

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
CenturyLink’s Proposal for Service-Based) GN Docket Nos. 12-353 and 13-5
Technology Transitions Experiments and)
Request for Declaratory Ruling)

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”) submits these comments in response to the Public Notice released on November 21, 2014 in the above-captioned proceeding. That Public Notice seeks comment on: (i) the proposal of CenturyLink, Inc. to “conduct trials of IP business services and IP exchange of business voice traffic in 12 wire centers in Las Vegas, Nevada” and (ii) CenturyLink’s related request for a declaratory ruling that CenturyLink’s participation in such trials “will not in any way affect its preexisting regulatory obligations related to the exchange of voice traffic with other providers or create any new obligations.”¹

As discussed below, the Commission should take steps to ensure that CenturyLink’s proposed trial does not prejudice other service providers from a competitive or regulatory standpoint by: (i) ensuring the regulatory *status quo* by denying CenturyLink’s request for declaratory ruling and instead clarifying that whatever Section 251/252 obligations exist today would continue to apply after the trial and (ii) imposing appropriate conditions to ensure that any service-based experiment is conducted by CenturyLink in an open and transparent manner that does not adversely impact the interests of non-participating third parties. Absent these

¹ See *Commission Seeks Comment on CenturyLink’s Proposal for Service-Based Technology Transitions Experiments and Request for Declaratory Ruling*, Public Notice, DA 14-1678, GN Docket Nos. 12-353 and 13-5 (Nov. 21, 2014); see also CenturyLink Proposal for IP Service Trial, GN Docket No. 13-5 (Nov. 12, 2014) (“CenturyLink Proposal”).

conditions, the Commission should not approve or otherwise place its imprimatur on CenturyLink’s proposal.

DISCUSSION

I. THE COMMISSION SHOULD ENSURE THAT ANY SERVICE-BASED TRIAL CONDUCTED BY CENTURYLINK DOES NOT EXEMPT IT FROM EXISTING OBLIGATIONS UNDER SECTIONS 251 AND 252 OF THE ACT

The *Technology Transitions Order* explicitly disclaims any intent to “resolve the legal and policy questions arising from the technology transitions in the context of an experiment.”² Rather, the intent of such experiments is to gather real-world data that will “fuel the ongoing public dialogue” about technology transitions and “help guide the Commission as [it] make[s] legal and policy choices that advance and accelerate the technology transitions while ensuring that consumers and the enduring values established by Congress are not adversely affected.”³ Cox agrees that service-based trials should be used to inform the policymaking process in this manner while ensuring that the service provider conducting the trial “maintain[s] the status quo in providing interconnection arrangements to both existing and new customers.”⁴

In particular, such experiments should be structured in a manner that is fully consistent with any and all substantive legal obligations to which that service provider is subject—including applicable interconnection obligations imposed by Sections 251 and 252 of the Act. Critically, those obligations—which include a local exchange carrier’s general duty to

² *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 01433, at ¶ 8 (2014) (“*Technology Transitions Order*”).

³ *Id.*

⁴ *Id.* ¶ 61.

interconnect with other telecommunications carriers,⁵ its more specific duty to establish arrangements for the “transport and termination of telecommunications,”⁶ and an incumbent local exchange carrier’s obligation to provide interconnection “for the transmission and routing of telephone exchange service and exchange access”⁷—are not contingent on the requesting carrier’s use of any particular technology. As such, they are fully applicable to IP interconnection arrangements (as the Commission has implicitly acknowledged),⁸ including the IP interconnection arrangements negotiated in the course of the proposed experiment. Conducting the trial through CenturyLink’s CLEC affiliate does not relieve CenturyLink of its 251 and 252 obligations.⁹

Cox agrees that CenturyLink’s participation in the proposed service-based experiment should not be deemed a concession by CenturyLink that the Section 251/252 framework applies to IP traffic. This result is fully consistent with Commission policy, including the Commission’s conclusion that “if a provider exchanges VoIP traffic in a wire center without first converting it

⁵ 47 U.S.C. § 251(a).

⁶ 47 U.S.C. § 251(b)(5).

⁷ 47 U.S.C. § 251(c).

⁸ *See, e.g., Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, at ¶ 1011 (2011) (“The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.”) (“*USF/ICC Transformation Order*”); *see also id.* ¶ 42 (cited in CenturyLink Proposal at 11 n.18).

