

TO: COMMISSIONERS AND ADVISORS

FROM: JOSEPH REZAC AND ADAM DE HUECK

SUBJECT: DOCKET TC15-056: RESALE AGREEMENT BETWEEN QWEST CORPORATION DBA CENTURYLINK QC AND INTTEC, INC.

DATE: SEPTEMBER 25, 2015

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## STAFF MEMORANDUM

### Overview

On July 21<sup>st</sup>, 2015, the Commission received a filing from Qwest Corporation dba CenturyLink QC, for approval of a Resale Agreement between CenturyLink and InTTec, Inc. pursuant to 47 U.S.C. § 252.

### Issue

After the implementation of the FCC Open Internet Order, should the commission approve an interconnection resale agreement or require a certificate of authority for a company reselling DSL only.

### Analysis

Prior to the filing of this docket, InTTec, Inc. (InTTec) reached out to staff to inquire if a Certificate of Authority from the Public Utilities Commission would be required for InTTec to do business. At that time, InTTec stated that they are a data-only reseller of DSL and that they do not own any facilities in South Dakota. With that information, Staff informed InTTec that applying for a COA from the PUC would not be required for the resale of DSL.

Shortly after that correspondence, Century Link opened a docket seeking approval of a resale agreement between CenturyLink and InTTec. In section 6.1.1 of the resale agreement CenturyLink authorizes the resale of all telecom services, including voice, offered by CenturyLink. With that language present, staff once again reached out to InTTec to determine the type of services the company was intending to offer. InTTec stated that they are executing the interconnection agreement to resell CenturyLink DSL.

In the past, staff would have recommend denying the filing and dismissing the docket as a result of InTTec not having a Certificate of Authority and not providing a telecommunication service in South Dakota. However, on March 12, 2015 the FCC released its Net Neutrality/Open Internet Order, "reinstating strong, enforceable open Internet rules."<sup>1</sup> The Commission triggered the new set of regulations by reclassifying "broadband Internet access service" (BIAS) as a telecommunications service under Title II of the 1934 Communications Act. So, now staff is questioning the proper course of action because of how the FCC addresses state regulation:

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<sup>1</sup> FCC Order 15-24 at ¶104.

“Finally, we announce our firm intention to exercise our preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme we adopt in this Order. [...] [S]ituations may nonetheless arise where federal and state actions regarding broadband conflict. The Commission has used preemption to protect federal interests when a state regulation conflicts with federal rules or policies, and we intend to exercise this authority to preempt any state regulations which conflict with this comprehensive regulatory scheme or other federal law. For example, should a state elect to restrict entry into the broadband market through certification requirements or regulate the rates of broadband Internet access service through tariffs or otherwise, we expect that we would preempt such state regulations as in conflict with our regulations. While we necessarily proceed on a case-by-case basis in light of the fact specific nature of particular preemption inquiries, we will act promptly, whenever necessary, to prevent state regulations that would conflict with the federal regulatory framework or otherwise frustrate federal broadband policies.”<sup>2</sup>

The FCC also addresses interconnection and market-opening provisions:

At this time, we conclude that the availability of other protections adequately address commenters’ concerns about forbearance from the interconnection provisions under the section (251/252 framework and under section 256.1572. We thus forbear from applying those provisions to the extent that they are triggered by the classification of broadband Internet access service in this Order. The Commission retains authority under sections 201, 202 and the open Internet rules to address interconnection issues should they arise, including through evaluating whether broadband providers’ conduct is just and reasonable on a case-by-case basis.<sup>3</sup>

Due to preemption concerns, staff questions if the Commission has jurisdiction over a company reselling broadband only and whether an interconnection resale agreement should be before the Commission.

Subsequently, if the commission extends its regulatory authority over the company, staff would recommend that InTTec apply for a Certificate of Authority.

That being said, given the types of services InTTec plans to offer, staff is concerned how the prospective application for a Certificate of Authority would look given InTTec does not indicate in offering local exchange services. InTTec has stated to staff they do not plan to offer voice services and have never had a voice switch or interconnection to the public switched telephone network.

### Conclusion

Accordingly, if the commission feels a Certificate of authority would be necessary and not in conflict with the recent FCC order, staff would review the application accordingly.

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<sup>2</sup> *Id* at ¶433

<sup>3</sup> *Id* at ¶513

At this time and in light of the 90 day timeline<sup>4</sup>, staff looks to the commission for guidance on these new and unusual issues as October 19<sup>th</sup>, 2015 approaches.

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<sup>4</sup> 47 U.S.C. § 252 (e) (4)