

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition of CenturyLink for a Waiver of Sections) WC Docket No. 15-324
51.907 and 51.915 of the Commission's Rules, as)
Applicable)
)

ORDER

Adopted: April 20, 2016

Released: April 20, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a waiver to allow CenturyLink, Inc. (CenturyLink) to facilitate a pro forma internal restructuring plan whereby it will merge all or some of its incumbent local exchange carriers (ILECs or incumbent LECs) in states in which it has multiple ILECs in order to reduce the number of Study Areas in a state. This waiver permits CenturyLink to consolidate its ILECs and allow its switched access rates and Eligible Recovery to be consolidated and calculated on the basis of the surviving Study Area in a state.

2. We find that CenturyLink's requested relief is in keeping with Commission precedent, and utilizes a methodology that is in the public interest and will benefit CenturyLink's customers as well as the company. We also find that the requested relief will help facilitate the Commission's goal of transitioning price cap carriers to the bill-and-keep regulatory regime.

II. BACKGROUND

3. USF/ICC Transformation Order. On November 18, 2011, the Commission released the USF/ICC Transformation Order, which, among other things, established new rules requiring carriers to adjust, over a period of years, many of their switched access charges effective on July 1st of each year, with the ultimate goal of transitioning to a bill-and-keep regime. As an initial matter, the Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011, and price cap carriers were required to remove their switched access services from the traffic-sensitive and trunking baskets. Price cap and rate-of-return carriers were required to make reductions to certain

1 See Petition of CenturyLink for a Waiver of Sections 51.907 and 51.915 of the Commission's Rules, as Applicable, WC Docket No. 15-324, at 2 (filed Dec. 18, 2015) (CenturyLink Petition or Petition) (In its Petition, CenturyLink detailed its plan for Louisiana, the first state in which it will consolidate its ILECs in order to complete an internal restructuring. CenturyLink describes that "[i]n Louisiana, all nine of the CenturyLink Louisiana ILECs first will consolidate their rate structures in a single tariff by March 2016 and participate in a single Federal access tariff filing on July 1, 2016.")

2 See generally Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633 (2011) (USF/ICC Transformation Order) aff'd sub nom. In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

3 See 47 CFR § 51.907(a). Although CenturyLink at one time had entities regulated pursuant to both price cap and rate-of-return regulation, it converted all of its rate-of-return incumbent LECs to price cap regulation. See CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief, Order, 24 FCC Rcd 4677 (WCB 2009); CenturyLink Petition for Conversion of Average Schedule Affiliates to Price Cap Regulation and (continued...)

intrastate switched access rates in 2012 and 2013 if specified criteria were met.⁴ In 2014, price cap and rate-of-return carriers began a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep.⁵ The price cap transition occurs over six years and the rate-of-return transition occurs over nine years.

4. The Commission also adopted a transitional recovery mechanism to mitigate the impact of reduced intercarrier revenues on carriers and to facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*.⁶ As part of the transitional recovery mechanism, the Commission defined as “Eligible Recovery” the amount of intercarrier compensation revenue reductions that incumbent LECs would be eligible to recover through a combination of end-user charges (the Access Recovery Charge (ARC)) and, where eligible and if a carrier elects to receive it, intercarrier compensation replacement Connect America Fund support.⁷ A carrier’s Eligible Recovery is based on a percentage of the reduction in revenue each year resulting from the intercarrier compensation reform transition.⁸

5. Price cap and rate-of-return LECs with Eligible Recovery were permitted to assess an ARC on consumers in the form of a monthly fixed charge beginning on July 3, 2012.⁹ Subject to certain identical limitations, the Commission allowed an annual residential and single-line business ARC rate increase of \$0.50 and an annual multi-line business ARC rate increase of \$1.00. Price cap LECs are allowed to make five such increases, and rate-of-return LECs may make six such increases. If an incumbent LEC cannot recover its entire Eligible Recovery through ARCs and is otherwise eligible, it may opt to receive the remainder from intercarrier compensation replacement Connect America Fund support.¹⁰ Intercarrier compensation replacement Connect America Fund support for price cap LECs phases out over three years beginning in 2017.¹¹

6. *2012 Average Schedule Conversion Order*. In the *2012 Average Schedule Conversion Order*, the Commission granted a waiver permitting several carriers to withdraw their average schedule study areas from the National Exchange Carrier Association (NECA) common line and traffic-sensitive access tariffs and convert them to price cap regulation.¹² In that order, the Commission waived certain of

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for *Limited Waiver Relief*, Order, 29 FCC Rcd 5140 (WCB 2014) (*CenturyLink Average Schedule Conversion Order*).

⁴ See 47 CFR §§ 51.907(b)-(c), 51.909(b)-(c).

⁵ See 47 CFR §§ 51.907(d), 51.909(d).

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36. In adopting the recovery mechanism, the Commission explained that it did so in large part “to provide predictability to incumbent carriers that had been receiving implicit [intercarrier compensation] subsidies [and] to mitigate marketplace disruption during the reform transition. . . .” *Id.* at 17962-63, para. 858.

