-47, WC Docket No. 10-110 para. 24, *Applications filed by Qwest Communications International Inc., and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control.*

Staff reviewed CenturyLink's Application requesting approval of its Interconnection Agreement with Geils, including the proposed Amendment, and did not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff believes that the parties' Interconnection Agreement is consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act. Accordingly, Staff recommended that the Commission approve the Interconnection Agreement, including Exhibit K.

COMMISSION DECISION

Under the terms of the Telecommunications Act, Interconnection Agreements, including Amendments thereto, must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission's review is limited, however. The Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement or implementation of the agreement is not consistent with the public interest, convenience and necessity. *Id.*

Based upon our review of the Application and the Staff's recommendation, the Commission finds that the parties' Interconnection Agreement is consistent with the public interest, convenience and necessity and does not discriminate. Therefore, the Commission finds that the Agreement, including Amendments thereto, should be approved. Approval of an Interconnection Agreement does not negate the responsibility of either party to an Agreement to obtain a Certificate of Public Convenience and Necessity if they are offering local exchange services or to comply with *Idaho Code* §§ 62-604 and 62-606 if they are providing other non-basic local telecommunications services as defined by *Idaho Code* § 62-603.

ORDER

IT IS HEREBY ORDERED that the Interconnection Agreement between Qwest Corporation dba CenturyLink QC and Geils Communications, Inc., Case No. QWE-T-11-14, is approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th
day of December 2011.



PAUL KJELLANDER, COMMISSIONER

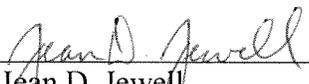


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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