

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION D/B/A CENTURYLINK QC

Respondent.

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State of WASH.
UTIL. AND TRANSP.
COMMISSION

RESPONSE TESTIMONY

OF

PHILIP E. GRATE

ON BEHALF OF

CENTURYLINK QC

JUNE 1, 2018

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1

I. IDENTIFICATION OF WITNESS

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH CENTURYLINK.**

3 **A.** My name is Philip E. Grate. My business address is 1600 7th Avenue, Seattle, Washington
4 98101. I am employed by CenturyLink and my current title is State Regulatory Affairs
5 Director.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, WORK EXPERIENCE, AND PRESENT**
7 **RESPONSIBILITIES.**

8 **A.** I received a Bachelor's of Science in Business Administration and a Juris Doctorate from
9 Indiana University. I am currently an inactive member of the Washington State Bar in
10 good standing. I began my professional career at what was then one of the Big Eight
11 accounting firms, Touche Ross & Co., in 1982 as a Certified Public Accountant. I joined
12 Pacific Northwest Bell (which is now part of CenturyLink) in 1984 as a tax researcher. I
13 was promoted to tax attorney and then took assignments as director of accounting standards
14 and director of regulatory finance. I accepted a position in CenturyLink's Public Policy
15 department in 2013 as director of regulatory and legislative affairs for Montana. In 2015 I
16 became director of regulatory affairs for Oregon. In 2016 I became director of regulatory
17 affairs for Washington as well. In this capacity I am responsible for CenturyLink's
18 regulatory matters before the Oregon Public Utility Commission and the Washington
19 Utilities and Transportation Commission (hereinafter "Commission").

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

21 **A.** Yes. I have testified regarding rate base rate-of-return revenue requirements in Docket
22 No. UT-970766, in support of the alternative form of regulation in Docket No. UT-061625,

1 and on the disposition of the gain from the sale of the Dex yellow pages business in Docket
2 No. UT-021120.

3

4

II. PURPOSE OF TESTIMONY

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 **A.** The purpose of my testimony is to address the allegations in the Complaint and to rebut the
7 testimony of Staff witness, Ms. Susie Paul. My testimony will explain why Qwest
8 Corporation d/b/a CenturyLink QC (hereinafter “CenturyLink QC” or “Company”) is not
9 in violation of the extension of service rule, WAC 480-120-071, or any other statutes or
10 rules, as alleged by Staff.

11 **Q. PLEASE EXPLAIN HOW YOUR TESTIMONY IS STRUCTURED.**

12 **A.** My testimony consists of eleven sections. Sections III through XI are organized as follows:

13 Section III – Background and Context for the issues presented;

14 Section IV – Facts Specific to the Complaint;

15 Section V - Rebuttal to the Allegations in the Complaint and in Staff’s Testimony;

16 Section VI – Federal Universal Service Fund Support;

17 Section VII – The Service on Demand Statute;

18 Section VIII – Practical Effect of the Complaint’s Interpretation;

19 Section IX – Public Policy Implications of the Complaint’s Interpretation;

1 Section X – Request for Penalties; and

2 Section XI - Conclusion

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

4 **A.** My testimony explains why, contrary to the allegations in the complaint, CenturyLink QC
5 is not in violation of the “service on demand” statute, RCW 80.36.090, and the extension of
6 service rule, WAC 480-120-071, because it refused to extend service without charge to an
7 applicant for telephone service in the Anna Maria Lane development. The line extension
8 rule does not apply to developments. Rather than rely on the definition of development in
9 the rule, Staff’s complaint invents and applies its own definition of development. My
10 testimony also addresses reasonable entitlement under the service on demand statute and
11 explains the harm to public policy that would result from Staff’s interpretation of that
12 statute. Finally, my testimony rebuts the complaint’s assertion that CenturyLink QC has
13 violated the Commission’s record retention rules.

14

15 **III. BACKGROUND AND CONTEXT**

16 **Q. WHAT FACTUAL BACKGROUND IS IMPORTANT TO AN UNDERSTANDING OF THE**
17 **COMPLAINT?**

18 **A.** The factual background includes:

- 19 • The competitiveness of the market for residential local exchange service in
20 Washington;

- 1 • The effect of competition on CenturyLink QC’s residential access line count and
2 intrastate revenues in Washington;
- 3 • The form of regulation under which CenturyLink QC operates in Washington;
- 4 • How CenturyLink QC determines whether to deploy facilities in new developments;
5 and
- 6 • How the presence or absence of CenturyLink QC facilities in a development determines
7 whether CenturyLink QC accepts orders for service in that development.

8 **Q. HOW DO THE POINTS ABOVE RELATE TO THE SPECIFIC ISSUES IN THIS CASE?**

9 **A.** The presence and effect of competition is a crucial element to this case. It places into
10 context Staff’s and CenturyLink QC’s very different understandings of the line extension
11 rule and the service on demand statute. It is clear that the regulatory obligations of a
12 company will vary depending on whether that company is regulated under monopoly era
13 rules, or in a way that recognizes a brutally competitive market, with attendant loss of
14 customers and scarcity of capital. In addition, it is important for the Commission to
15 understand how and why CenturyLink QC deploys facilities to developments, and why
16 Staff’s proposed application of the line extension rule would create an absurd and
17 punitive result.

18

19 **A. COMPETITION**

20 **Q PLEASE DISCUSS THE NATURE AND EXTENT OF COMPETITION FOR VOICE SERVICES IN**
21 **WASHINGTON.**

1 **A.** Competition for, and competitive pressure on, voice services is powerful and pervasive in
2 Washington. Under intense competition Washington ILECs have lost most of their access
3 lines. FCC data show Washington ILECs' access line counts declined 72% between 1999
4 and 2016. Between 2000 and 2017, CenturyLink QC's access line count declined 80
5 percent. Exhibit PG-2 further details Washington's and CenturyLink QC's access line
6 losses. Loss of access lines is hardly unique to CenturyLink QC or Washington; Exhibit
7 PG-3 shows how ILECs around the country have suffered similar losses

8 **Q. IS THE MARKET FOR RESIDENTIAL LOCAL EXCHANGE SERVICE IN WASHINGTON**
9 **COMPETITIVE?**

10 **A.** Yes. In Docket No. UT-130477, CenturyLink's petition for its current alternative form of
11 regulation (AFOR), the Commission concluded:

12 CenturyLink and other parties have presented compelling evidence that a variety of
13 alternative communications providers offer a wide range of comparable services
14 throughout the Company's service territory and that the Commission should reduce
15 its regulatory oversight in favor of greater reliance on market discipline. (Order 04,
16 Docket UT-130477, January 9, 2014.)

