

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Gallatin River Communications L.L.C. :
d/b/a CenturyLink and NTS Services Corp. : 12-0328
:
Joint Petition for Approval of Collocation :
Agreement. :

ORDER

By the Commission:

I. Procedural History

On May 3, 2012, pursuant to 83 Illinois Administrative Code Part 763, Gallatin River Communications, L.L.C. d/b/a CenturyLink (“CenturyLink”) and NTS Services Corp. (“NTS”), filed a joint petition for approval of a Collocation Agreement (“Agreement”) dated February 14, 2011, under Section 252 of the Telecommunications Act of 1996 (47 U.S.C. §§ 151 et seq.) (“the Act”). The Agreement was submitted with the petition. A statement in support of the petition was filed along with verifications sworn to by Thomas Dethlefs on behalf of CenturyLink and by Sue Scott on behalf of NTS, stating that the facts contained in the petition are true and correct to the best of their knowledge, information, and belief.

Hearing was waived in this matter and there were no contested issues. Staff filed the Verified Statement of A. Olusanjo Omoniyi of the Commission’s Telecommunications Division. Mr. Omoniyi’s Verified Statement and the Petition were admitted into evidence and the record was marked “Heard and Taken.”

II. Section 252 of the Telecommunications Act

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection services or network elements. CenturyLink and NTS have negotiated such an Agreement and submitted it for approval in this proceeding.

Section 252(e)(1) of the Act provides, in part, that “[a]ny interconnection agreement adopted by negotiation...shall be submitted for approval to the State Commission.” This Section further provides that a State Commission to which such an agreement is submitted “shall approve or reject the agreement, with written findings as to any deficiencies.” Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that “the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement” or that

"the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. This provision further states that "(n)o State court shall have jurisdiction to review the action of a State Commission in approving or rejecting an agreement under this section".

Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State Commission fails to carry out its responsibility, and Section 252(e)(6) provides that any party aggrieved by a State Commission's determination on a collocation agreement may bring an action in the appropriate Federal District Court.

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (3) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

III. The Agreement

The Agreement governs the purchase by NTS of certain telecommunications services provided by CenturyLink in CenturyLink's certificated areas in Illinois, pursuant to the obligations of Local Exchange Carriers under the 1996 Telecommunications Act. If approved by the Commission, the Agreement shall be effective as of February 14, 2011, and shall remain in effect unless cancelled or terminated earlier in accordance with the terms of the Agreement.

IV. POSITIONS OF THE PARTIES

No party contended that the Amendment is discriminatory or contrary to the public interest. Staff reviewed the Amendment in the context of the criteria contained in Section 252(e)(2)(A) of the Act and determined that it met the necessary requirements. Under this Section, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Mr. Omoniyi stated that the Amendment meets the standards set forth in the Telecommunications Act of 1996 and is consistent with the public interest, convenience and necessity. There are no contested issues in this docket. Staff recommended that the Commission approve the Amendment for the reasons set forth in the Verified Statement of Mr. Omoniyi. Staff also recommended that the Commission require

CenturyLink, within five (5) days from the date the Amendment is approved, to modify its tariffs to reference the Amendment for each service affected. Such a requirement is consistent with the Commission's orders in previous negotiated agreement docket and allows interested parties access to the Amendment. The following section of CenturyLink's tariffs should reference the CenturyLink-NTS Agreement: Agreements with Telecommunications Carriers (Ill.C.C. No. 2 Section 16). Staff further recommended that the Commission require CenturyLink to file with the Office of the Chief Clerk, within five (5) days from the date upon which the Amendment is approved, a verified statement that the approved Amendment is the same as the Amendment filed in this Docket with the Verified Petition.

V. Findings And Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) CenturyLink and NTS are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act;
- (2) CenturyLink and NTS have entered into a Collocation Agreement which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Agreement between CenturyLink and NTS does not discriminate against a telecommunications carrier not a party to the Amendment;
- (6) in order to assure that the Amendment is in the public interest, CenturyLink should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Amendment is the same as the Amendment filed in this docket with the verified petition. The Chief Clerk shall place the Agreement on the Commission's website under Interconnection Agreements;
- (7) CenturyLink should also place replacement sheets in its tariffs at the following location: Ill.C.C. No. 2 Section 16;
- (8) the Amendment should be approved as hereinafter set forth;

- (9) approval of the Amendment does not have any precedential effect on any future collocation agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Collocation Agreement dated February 14, 2011 between Gallatin River Communications, L.L.C. d/b/a CenturyLink and NTS Services Corp. is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that CenturyLink shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 31st day of July, 2012.

(SIGNED) DOUGLAS P. SCOTT

CHAIRMAN