⁹ The D.C. Circuit has held that ILEC may not “sideslip” its obligations under the Section 251/252 framework by offering telecommunications services through an affiliate; to the contrary, that would constitute “a circumvention of the statutory scheme.” *Association of Communs. Enters. v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001).

to TDM, that provider shall not be deemed to have conceded—nor will the Commission have determined—that VoIP traffic is subject to interconnection obligations.”¹⁰

But even a cursory review of CenturyLink’s proposal demonstrates that it seeks to go one step further and affirmatively place IP interconnection arrangements outside of the Section 251/252 framework. CenturyLink maintains that it is “not seeking to resolve . . . any of the myriad and complex legal and policy questions implicated by the IP transition.”¹¹ Yet, CenturyLink assumes the inapplicability of that framework to IP interconnection and repeatedly suggests that business arrangements under the proposed service-based experiment would be negotiated on some other basis. For example, CenturyLink asserts that participants would “transition from their current TDM-based *Section 251* interconnection arrangements to *commercially-negotiated* VoIP connectivity arrangements”¹²—implying that the latter would *not* be interconnection arrangements subject to Section 251.

CenturyLink’s request that the Commission “confirm that CenturyLink’s participation in this trial will not in any way affect its preexisting obligations—or create any new ones—related to the exchange of voice traffic with other providers” must be viewed with skepticism in light of these statements.¹³ Although, on face, this request appears consistent with the policies underlying the *Technology Transitions Order*, the request also is *inconsistent* with the rest of CenturyLink’s proposal, and obscures the fact that CenturyLink *is* seeking to exempt itself from existing regulatory obligations insofar as it attempts to place IP interconnection agreements outside the technology-neutral Section 251/252 framework established by Congress.

¹⁰ *Technology Transitions Order* ¶ 25.

¹¹ CenturyLink Proposal at 16.

¹² *Id.* at 14 (emphasis added).

¹³ *See id.* at 1. CenturyLink explicitly conditions its participation in the proposed trial on the grant of such confirmation. *Id.* at 11.

Further confusion arises because CenturyLink conflates the question of whether the Section 251/252 framework applies with that of whether applicable interconnection obligations have been satisfied in a given case. To the extent that the Section 251/252 framework *does* apply, CenturyLink’s participation in the proposed experiment *should* inform how that framework is applied and the evaluation of whether CenturyLink has complied with applicable interconnection obligations arising within that framework. For example, CenturyLink’s willingness to exchange IP traffic with Bandwidth and Inteliquent (assuming any provisional agreements remain in force after the trial) should bear on whether CenturyLink is required to interconnect with other carriers under similar terms and conditions.¹⁴ Indeed, it is difficult to imagine how CenturyLink could justify refusing to exchange traffic in an IP format with a provider like Cox if it enters into such arrangements with other competitors, especially in light of the Commission’s confirmation regarding the applicability of good-faith negotiation obligations in this context.¹⁵

Nevertheless, CenturyLink asks the Commission to “clarify” that the proposed service-based experiment would not “impact” any obligation CenturyLink has to negotiate in good faith in response to requests for IP interconnection for the exchange of voice traffic.¹⁶ Again, to the extent that CenturyLink has obligations under Sections 251 and 252 of the Act in this context, as Cox believes to be the case, this request for “clarification” amounts to a *de facto* request that the

¹⁴ CenturyLink asserts that, for a variety of reasons, its ability to exchange local voice traffic in IP format outside of the context of a trial would be limited. CenturyLink Proposal at 11. But this is hardly a basis for providing the “clarification” that CenturyLink seeks. Rather, to the extent that CenturyLink believes that it would not be feasible for CenturyLink to enter into an IP interconnection agreement with a requesting carrier, the reasonableness of that position should be evaluated in accordance with Sections 251 and 252.

¹⁵ See *USF/ICC Transformation Order* ¶ 1011.

¹⁶ CenturyLink Proposal at 10-11.

Commission forbear from enforcing the Section 251/252 framework. Although the *Technology Transitions Order* anticipates that “temporary forbearance” might be necessary in certain instances to facilitate service-based trials¹⁷—an approach that may or may not be consistent with the requirements of the Act—CenturyLink has not even attempted to satisfy the applicable forbearance standard. Therefore, if the Commission does issue any declaratory ruling, it should clarify that any Section 251/252 obligations currently applicable to IP interconnection arrangements would continue to apply following the proposed experiment, including any obligations related to the IP interconnection arrangements arising in the context of the proposed trial if their terms extend beyond the period of the experiment.