17 **Q. HOW HAS THIS COMPETITION MANIFESTED ITSELF IN THE MARKET FOR RESIDENTIAL**
18 **VOICE SERVICES IN WASHINGTON?**

19 **A.** As of 2016, only 6% of households in Washington rely exclusively on landline service, and
20 fully one-half of all households satisfy all their voice telephony needs with wireless service
21 only. Exhibit PG-4 graphically illustrates this information.

1 **Q. HAS COMPETITION FOR LOCAL EXCHANGE SERVICE IN WASHINGTON AFFECTED**
2 **CENTURYLINK QC?**

3 **A.** Yes. As shown in Exhibit PG-5, CenturyLink QC's revenues have plummeted. Adjusted
4 for inflation, CenturyLink QC's Washington jurisdiction annual revenues in 2017 are 19
5 percent of what they were in 2000. Stated in 2017 dollars, CenturyLink QC generates *1.2*
6 *billion* fewer dollars of annual Washington jurisdiction revenues than it did in 2000.

7

8 **B. THE AFOR**

9 **Q. UNDER WHAT FORM OF REGULATION DOES CENTURYLINK QC OPERATE IN**
10 **WASHINGTON?**

11 **A.** CenturyLink QC operates under an alternative form of regulation (AFOR). The AFOR is
12 effective for seven years and will expire January 9, 2021. The AFOR provides that
13 CenturyLink QC will be treated as if it were competitively classified pursuant to RCW
14 80.36.320. (Docket No. UT-130447, Order 04, January 9, 2014.)

15

16 **C. EXTENSIONS OF SERVICE TO DEVELOPMENTS**

17 **Q. WHAT TERMS AND CONDITIONS GOVERN CENTURYLINK QC'S EXTENSION OF FACILITIES**
18 **TO SERVE NEW RESIDENTIAL HOUSING DEVELOPMENTS?**

19 **A.** Section 4.4 of CenturyLink QC's Exchange and Network Services Catalog No. 2 contains
20 the terms and conditions applicable to the extension of facilities to serve new residential
21 housing developments. These terms and conditions are contained in a Provisioning
22 Agreement for Housing Developments ("PAHD"), which is a contractual agreement

1 between the company and the developer for the provision of facilities to and within the new
2 areas of residential development.

3 **Q. DOES CENTURYLINK QC CHARGE DEVELOPERS TO EXTEND ITS FACILITIES TO SERVE A**
4 **NEW RESIDENTIAL HOUSING DEVELOPMENT?**

5 **A.** Sometimes. CenturyLink QC's terms and conditions include the following provision that
6 governs what costs the developer will be responsible for if CenturyLink QC extends its
7 facilities to serve the new development:

8 If in the opinion of the Company, construction to and within the development does not
9 constitute a prudent investment, the Developer/Builder will assume that portion of the
10 construction costs that exceed a prudent financial contribution by the Company.¹

11 **Q. WHAT HAPPENS WHEN A PROJECT WOULD NOT BE A PRUDENT INVESTMENT?**

12 **A.** In cases where CenturyLink QC determines a project is not financially prudent, the
13 Company's terms and conditions provide that the developer is responsible for "that portion
14 of the construction costs that exceed a prudent financial contribution by the Company."
15 CenturyLink QC sends the developer a PAHD document that sets forth the conditions
16 under which CenturyLink QC would extend its facilities, including the charges that the
17 developer will be responsible for paying prior to CenturyLink QC proceeding with any
18 construction. If the developer does not respond or does not accept the conditions outlined
19 in the PAHD, including payment of the requested charges, CenturyLink QC will not extend
20 its facilities to serve the development.

¹ Qwest Corporation Exchange and Network Services Catalog No. 2, paragraph 4.4.B.6.b.(4).

1 **Q. IN CASES WHERE A DEVELOPER FAILS TO EXECUTE A PAHD AND AGREES TO PAY**
2 **REQUESTED CONSTRUCTION CHARGES WHAT DOES CENTURYLINK QC DO?**

3 **A.** As it becomes aware of the information, CenturyLink QC updates its facility records to
4 identify developments for which the developer has not executed a PAHD and agreed to pay
5 requested construction charges. CenturyLink QC's records are supposed to tag each
6 address in such developments to indicate it has no facilities there. Having this information
7 in CenturyLink QC's records allows it to inform residential applicants for CenturyLink QC
8 service to addresses with no facilities that it does not have facilities to provide service and
9 will not be able to fulfill a request for service.

10

11

IV. FACTS SPECIFIC TO THE COMPLAINT

12 **Q. WHAT ARE THE BASIC FACTS OF THIS COMPLAINT?**

13 **A.** In December 2016, a person residing in the Anna Marie Lane subdivision in Vancouver,
14 Washington, requested service from CenturyLink QC. This development is within
15 CenturyLink QC's service territory. The applicant initially asked to transfer service from
16 his previous residence.

17 When CenturyLink QC's technician went to install service, he discovered there were no
18 facilities at the applicant's address and so informed the applicant. CenturyLink QC then
19 notified the applicant that it had no facilities at his new location and that CenturyLink QC
20 could not provide service.

1 **Q. WHY ARE THERE NO CENTURYLINK QC FACILITIES IN THIS DEVELOPMENT?**

2 **A.** CenturyLink QC offered the developer a PAHD to enable CenturyLink QC to extend
3 facilities into the development. The developer declined to execute the PAHD and pay the
4 requested construction charges. Consequently, CenturyLink QC did not deploy
5 telecommunications facilities in this development. Because CenturyLink QC does not have
6 facilities in this development, it is a “no serve housing development” where CenturyLink
7 QC does not accept orders for service from residential customers due to the developer’s
8 decision to decline to execute the PAHD offered by CenturyLink QC.