⁷ *Id.* at 17957, para. 850. In determining how the transitional recovery should be funded, the Commission concluded that “it is appropriate to first look to customers paying lower rates for some limited, reasonable recovery, and adopt a number of safeguards to ensure that rates remain affordable and that consumers are not required to contribute an inequitable share of lost intercarrier revenues.” *Id.* at 17988, para. 906.

⁸ *Id.* at 17957-58, para. 851.

⁹ 47 CFR §§ 51.915(e)(5), 51.917(e)(6); see also *July 3, 2012 Annual Access Charge Tariff Filings*, Order, 27 FCC Rcd 2981, 2982, para. 3 (WCB 2012).

¹⁰ 47 CFR § 51.915(f).

¹¹ 47 CFR § 51.915(f)(3)-(5).

¹² *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief; Consolidated Communications Companies Tariff F.C.C. No. 2; Frontier Telephone Companies Tariff F.C.C. No. 10; Windstream Telephone Systems Tariff F.C.C. No. 7*, Order, 27 FCC Rcd

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its rules to allow each involved carrier to establish a single interstate access tariff for its average schedule study areas exiting the NECA interstate tariffs, and approved a methodology for establishing initial interstate switched and special access rates using NECA switched and special access rates adjusted to reflect the extent the exiting study areas were either a net contributor to, or a net recipient from, the NECA traffic-sensitive pool.¹³ The Commission concluded that the switched access rates developed using this methodology would be deemed to be the rates that are capped by section 51.907(a).¹⁴

7. On May 15, 2014, the Wireline Competition Bureau (Bureau), on delegated authority, granted CenturyLink's petition for waiver to convert its remaining three average schedule rate-of-return study areas to the regulatory requirements applicable to price cap carriers.¹⁵ The Bureau approved CenturyLink's proposal to follow the same transition methodology as that approved in the *2012 Average Schedule Conversion Order* and permitted CenturyLink to establish a single blended rate for its switched access services for the three study areas.¹⁶

8. *CenturyLink Petition*. On December 18, 2015, CenturyLink filed a Petition for Waiver requesting a waiver, to the extent required, "of sections 51.907 and 51.915 of the Commission's rules to facilitate a *pro forma* internal restructuring plan whereby CenturyLink will undertake to merge some or all of its ILECs in states in which it has multiple ILECs to reduce the number of Study Areas in the state."¹⁷ CenturyLink states that the waiver is sought to ensure that the switched access rates subject to section 51.907 of the Commission's rules and Eligible Recovery of its ILECs "can be consolidated in each jurisdiction and calculated on the basis of each surviving Study Area in a state" because "[t]he Commission's access rates and recovery rules do not appear to address this scenario."¹⁸ CenturyLink anticipates that the first of these consolidations and restructurings will occur in connection with the CenturyLink ILECs in Louisiana.¹⁹ No comments were filed on the CenturyLink Petition.²⁰

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15753 (2012) (*2012 Average Schedule Conversion Order*). The *2012 Average Schedule Conversion Order* approved a two-step process: first the carriers would withdraw from the NECA tariff and establish their own interstate access rates under rate-of-return regulation; second, they would convert to the price cap regulatory structure on January 1, 2013. The summary in the text above reflects the process as if it had been a single step process.

¹³ *Id.* at 15760-61, para. 17.

¹⁴ *Id.* At the time the *2012 Average Schedule Conversion Order* was adopted, switched access rates were only capped pursuant to section 51.907—no rates had yet begun the transition to bill-and-keep. 47 CFR § 51.907 (2012).

¹⁵ See generally *CenturyLink Average Schedule Conversion Order*.

¹⁶ See *CenturyLink Average Schedule Conversion Order*, 29 FCC Rcd at 5145, para. 13.

¹⁷ See *CenturyLink Petition* at 1.

¹⁸ *Id.* at 4. In its petition, CenturyLink seeks to consolidate its "Transitional Intrastate Access Service, Tandem and End Office Access Service and Dedicated Access Rates." *Id.* at 1. CenturyLink, in an *ex parte* filing, clarified that "the requested waiver is intended to permit CenturyLink to consolidate the study areas of multiple local exchange carriers (LECs) in a state in advance of their being merged so that each surviving Study Area may first operate under a single tariff with uniform switched access rates, participate in a single statewide Federal access tariff filing, and consolidate their eligible recovery. This waiver would permit this result as to all switched access rate elements of those LECs. This would include those falling within the scope of Rule 51.907 as well as any other switched access rate elements of these LECs (i.e. those rate elements that are addressed in CenturyLink's annual switched access transitional Inter-carrier compensation tariff filings since the *USF/ICC Transformation Order* as well as those switched access rate elements that were covered in CenturyLink's broader switched access annual filings prior to the *USF/ICC Transformation Order* – last filed June 2011)." Letter from Timothy M. Boucher, Assoc. General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-324, at 1 (filed Mar. 11, 2016) (internal citation omitted).