II. THE COMMISSION SHOULD ENSURE THAT ANY SERVICE-BASED TRIAL IS CONDUCTED IN AN OPEN AND TRANSPARENT MANNER THAT DOES NOT ADVERSELY IMPACT THE INTERESTS OF NON-PARTICIPANTS

CenturyLink characterizes its proposed trial as “an overlay that will have no effect on retail or wholesale customers not participating in the trial”—except to the extent that any such customer calls or receives a call from a customer that *is* participating in the trial.¹⁸ Of course there *are* other providers, including Cox, operating in the Las Vegas market, so this “exception” means that the proposed trial necessarily *will* have a substantial impact on non-participants and their customers (as such customers inevitably will place calls to and/or receive calls from business customers that use CenturyLink’s IP-based services). Customers outside of the Las Vegas market also could be impacted—particularly given that Inteliquent operates as a transit provider.

This reality is particularly significant in light of CenturyLink’s concession that technology transitions “can be disruptive, both in terms of unsettling customer expectations and

¹⁷ See *Technology Transitions Order*, Appx. ¶ 7.

¹⁸ CenturyLink Proposal at 9.

threatening established business models.”¹⁹ But CenturyLink wholly ignores the potential for its proposal to adversely impact third parties, and fails to propose any measures to ensure that those parties are protected from harms that might arise as a result of that trial. To safeguard the interests of non-participating service providers and their customers, the Commission should ensure that any approval of the proposed service-based experiment is subject to the following conditions:

First, the Commission should require CenturyLink to file all interconnection agreements and similar arrangements (however characterized), and obtain approvals thereof as necessary, in accordance with Section 252 of the Act.²⁰ Such a condition would help ensure that the proposed service-based experiment is conducted in a transparent manner. If the Commission does not order such agreements to be filed pursuant to Section 252, the Commission at least should require those agreements to be filed with the Commission to facilitate public review and the Commission’s ability to assess whether such arrangements should be subject to the Section 251/252 framework in the future.

Second, the Commission should require CenturyLink to allow service providers other than Bandwidth and Inteliquent to participate, on a voluntary basis, in the proposed service-based experiment. Although the *Technology Transitions Order* requires that service-based trials maintain the wholesale access enjoyed by all carriers and “invites [wholesale] customers to participate voluntarily,”²¹ CenturyLink does not explicitly invite participation in the trial by other service providers. Requiring CenturyLink to do so would enhance the value of the proposed experiment by: (i) increasing the likelihood that participants reflect a cross-section of the

¹⁹ *Id.* at 3-4.

²⁰ 47 U.S.C. § 252.

²¹ *Technology Transitions Order* ¶ 59.

industry and (ii) limiting CenturyLink’s ability to “cherry pick” specific CLECs in order to produce results that tend to support its policy preferences.

Third, the Commission should ensure that all data produced as part of the proposed experiment are available to the public. CenturyLink itself recognizes the need for such transparency, and for “other interested parties to observe key aspects of the trial”²² Thus, CenturyLink promises to conduct an open, transparent trial and to make collected information available to interested parties.²³ The Commission should provide a regulatory backstop for this voluntary commitment by requiring CenturyLink to file periodic reports and make its “raw” data available to requesting parties. Further, to be consistent with its approach to the AT&T trials, the Commission should utilize an independent, third-party expert to ensure a data-driven analysis without bias.

Fourth, the Commission should ensure that participation in any service-based experiment is limited to CenturyLink’s existing business customers, and should preclude CenturyLink from using the experiment to “win” new customers—*e.g.*, by offering free service to new customers that participate. Although CenturyLink explains that it would use “existing marketing channels to recruit business customers to voluntarily participate in the trial,”²⁴ it is unclear whether this commitment is binding and, in any event, such a commitment might not preclude CenturyLink from allowing new customers to participate. A clarifying condition would help to avoid any confusion as to whether the Commission is endorsing CenturyLink as a favored service provider by placing an official imprimatur on the company’s experimental service offering.

²² CenturyLink Proposal at 7.

²³ *Id.* at 10.

²⁴ *Id.* at 8.

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For the foregoing reasons, the Commission should take action consistent with these comments.

Barry J. Ohlson
Jennifer L. Prime
COX ENTERPRISES, INC.
975 F Street, NW, Suite 300
Washington, DC 20004

/s/ Jennifer W. Hightower
Jennifer W. Hightower
Joiava Philpott
COX COMMUNICATIONS, INC.
1400 Lake Hearn Drive
Atlanta, GA 30319

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