9 **Q. IS RESIDENTIAL SERVICE FROM OTHER PROVIDERS AVAILABLE IN THIS DEVELOPMENT?**

10 **A.** Yes. Residential service from Comcast is available and wireless providers are also
11 available to serve residents in this development.

12 **Q. IS CENTURYLINK QC REQUIRED TO DEPLOY FACILITIES IN A DEVELOPMENT WITHOUT A**
13 **PAHD?**

14 **A.** No. The line extension rule specifically states that it does not apply to service in
15 developments. The Commission has no other rules that apply to service in a development.
16 And CenturyLink QC has required a developer contribution since 1999. As such,
17 CenturyLink QC is permitted to demand a developer contribution and is permitted to refuse
18 to deploy facilities without that contribution.

19 **Q. WOULD DEPLOYMENT OF FACILITIES TO THE APPLICANT BE A PRUDENT INVESTMENT?**

20 **A.** No. CenturyLink QC determined that the cost of deploying facilities to the applicant’s
21 property exceeds the revenues CenturyLink QC could generate from serving the applicant.

1 **Q. WOULD THE COST OF DEPLOYING FACILITIES TO THE APPLICANT’S RESIDENCE BE**
2 **RECOVERABLE FROM A SOURCE OTHER THAN THE APPLICANT?**

3 **A.** No. There is no subsidy available from another source to provide recovery of the cost of
4 facilities to serve the applicant.

5
6 **V. REBUTTAL TO THE ALLEGATIONS IN THE COMPLAINT**
7 **AND IN STAFF’S TESTIMONY**

8 **Q. WHAT DOES THE COMPLAINT ALLEGE?**

9 **A.** The complaint, and Ms. Paul’s direct testimony, allege that CenturyLink QC violated the
10 “service on demand” statute, RCW 80.36.090, and the extension of service rule, WAC 480-
11 120-071, because it refused to extend service to the applicant in the Anna Maria Lane
12 development without charge. CenturyLink QC disputes these allegations, as well as all
13 allegations about maintaining proper records, and Staffs assertion that penalties are
14 warranted.

15 **Q. MS. PAUL DISCUSSES THE EXTENSION OF SERVICE RULE IN HER TESTIMONY AT PAGES 13-**
16 **19. CAN YOU RESPOND GENERALLY TO THAT TESTIMONY?**

17 **A.** Yes. In general, and as discussed in more detail below, the extension of service rule does
18 not mandate that CenturyLink QC provide telephone service in this case. This is because
19 the service requested is in a development, and the rule has a specific exception which
20 excludes developments from being eligible for service under the rule. Furthermore, Staff is
21 incorrect in its suggestion that CenturyLink QC fails to follow its PAHD process, or that
22 CenturyLink QC should have installed facilities in this development without a PAHD.

1 **Q. IN PERTINENT PART, WHAT DOES THE EXTENSION OF SERVICE RULE PROVIDE?**

2 **A.** In pertinent part it provides:

3 **(3) Residential basic local exchange service.**

4 (a) Each wire line ETC must, within seven business days of an applicant's initial
5 request, provide the applicant with an application for extension of service. The company
6 must also provide the applicant a brief explanation of the extension of service rules.

7 (b) The company must process applications that require an extension of service in
8 a timely manner.

9 **(4) Allowances.**

10 (a) A company must allow for an extension of service within its service territory
11 up to one thousand feet at no charge to the applicant. The company may allow for an
12 extension of service for distances over the allowance.

13 **Q. DOES THE EXTENSION OF SERVICE RULE APPLY IN THIS CASE?**

14 **A.** No. With emphasis in bold added, the line extension rule, WAC 480-120-071(2), entitled
15 "Definitions," provides:

16 "Extension of service" means an extension of company distribution plant for new
17 residential basic local exchange service to a location where no distribution plant of the
18 extending company exists at the time an extension of service is requested. An extension
19 is constructed at the request of one or more applicants for service. Extensions of service
20 do not include trenches, conduits, or other support structure for placement of company-
21 provided facilities from the applicant's property line to the premises to be served.

1 **Extension of service, as defined in this rule, does not apply to extensions of service to**
2 **developments** or to extensions of service for temporary occupancy or temporary service.

3 Because the applicant resides in a development, and the developer did not comply with
4 CenturyLink QC's process to enable CenturyLink QC to deploy facilities in the
5 development, the extension of service rule does not apply to the applicant.

6 **Q. STAFF ASSERTS THE EXTENSION OF SERVICE RULE APPLIES IN THIS CASE. WHY DO YOU**
7 **DISAGREE?**

8 **A.** The complaint argues the extension of service rule applies because: "the allegations in this
9 proceeding involve service to a property that is occupied rather than to land that is being
10 developed." Ms. Paul's testimony echoes that assertion where she states that "Staff
11 informed CenturyLink that WAC 480-120-071(2) defines development as land that is
12 divided or proposed to be divided; and the customer does not live on land that is divided or
13 proposed to be divided."² The fallacy of the complaint's assertion is that it invents its own
14 definition of "development" instead of using the definition found in the extension of
15 service rule:

16 "Development" means land which is divided or is proposed to be divided for the purpose
17 of disposition into four or more lots, parcels, or units.

18 The complaint substitutes its own definition, "land that **is being developed**," for the actual
19 definition in the rule, "land which **is divided**...into four or more lots."

² See, Ms. Paul's Exhibit SP-1T, page 18, lines 16-19.

1 **Q. IS THE COMPLAINT’S DEFINITION OF “LAND WHICH IS DIVIDED” ACCURATE?**

2 **A.** No. The definition in the rule is unambiguous and so requires no interpretation. Staff has
3 simply invented a different definition that suits its argument. Ms. Paul’s testimony ignores
4 the reality that this subdivision is land which is divided into four or more lots by claiming
5 that only one of those lots is relevant for purposes of the interpretation. However, if the
6 validity of that definition evaporates after the properties are sold, then the exemption for
7 developments will be meaningless.

