

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Order Declaring Warm Springs)	WC Docket No. 16-284
Telecommunications Company An)	
Incumbent Local Exchange Carrier for the)	
Warm Springs Reservation in Oregon)	

**OPPOSITION OF CENTURYLINK TO PETITION OF THE WARM SPRINGS
TELECOMMUNICATIONS COMPANY**

CenturyLink¹ hereby files a formal opposition to the Petition of Warm Springs Telecommunications Company (WST) requesting that the Federal Communications Commission (Commission) designate it as the incumbent local exchange carrier (ILEC) for the Warm Springs Wire Center.² CenturyLink is the existing ILEC for the Warm Springs Wire Center. CenturyLink generally denies the factual allegations and legal conclusions in the Petition, including allegations regarding the nature of CenturyLink’s service on the Warm Springs Reservation, market share information, the history of the relationship between the Confederated Tribes of Warm Springs and CenturyLink, and WST’s ability to function as the ILEC on the reservation. The Commission should issue a public notice, gather comment, and deny the petition if WST fails to demonstrate that treating it as an ILEC in the Warm Springs Wire Center is consistent with the public interest, convenience and necessity and the purposes of section 251. CenturyLink submits that WST has not done so at this time. At a minimum, before the Commission can determine if this test has been satisfied, the Commission must consider these

¹ This Opposition is filed by, and on behalf of, CenturyLink, Inc. and its regulated wholly-owned ILEC subsidiary in Oregon, Qwest Corporation, d/b/a CenturyLink QC (“CenturyLink”).

² WST also seeks to be treated as an ILEC for the Wanapine Exchange. Because CenturyLink is not an existing ILEC for that exchange, CenturyLink is not taking a position on that request.

issues in the broader context of service to all customers served by the Warm Springs Wire Center.

I. BACKGROUND INFORMATION.

CenturyLink is the existing ILEC in the Warm Springs Wire Center. CenturyLink's central office for the wire center is located on the Warm Springs reservation and CenturyLink serves customer locations on the reservation as well as customer locations outside of the reservation from that central office. Specifically, out of the Warm Springs central office CenturyLink serves approximately 16 lines, in two separate areas, that are outside of the reservation boundaries. The wire center boundaries encompass land both on and off of the reservation.

II. LEGAL STANDARD.

Pursuant to Section 251(h)(2), the Commission may treat comparable carriers as ILECs for Section 251 purposes if three criteria are met: (1) the carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position of the existing ILEC; (2) the carrier has substantially replaced the ILEC; and (3) such treatment is consistent with the public interest, convenience, and necessity and the purposes of Section 251.³

III. WST HAS NOT ESTABLISHED THAT IT HAS SUBSTANTIALLY REPLACED CENTURYLINK OR THAT IT IS IN THE PUBLIC INTEREST TO TREAT IT AS AN ILEC IN THE WARM SPRINGS WIRE CENTER.

As part of the statutory test, WST must show that it has substantially replaced CenturyLink in the Warm Springs Wire Center. WST has not made this demonstration. WST asserts that it has substantially replaced CenturyLink in the wire center because it has overbuilt CenturyLink in much of the wire center. It asserts that it serves more than 90% of the customers

³ 47 U.S.C. § 251(h)(2).

in that wire center with its own facilities.⁴ But, it is not clear whether this includes service to customers that are not residing within the reservation, but are served by the Warm Springs Wire Center. If WST wants to be an ILEC for the Warm Springs Wire Center, it should demonstrate that it has substantially replaced CenturyLink in the entirety of the Warm Springs wire center and not just the portion that is within the tribal reservation. WST has not done so.