¹⁹ *CenturyLink Petition* at 2.

III. DISCUSSION

9. CenturyLink seeks a waiver to facilitate a *pro forma* internal restructuring plan to allow it to merge some or all of its ILECs in states in which it has multiple ILECs in order to reduce the number of Study Areas in the state.²¹ According to CenturyLink, as part of this restructuring, the CenturyLink ILECs in each surviving Study Area will first operate under a single tariff with uniform switched access rates, participate in a single statewide federal access tariff filing, and consolidate their Eligible Recovery before merging.²² Accordingly, CenturyLink is seeking a waiver of section 51.907 to enable the affected CenturyLink ILECs and the surviving corporate entities in each state to assess uniform switched access rates that may differ from the switched access rates currently in place for each ILEC in the state.²³ CenturyLink also is seeking a waiver of section 51.915 “because the restructuring in some jurisdictions may result in the consolidation of CALLS Study Areas and non-CALLS Study Areas.”²⁴

10. CenturyLink proposes to consolidate its switched access rates by using a revenue-neutral, weighted approach.²⁵ Under this approach, CenturyLink states that it will (1) take the current switched access rates for each affected ILEC and the most-recent demand data filed with the Commission, (2) sum the revenue by element associated with those ILECs and sum the demand by element for all of them, and then (3) divide the summed revenue amount by the summed demand to determine a single rate by element.²⁶ According to CenturyLink, “[u]sing this methodology will increase some individual rates within one legacy Study Area while lowering the rates within other legacy Study Areas, allowing the consolidated rates to be set at revenue-neutral average rates.”²⁷

11. As an initial matter, we find that the transition methodology set out in CenturyLink’s Petition is consistent with the Commission’s *2012 Average Schedule Conversion Order*, and with the subsequent grant of CenturyLink’s request to take the same approach when it converted its remaining average schedule rate-of-return study areas to the regulatory requirements applicable to price cap carriers in 2014.²⁸ Those precedents have established that this transition methodology protects the public interest by ensuring that rates remain reasonable and consistent with the policies in the *USF/ICC Transformation Order*.

12. We find good cause to grant CenturyLink’s Petition “to take similar action in other jurisdictions where, as [in Louisiana], a proposed consolidation and restructuring will have no material adverse effect on carrier or retail customers (‘customers’), be revenue neutral to CenturyLink, and result in no material change to CenturyLink’s eligible recovery in each affected area.”²⁹ We conclude that

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²⁰ *Wireline Competition Bureau Seeks Comment on CenturyLink, Inc. Petition for Waiver of Sections 51.907 and 51.915 of the Commission’s Rules*, Public Notice, 30 FCC Rcd 14491 (WCB 2015).

²¹ CenturyLink Petition at 1.

²² *Id.*

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15757, para. 9.; *CenturyLink Average Schedule Conversion Order*, 29 FCC Rcd at 5145-46, paras. 13-14; see *supra* paras. 7-7.

²⁹ Generally, the Commission’s rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective

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permitting CenturyLink to consolidate and restructure using the methodology described above is in the public interest because it will: 1) be revenue neutral; 2) enable customers to evaluate and purchase services more quickly and easily than if required to purchase from multiple, separate tariffs; 3) free up Commission resources previously needed to evaluate multiple tariffs; and 4) allow CenturyLink to reduce its operational costs and resource expenditures currently associated with maintaining multiple federal tariffs for its ILECs.³⁰ Consequently, we find that granting CenturyLink's waiver request is in the public interest and facilitates the achievement of Commission policies by offering the public interest benefits generally attributed to incentive regulations – specifically, for the carrier to become more efficient, innovative, and productive.³¹

13. The other CenturyLink Study Area consolidations discussed in the Petition may be completed via the required tariff filings and supporting documentation made with the Commission utilizing the methodology described above.³² We require that, as part of the requisite tariff filings, CenturyLink include a letter certifying that each Study Area consolidation will be revenue neutral and follow the same methodology approved in this Order. Other price-cap carriers seeking a waiver in order to complete Study Area consolidations should detail for the Commission, in their waiver petitions, how the requested relief will be revenue neutral and furthers the goals established in the *USF/ICC Transformation Order*. The petitioning party should also detail how the requested waiver conforms to the prevailing precedent as well as describe the consumer benefits expected from a waiver grant.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the Petition for Waiver of 47 CFR §§ 51.907 and 51.915 filed by CenturyLink, Inc. on December 18, 2015 IS GRANTED.

15. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

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implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. See CenturyLink Petition at 3.

³⁰ See CenturyLink Petition at 6-8 (describing likely benefits to “[c]ustomers of CenturyLink Louisiana ILECS” associated with granting the CenturyLink Petition).

³¹ See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6790, para. 31 (1990).

³² See 47 CFR § 61.58 (Because the rate changes would likely involve both rate increases and rate decreases, we would expect such tariffs to be filed on at least fifteen (15) days' notice).