8 **Q. DOES THE ANNA MARIA LANE SUBDIVISION FALL WITHIN THE DEFINITION OF**
9 **“DEVELOPMENT.”**

10 **A.** Yes, squarely. The Anna Maria Lane subdivision is land which is divided into (twelve)
11 lots, one of which is the applicant’s.

12 **Q. HOW WOULD THE STAFF APPLY ITS DEFINITION OF DEVELOPMENT?**

13 **A.** It is unclear. In discovery, CenturyLink QC asked Staff to provide a full and complete
14 explanation of Staff’s position regarding the point(s) in time at which the lots in a
15 “development” are not subject to the line extension rule, and the point(s) in time that each
16 lot becomes subject to the line extension rule. Staff declined to answer, objecting that the
17 question was irrelevant. A copy of the request and Staff’s response can be found in Exhibit
18 PG-6.

19 **Q. IS THE QUESTION RELEVANT?**

20 **A.** Of course it is. Staff has asked the Commission to fine CenturyLink QC for 175 violations
21 of WAC 480-120-071, the extension of service rule. Staff’s request relies on a definition of
22 “development” not found in the rule. Yet, Staff declines to explain how its definition of

1 development would work in practice, leaving CenturyLink QC and other carriers to
2 speculate under what circumstances Staff might conclude they have violated the rule. Staff
3 has invented its own rule and left carriers and the Commission to guess what it is.

4 **Q. STAFF ALSO CONTENDS (SP-1T, PAGE 15, LINE 6 – PAGE 16, LINE 5) THAT CENTURYLINK**
5 **MAY BE INAPPROPRIATELY REFUSING TO INSTALL FACILITIES OR TO OFFER A PAHD. DO**
6 **YOU HAVE A RESPONSE?**

7 **A.** Yes, CenturyLink QC denies those allegations, which are wholly inaccurate and based on
8 discussions with individuals who do not have firsthand knowledge of the situations they are
9 talking about.

10 **Q. PLEASE RESPOND TO THE ALLEGATIONS OF MR. BROCKER REGARDING DEPLOYMENT OF**
11 **CENTURYLINK QC FACILITIES IN THE APPLEWOOD SUBDIVISION..**

12 **A.** Ms. Paul states (Ex. SP-1T, p. 15, lines 6-14) that Mr. Brocker told her that CenturyLink
13 told him “that the cost of coming in versus the opportunity for revenue is not worth it to
14 CenturyLink financially and that the Company was opting out.” Unfortunately, Ms. Paul
15 did not attempt to check this information directly with CenturyLink QC, and Mr. Brocker is
16 simply wrong.

17 CenturyLink QC offered to extend facilities utilizing Fiber to the Home technology in the
18 Applewood subdivision. CenturyLink QC sent the developer a PAHD asking for a
19 contribution of \$8,560 for 23 lots in the subdivision. That offer was made on July 20,
20 2017. See, Exhibit PG-7. The developer never responded, and the offer expired after 90
21 days.

1 **Q. PLEASE RESPOND TO THE ALLEGATIONS OF MR. LIPE OF PRAIRIE ELECTRIC.**

2 **A.** Ms. Paul states (p. 15, line 16 – page 17, line 5) that Mr. Randy Lipe told her that
3 CenturyLink (via CenturyLink employee Larry McDonald) is responding “more and more”
4 with “No CTL Service,” stating they are not dropping lines in smaller developments
5 because they are losing money. Ms. Paul goes on to state that Mr. Lipe told her that on the
6 utilities schedule he provided to her, “No CTL Service” indicates where CenturyLink QC
7 opted not to serve. Unfortunately, Ms. Paul did not attempt to check this information
8 directly with CenturyLink QC, and Mr. Lipe is simply wrong.

9 Mr. McDonald responded as follows:

10 “I take exception to the notation that I would tell Randy that we are not going into a smaller
11 development due to ‘we are losing money.’ I have specific guidelines / processes that I
12 have to follow in regards to subdivisions and if there will be a need for participation from
13 the developer based on process. If developer participation is required, a PAHD agreement
14 spelling out how much the developer must pay for CenturyLink to enter their development
15 is sent to the developer. Randy will call and ask if we are going into a development. I will
16 answer him honestly and state either yes we are going in or I’m waiting for the developer’s
17 response to the PAHD agreement for their participation.”

18 There is simply no validity to Mr. Lipe’s third hand allegations.

19 **Q. HAS CENTURYLINK QC BEEN CONSISTENT IN ITS TREATMENT OF NEW DEVELOPMENTS**
20 **OVER TIME?**

21 **A.** Yes. For at least the last 19 years, CenturyLink QC has required a PAHD for
22 developments of four or more lots and has considered the extension of service rule
23 inapplicable to them.

1 **Q. DID STAFF HAVE REASON TO BE AWARE OF THIS?**

2 **A.** Yes. CenturyLink QC's PAHD terms and conditions have been effective since at least
3 1999.

4 **Q. WERE THE COMMISSION AND STAFF MADE AWARE OF THESE TERMS?**

5 **A.** Yes, they were. In 1999 U S WEST Communications (now CenturyLink QC) was under
6 full tariff regulation for local service. All terms and conditions in CenturyLink QC's tariff
7 were filed with and approved by (or allowed to become effective by) the Commission.
8 Further, in 2008 CenturyLink QC specifically removed the PAHD terms from the tariff and
9 placed them in a catalog/price list. This was accomplished via a series of compliance
10 filings with the Commission after the first AFOR, Docket No. UT-061625. See Exhibits
11 PG-8A through PG-8E.

12 **Q. DID CENTURYLINK QC MAKE CHANGES TO THE PAHD TERMS AFTER THAT?**

13 **A.** Yes, Qwest Corporation and subsequently CenturyLink QC have periodically updated the
14 PAHD terms in the catalog, as permitted under the current and prior AFORs.