With respect to the public interest analysis, the Commission has recognized that the public interest analysis required by section 251(h)(2)(C) is limited to the purposes of section 251 which are the pro-competitive interconnection obligations of that section that are applicable to incumbent providers.⁵ Even so, any evaluation of granting a carrier ILEC status solely for purposes of interconnection obligations requires some consideration of the context of those obligations. WST has not made any commitment to take on the section 251(c) obligations at the heart of ILEC regulation and the primary purpose of a section 251(h)(2)(C) petition, as the Commission recognized in the *Mid-Rivers* proceeding. WST also states that it has received ETC status from the Oregon Commission,⁶ but it has not stated whether the area for which it has been designated an ETC encompasses the Warm Springs wire center. Additionally, WST asserts that it has made a “‘COLR’ type commitment” to the Tribal Council to serve everyone on the reservation.⁷ But, WST has said nothing in its actual Petition about service to customer locations

⁴ Petition at pg. 5.

⁵ *In the Matter of Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, Report and Order, 21 FCC Rcd 11506, 11514 ¶17 (2006) (*Mid-Rivers Order*).

⁶ Petition at pg. 3.

⁷ Petition at pg. 3.

not within the reservation, but served out of the Warm Springs wire center.⁸ WST should not be granted ILEC status for a portion of the wire center without any consideration of the other customers served out of that wire center.

It is also worth noting that while WST has demonstrated that the Oregon Public Utility Commission (Oregon Commission) has requested that the Commission treat WST as an ILEC in the Wanapine Exchange, it has made no similar demonstration with respect to the Warm Springs Wire Center.⁹ Instead, it appears that WST has simply tacked on its request for ILEC status in the Warm Springs Wire Center without any consideration by the Oregon Commission.¹⁰ The Commission may benefit from input by the Oregon Commission on this issue.

Further, with respect to service in the Warm Springs Wire Center on the reservation, it is not clear whether WST has sufficient facilities to provide service to all existing locations on the reservation currently receiving service within the wire center. It is CenturyLink's understanding that WST uses a wireless technology to serve many of its residential customers. CenturyLink has reason to believe that some existing customer locations on the reservation cannot be served with WST's wireless facilities. The Commission should better understand this situation prior to any decision regarding this petition.

Finally, WST should not be designated the ILEC in the Warm Springs exchange without some consideration of the impact on CenturyLink as the existing ILEC. If WST is granted ILEC

⁸ Only as a note to Attachment I of the Petition does WST make a statement about possible service to homes off the reservation. *See* Petition, Attachment I, Maps. The statement is insufficient for addressing this important issue.

⁹ Petition at pg. 5.

¹⁰ Petition at pgs. 5-6.

status for the exchange, the Commission must also evaluate future regulatory treatment for CenturyLink.¹¹

As an ILEC, WST would be required to negotiate with and treat other telecommunications carriers consistent with the Communications Act, Oregon law, and other applicable rules and regulations. Among other things, WST cannot favor itself when it comes to rights of way. CenturyLink is concerned that WST may not be willing to uphold these obligations with respect to rights-of-way that are imperative to CenturyLink's maintenance of its state and federally mandated service obligations in the state of Oregon. CenturyLink has inquired on several occasions over the past four years regarding negotiations for new right-of-way leases for fiber and for its Warm Springs central office, which the Tribe has largely ignored. Any consideration of this Petition should, at a minimum, be conditioned upon the Tribe's grant of right-of-way access on reasonable terms and conditions.

IV. CONCLUSION.

For the reasons stated above, the Commission should issue a public notice, gather comment, and deny the petition if WST fails to demonstrate that treating it as an ILEC in the Warm Springs Wire Center is consistent with the public interest, convenience and necessity and the purposes of section 251. At a minimum, before the Commission can determine if this test

¹¹ See *Mid-Rivers Order*, 21 FCC Rcd at 11515-21 ¶¶ 20-34 (addressing subsequent regulatory treatment of existing ILEC when granting another LEC ILEC status in the same exchange).

has been satisfied, the Commission must consider these issues in the broader context of service to all customers served by the Warm Springs Wire Center.

Respectfully submitted,

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