15 **Q. IN PRACTICE, DOES CENTURYLINK QC EVER ENTER INTO PAHDS WITH DEVELOPERS
16 AND INSTALL FACILITIES IN NEW DEVELOPMENTS?**

17 **A.** All the time. In response to discovery, CenturyLink QC provided Public Counsel a six-
18 page schedule of developments that CenturyLink QC served from January 1, 2015 through
19 the present. The schedule is Exhibit PG-9

20

1 **VI. FEDERAL UNIVERSAL SERVICE FUND SUPPORT**

2 **Q. STAFF’S TESTIMONY, AT P. 4 LINES 1 – 16, DISCUSSES THE ISSUES ASSOCIATED WITH**
3 **“ETC” OBLIGATIONS AND FEDERAL HIGH-COST UNIVERSAL SERVICE SUPPORT. WHAT IS**
4 **THE RELEVANCE OF THESE ISSUES?**

5 **A.** The line extension rule only applies to local exchange companies receiving federal high-
6 cost universal service support. The rule also references carriers who are designated as an
7 “eligible telecommunications carrier,” or ETC. However, as will be shown in the
8 discussion below, while CenturyLink QC is an ETC statewide in its service territory,
9 CenturyLink QC does not receive federal high-cost universal service support for the area of
10 this development.

11 **Q. DOES CENTURYLINK QC RECEIVE ANY FEDERAL UNIVERSAL SERVICE FUND SUPPORT IN**
12 **WASHINGTON?**

13 **A.** Yes, CenturyLink QC receives Federal Universal Service Fund Support in Washington
14 through four programs, none of which will be shown to support the deployment at issue in
15 this case:

- 16 1. **Low-Income Support**, also called the **Lifeline program**, assists low-income
17 customers by helping to pay for monthly telephone charges or broadband internet
18 access service charges so that telephone service or internet service is more affordable.
- 19 2. **Schools and Libraries Support**, also known as the "**E-Rate**," provides
20 telecommunication services, internet access, and internal connections to eligible
21 schools and libraries.

1 3. **Rural Health Care Support** allows rural health care providers to pay rates for
2 telecommunications services similar to those of their urban counterparts, making
3 telehealth services affordable, and also subsidizes internet access.

4 4. **High-Cost Support** (now known as the **Connect America Fund or CAF**) provides
5 support to certain qualifying telecommunications companies that serve high-cost areas,
6 to enable residents of these regions to have access to reasonably comparable voice and
7 internet access service at rates reasonably comparable to urban areas.

8 **Q. IS ANY OF THE FUSF SUPPORT CENTURYLINK QC RECEIVES IN WASHINGTON FOR THE**
9 **DEPLOYMENT OF FACILITIES IN THE ANNA MARIE LANE SUBDIVISION?**

10 **A.** No. Lifeline, Schools and Libraries, and Rural Health Care are programs for the support of
11 particular groups of customers, specifically low-income customers, schools, libraries and
12 rural health care providers. The FCC targets Connect America Fund support to deployment
13 of broadband capable networks in census blocks the FCC has designated as qualified for
14 such support. The Anna Maria Lane subdivision is not in a census block the FCC has
15 designated for CAF support. So, none of the FUSF support CenturyLink QC receives is for
16 extending voice telecommunications service to residences in this development.

17 **Q. AS AND ETC, IS CENTURYLINK QC OBLIGATED TO PROVIDE VOICE TELEPHONY SERVICE**
18 **IN THE ANNA MARIE LANE SUBDIVISION?**

19 **A.** No. The FCC has relieved price cap carriers such as CenturyLink QC of the ETC
20 obligation imposed by Section 214(e)(1)(A) to provide voice telephony service in most of
21 the census blocks they serve. As part of this action, the FCC relieved CenturyLink QC of
22 its Section 214(e)(1)(A) obligation in most of the census blocks its serves in Washington,
23 including the census block that this development occupies.

1 **Q. PLEASE EXPLAIN HOW THE FCC RELIEVED PRICE CAP CARRIERS OF ETC THE**
2 **OBLIGATION TO PROVIDE VOICE TELEPHONY SERVICE IN MOST OF THE CENSUS BLOCKS**
3 **THEY SERVE.**

4 **A.** On July 23, 2015 in Notice DA 15-851, the FCC identified the census blocks where price
5 cap carriers still have federal high cost support voice telephony service obligations. In
6 addition, the FCC confirmed that price cap carriers were relieved of federal ETC
7 obligations to provide voice telephony service for any census blocks not included on the
8 list.

9 Key provisions of the Notice DA 15-851 are found in paragraphs 2 and 3 and footnote 4
10 which are provided in Exhibit PG-10.

11 **Q. DID THE FCC RELIEVE CENTURYLINK QC OF THE OBLIGATION TO PROVIDE VOICE**
12 **TELEPHONY SERVICE IN THIS DEVELOPMENT?**

13 **A.** Yes. CenturyLink QC has determined that this development is located in census block
14 530110406041006. This census block is not on the list of census blocks identified in the
15 FCC's Notice DA 15-851 described above where price cap carriers still have the Section
16 214(e)(1)(A) obligation to provide voice telecommunications service. Because this census
17 block is not on the list reflected in the FCC Notice, CenturyLink QC is no longer obligated
18 under section 214(e)(1)(A) to provide voice telecommunications service to it.

19 **Q. CONSIDERING THESE CHANGES, DOES THE EXTENSION OF SERVICE RULE STILL APPLY TO**
20 **CENTURYLINK QC?**

21 **A.** It's questionable. WAC 480-120-071(1) provides: "This rule applies to local exchange
22 companies receiving federal high-cost universal service support." If the premise
23 underlying the rule is that federal high-cost support is in support of *local exchange*

1 universal service, then the extension of service rule should not apply to carriers receiving
2 CAF support for broadband enablement in a limited number of census blocks because such
3 CAF support does not support local exchange universal service.

4
5 **VII. THE SERVICE ON DEMAND STATUTE**

6 **Q. MS. PAUL’S TESTIMONY ASSERTS THAT THE SERVICE ON DEMAND STATUTE, RCW**
7 **80.36.090, REQUIRES CENTURYLINK QC TO SERVE THIS APPLICANT. (EX. SP-1T, P. 7,**
8 **LINE 1 – P. 13, LINE 2). DO YOU AGREE?**

9 **A.** No. CenturyLink QC is not aware of any provision in Washington law that requires
10 telecommunications companies to have facilities deployed and standing ready to provide
11 service to any applicant who orders it, or that such facilities must be newly deployed on
12 demand, without limitation. RCW 80.36.090, enacted in 1911, requires that “[e]very
13 telecommunications company shall, upon reasonable notice, furnish to all persons and
14 corporations who may apply therefor *and be reasonably entitled thereto* suitable and proper
15 facilities and connections for telephonic communication and furnish telephone service as
16 demanded. (Emphasis added.)”

17 Staff’s testimony suggests that there is no limitation to the obligation to provide service on
18 demand. However, there is a very important limitation. RCW 80.36.090 does not say that
19 every telecommunications company must provide service on demand to anybody who
20 orders it. Instead it provides that telecommunications companies must provide facilities
21 and service to all persons who may be *reasonably entitled* to such service. As CenturyLink
22 QC understands it, the Commission has implemented that statute by promulgating the line
23 extension rule.

1 **Q. STAFF’S TESTIMONY ASSERTS THAT A CLEC HAS THE SAME OBLIGATION TO SERVE**
2 **UNDER THIS STATUTE. DO YOU AGREE?**

3 **A.** No. At page 11 of Ms. Paul’s testimony, she quotes from a Commission order³ that
4 provides:

5 The Commission however explicitly did not waive RCW 80.36.090 when
6 competitively classifying CLECs because it believed the statute applied to “every
7 telecommunications company.” And, the Commission knew that a rule of reason
8 would have to be applied to requests for service from CLECs: . . . The rule of reason
9 would dictate that anywhere a CLEC has facilities in place and could reasonably use
10 those facilities to serve an applicant, it must provide service as requested because the
11 customer is reasonably entitled thereto. RCW 80.36.090 (Emphasis added.)

12 Under the AFOR, CenturyLink QC is to be treated as if it were a competitively classified
13 company. Under the rule-of-reason the order articulates, a CLEC would be expected to
14 provide service anywhere the CLEC *has facilities in place* and could reasonably use those
15 facilities to serve an applicant. Nothing in Washington law requires CLECs to have
16 facilities in place ubiquitously. The Commission’s rule of reason does not provide that a
17 CLEC must deploy facilities to fulfill requests for services where it does not already have
18 facilities in place.

19 Because the developer of this development did not enter into a PAHD with CenturyLink
20 QC, the company does not have facilities in place in the development. Because
21 CenturyLink QC is treated as if it were competitively classified under the AFOR, it follows

³ *Wash. Utils. & Transp. Comm’n v. U S WEST Communications, Inc.*, UT-961638, Fourth Supp. Order, p. 22 (Jan. 16, 1998).

1 that CenturyLink QC has no obligation to have facilities in place in the development or to
2 deploy facilities to fulfill requests for service in the development.

3 **Q. IS THE APPLICANT IN THIS CASE REASONABLY ENTITLED TO TELECOMMUNICATION**
4 **SERVICE UNDER STATE LAW?**

5 **A.** RCW 80.36.090 does not define “reasonably entitled” much less confer entitlement.

6 **Q. IF STATE LAW DOES NOT CONFER UNCONDITIONAL ENTITLEMENT, OR DEFINE**
7 **“REASONABLY,” WHEN IS A PERSON REASONABLY ENTITLED TO FACILITIES?**

8 **A.** This will be the ultimate question for the Commission to decide. In making that
9 determination, CenturyLink QC is asking the Commission to consider that Washington’s
10 market for residential local exchange service is demonstrably competitive, and that the
11 residents of this development already have a choice of service providers in Comcast and
12 assorted wireless providers. CenturyLink QC submits that under those circumstances, and
13 where the developer has not complied with the terms and conditions of the Company’s
14 PAHD, the Commission should not mandate that CenturyLink QC provide service.

15 **Q. MS. PAUL STATES THAT THE PRESENCE OF ALTERNATE SERVICE PROVIDERS HAS NO**
16 **BEARING ON THE ISSUE OF WHETHER CENTURYLINK QC IS OBLIGATED TO SERVE.**
17 **(EXHIBIT SP-1T, PAGE 11, LINES 1-7.) DO YOU AGREE?**

18 **A.** No. This is a crucial element in determining whether an applicant is “reasonably entitled”
19 to service. The word “reasonably” cannot be read out of the statute; it has to mean
20 something. This suggests that the Commission should consider all the circumstances
21 around a request for service, including whether there are alternative providers. Staff’s
22 interpretation would read “reasonably” out of the statute by disregarding the totality of the
23 circumstances.

1 **Q. CAN YOU DISCUSS THE RELEVANCE OF COMPETITIVE MARKET CONDITIONS IN MORE**
2 **DETAIL?**

3 **A.** Yes, in a non-monopoly, competitive market, buyers and sellers choose the transactions
4 they wish to pursue and not pursue. Regulatory involvement is minimal and regulatory
5 agencies do not typically control or mandate entry into particular markets. As CenturyLink
6 QC's revenue decline proves, consumer choice creates financial risk for providers. Hence,
7 participation in Washington's telecommunications marketplace is risky, with the very real
8 possibility of participants earning less than an adequate return on their investment and
9 recovering less than all of their investment. Consequently, all decisions about market
10 entry, including investments made in Washington's telecommunications business must be
11 either voluntary or, if involuntary, compensated. In this competitive, risky, and necessarily
12 voluntary environment, the presence of another or multiple providers must be taken into
13 account.

14 **Q. WHAT IMPACT ON THE COMPETITIVE MARKET WOULD THE COMMISSION HAVE IF IT**
15 **FORCED CENTURYLINK QC TO SERVE IN A DEVELOPMENT WHERE THE DEVELOPER**
16 **DECLINED THE PAHD AND WHERE OTHER PROVIDERS ALREADY OFFER SERVICE?**

17 **A.** The impact would be undeniably negative. First, as CenturyLink QC has repeatedly
18 pointed out, the line extension rule does not apply in developments. CenturyLink QC relies
19 on this provision as a way to enable it to make prudent and informed deployment decisions.
20 If the Commission allows developers to avoid entering into a PAHD because individual
21 applicants in developments will succeed in obtaining service under the line extension rule,
22 then the "exception" for developments will have been negated. Further, CenturyLink QC
23 will be forced to serve under the most expensive circumstances possible – after streets and
24 sidewalks are complete, instead of when construction is just starting. This makes

1 CenturyLink QC's cost to serve a customer higher than it otherwise would be, in a situation
2 that CenturyLink QC believes would have been uneconomic without a contribution from
3 the developer. Finally, such a decision will visit competitive harm on other providers, such
4 as Comcast, who will now be faced with an unanticipated competitor who is not voluntarily
5 entering the market. CenturyLink QC will be financially worse off; Comcast will be
6 financially worse off. This is a no-win situation for the providers.

7 **Q. IS STAFF'S INTERPRETATION OF THE EXTENSION OF SERVICE RULE REASONABLE?**

8 **A.** No. As noted above, Staff's interpretation of the extension of service rule is unreasonable
9 for two reasons: 1) it does not take into account the plain language of the rule regarding its
10 inapplicability to developments, and, 2) it works an anticompetitive result as described
11 above.

12 **Q. IS IMPOSITION OF THE EXTENSION OF SERVICE RULE REASONABLE IN THIS CASE**
13 **PARTICULARLY?**

14 **A.** No. In this particular case, the applicant can obtain residential local exchange service from
15 other providers. Comcast and the wireless companies have already made voluntary
16 investments to make service available. They have facilities in place and could reasonably
17 use those facilities to serve this applicant.

18 It would be unreasonable to force CenturyLink QC to make an imprudent investment to
19 serve this applicant. CenturyLink QC's forced investment would also harm the providers
20 that have already deployed facilities by reducing the likelihood they can recover some of
21 their investment from this applicant.

22

1 **VIII. PRACTICAL EFFECT OF THE COMPLAINT'S**
2 **INTERPRETATION**

3 **Q. WHAT IS THE PRACTICAL EFFECT OF APPLYING THE EXTENSION OF SERVICE RULE AS THE**
4 **COMPLAINT WOULD?**

5 **A.** If the extension of service rule is interpreted and applied as Staff asserts it should be,
6 developers would have little to no incentive to bear any cost of investment in
7 telecommunications facilities that add to the value of their developments. Knowing that
8 individual property owners within their developments can rely on regulated telephone
9 companies deploying 1,000 feet of free facilities for each lot in the development,
10 developers will have practically no reason to agree to shoulder that cost. The complaint's
11 interpretation of the rule effectively shifts the burden of investing in telecommunications
12 facilities from the developer whose property benefits from the investment to the telephone
13 companies whose investment would be imprudent.

14 For example, extension of service to this entire subdivision would require less than 12,000
15 feet of CenturyLink QC facilities. So, all twelve lots could ask for service and, under the
16 complaint's interpretation of the extension of service rule, CenturyLink QC (and only
17 CenturyLink QC) would be compelled to deploy its facilities for free at very high cost
18 because the subdivision is already built with paved streets, sidewalks, and other buried
19 utilities already installed. Not only would this deployment be an imprudent investment that
20 financially harms CenturyLink QC, it could also harm the other providers (wireline and
21 wireless) who have already invested to deploy facilities to make service available to all the
22 lots. In a nutshell, if CenturyLink QC is forced to deploy its facilities, the development
23 would be over-invested in telecommunications facilities and that overinvestment would
24 jeopardize all investors' ability to recover their investment.

1 **Q. ONCE CENTURYLINK QC BORE THE COST OF EXTENDING FACILITIES TO THESE**
2 **APPLICANTS, WOULD ANY OF THEM BE OBLIGATED TO CONTINUE PURCHASING SERVICE**
3 **FROM CENTURYLINK QC?**

4 **A.** Not at all. Any or all of them could stop buying service from CenturyLink QC any time
5 they liked without penalty or obligation, leaving CenturyLink QC without the ability to
6 recover from them the cost of extending facilities to them.

7

8 **IX. PUBLIC POLICY IMPLICATIONS OF THE COMPLAINT'S**
9 **INTERPRETATION**

10 **Q. WHAT ARE THE PUBLIC POLICY IMPLICATIONS OF STAFF'S INTERPRETATION OF THE**
11 **EXTENSION OF SERVICE RULE?**

12 **A.** They are uniformly negative. First, Staff's interpretation undermines the regulatory relief
13 the AFOR was meant to provide. The complaint's interpretation compels imprudent
14 investment that carriers cannot recover from the benefitting applicant or from the state.
15 The firm so compelled stands little chance of recovering its state-mandated investment
16 from non-benefitting customers because they can buy service from other providers whose
17 prices need not include the cost of the imprudent investment.

18 Second, the complaint's interpretation harms firms that compete for the benefitting
19 customer's business because they must compete with a firm that serves the applicant using
20 imprudent investment (made only because the state mandates it).

21 In a nutshell the interpretation allows the state to bestow a windfall on the benefitting
22 applicant (who pays less than the actual cost of service) and forces the telecommunications
23 industry (principally the investing firm) to bear the cost of providing that state-created

1 windfall. This state control in a competitive industry is bad public policy because it
2 distorts the economic signals that, in a competitive market, should govern decision making
3 for both firms' investment in facilities and consumer's selection of services and providers.
4

5 **X. REQUEST FOR PENALTIES**

6 **Q. SHOULD CENTURYLINK QC BE SUBJECT TO PENALTIES FOR VIOLATING THE SERVICE ON**
7 **DEMAND STATUTE AND COMMISSION RULES?**

8 **A.** No. The complaint requests that the Commission fine CenturyLink QC for 174 violations
9 of RCW 80.36.090, which requires service to be furnished on demand; 175 violations of
10 WAC 480-120-071, the extension of service rule; one violation of WAC 480-120-349, the
11 records retention rule; and one violation of WAC 480-120-166, the complaint retention
12 rule. I will address each of these demands in turn.

13 **Q. SHOULD CENTURYLINK QC BE SUBJECT TO PENALTIES FOR 174 VIOLATIONS OF RCW**
14 **80.36.090?**

15 **A.** No. RCW 80.36.090 requires CenturyLink QC to furnish to "all persons and corporations
16 who may apply therefor and be reasonably entitled thereto suitable and proper facilities and
17 connections for telephonic communication and furnish telephone service as demanded."
18 CenturyLink QC is not in violation of RCW 80.36.090 because, as I have already
19 explained, the applicant in this case is not reasonably entitled to facilities or service from
20 CenturyLink QC.

1 **Q. SHOULD CENTURYLINK QC BE SUBJECT TO PENALTIES FOR 175 VIOLATIONS OF WAC**
2 **480-120-071(3) WHICH IS A SUBSECTION OF THE EXTENSION OF SERVICE RULE?**

3 **A.** No. CenturyLink QC did not violate of the extension of service rule. First, the extension
4 of service rule provides that extension of service “does not apply to extensions of service to
5 developments.” The applicant’s residence is in Anna Maria Lane Subdivision which is a
6 development. Accordingly, the extension of service rule does not apply to residences in
7 Anna Maria Lane Subdivision and, therefore, does not apply in this case.

8 Second, under the AFOR, CenturyLink QC is to be treated as if it were a competitively
9 classified company. Under the Commission’s rule of reason, a competitively classified
10 company would not have an obligation to extend facilities to this applicant.

11 Third, the extension of service rule applies only to carriers who receive federal high-cost
12 universal service support. CenturyLink QC no longer receives federal high-cost universal
13 service support for local exchange telephone service generally in Washington. Instead it
14 receives Connect America Fund Phase II support that is exclusively for deployment of
15 broadband capable networks in specific census blocks the FCC has designated as qualified
16 for such support. Because the FUSF no longer provides high-cost support for local
17 exchange telephone service the FCC has relieved price cap carriers such as CenturyLink
18 QC of the obligation to provide voice telephony service in most census blocks in
19 Washington, including the census block where this subdivision is located.

1 **Q. SHOULD CENTURYLINK QC BE FINED FOR VIOLATING THE EXTENSION OF SERVICE**
2 **RULE BECAUSE IT DID NOT REQUEST AN EXEMPTION FROM IT UNDER THE COMMISSION'S**
3 **EXEMPTION RULE, WAC 480-120-015?**

4 **A.** No. At page 22, Ms. Paul's testimony describes the exemption rule and points out that
5 CenturyLink QC did not use it to ask for exemption from the line extension rule.
6 CenturyLink QC had no reason to seek exemption from the extension of service rule
7 because, by its own terms, it does not apply in developments, such as Anna Maria Lane
8 Subdivision. Only by substituting its own definition of development for the actual
9 definition of development in the extension of service rule is Staff able to assert
10 CenturyLink QC violated the rule, or should have asked for an exemption of the rule.

11 **Q. SHOULD CENTURYLINK QC BE SUBJECT TO PENALTIES FOR 175 VIOLATIONS OF WAC**
12 **480-120-349, THE RECORDS RETENTION RULE?**

13 **A.** No. Ms. Paul, beginning at page 23 of her testimony, asserts that CenturyLink QC is in
14 violation of the Commission's records retention rule. CenturyLink QC disagrees.
15 CenturyLink QC is not in violation of the records retention rule because it does not apply in
16 this case. WAC 480-120-349 requires telecommunications companies to keep all records
17 and reports required by "these rules or commission order" for three years, not "all" records
18 generally. Staff points to no other rule or Commission order requiring retention of records
19 associated with service denials to customers in "no-build" developments. Thus, the records
20 in this case are not subject to that rule, nor could CenturyLink QC have reasonably known
21 or understood that they would be.

1 **Q. SHOULD CENTURYLINK QC BE SUBJECT TO PENALTIES FOR ONE VIOLATION OF WAC**
2 **480-120-166, THE COMPLAINT RETENTION RULE?**

3 **A.** No. Ms. Paul, beginning at page 24 of her testimony, asserts that CenturyLink QC is in
4 violation of the Commission’s rule regarding retention of Commission-referred complaints.
5 CenturyLink QC is not in violation of the complaint retention rule. WAC 480-120-166
6 requires telecommunications companies subject to Commission regulation to keep a record
7 of all Commission-referred complaints concerning service or rates for at least two years
8 and, on request, make them readily available for Commission review.

9 CenturyLink QC complies with this rule and retains records of Commission-referred
10 complaints for at least two years. Ms. Paul’s exhibit SP-23, does not indicate that the
11 company is not retaining Commission-referred complaints. Indeed, Staff did not ask for
12 information specifically on Commission-referred complaints, which would have been
13 searchable for the relevant period of time by either customer name, customer telephone
14 number, or service address. When CenturyLink QC stated that it kept complaint records
15 going back only to “early January of 2016” CenturyLink QC was referring to a *searchable*
16 *database* of both internal and Commission-referred complaints, and where the search
17 parameters are categorized by the *type of issue complained of* as opposed to *specific*
18 *customer-identifying information* such as phone number, name, or address. CenturyLink
19 QC did not violate WAC 480-120-166 because it retains records for Commission-referred
20 complaints about rates and service for at least two years.

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XI. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The complaint is completely without merit. Contrary to the complaint’s assertion, CenturyLink QC’s refusal to extend service for free to an applicant in a no build development served by other providers does not violate the Commission’s extension of service rule or the “service on demand” statute. Nor did CenturyLink QC violate the Commission’s record retention rule. The complaint misapplies the rules and statute and would result in effectively negating the “development” exception in the extension of service rule. Further, the complaint ignores the competitive environment and would result in application of monopoly era type regulation in an effectively competitive market, which is undeniably bad public policy.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.