



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
9275 GUNSTON RD
FORT BELVOIR, VA 22060-5546
June 12, 2012

REPLY TO
ATTENTION OF
Regulatory Law Office
U 4209

VIA ELECTRONIC MAIL (6/12/12) & OVERNIGHT UPS

Commission Executive Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Subject: **DoD/FEA's Comments and Opposition**

In Re: **Docket No. UT-120128** – In the Matter of the Application of CENTURYLINK
Regarding the Sale and Transfer of Property.

To The Honorable Commission Executive Director and Secretary:

Enclosed for filing in the above-captioned proceeding are the hard copy original and twelve (12) copies of the Comments and Opposition of the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"). A Certificate of Service is appended to this filing.

Copies of this document are being sent in accord with the Certificate of Service. Inquiries to this office regarding this proceeding should be directed to the undersigned at (703) 696-1643.

Thank you for your cooperation and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen S. Melnikoff".

Stephen S. Melnikoff
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Enclosure: Twelve (12) Copies
CF: See Certificate of Service

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET No. UT-120128
CENTURYLINK Regarding the Sale)	
and Transfer of Property)	THE UNITED STATES DEPARTMENT
)	OF DEFENSE AND ALL OTHER
)	FEDERAL EXECUTIVE AGENCIES'
)	
)	CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing document, together with this Certificate of Service, in Docket No. UT-120128 to be sent this day by electronic service (email) and postage prepaid, properly addressed, first class U.S. Mail (or private courier) to the counsel and parties named below, as indicated:

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Transportation Commission
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Dated this 12th day of January 2012,
at Fort Belvoir, Virginia.



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(6/11/12)

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Oshie in the open meeting, paramount to any distribution of the intrastate portion of the gain was that it be a broad distribution to maximize benefits for consumers in Washington. Indeed, the Staff Recommendation memo recognized the need for a broad distribution of the gain. As Staff noted, “Staff needs more time to explore alternatives other than bill credits or the proposed broadband deployment *that would broaden the distribution to Qwest’s customer base.*”²

(emphasis added) DoD/FEA continues to believe that a broader distribution of the gain than just broadband deployment to unserved areas is more appropriate and should include two projects necessary for national security and safety requirements on Joint Base Lewis McChord (JBLM) with ancillary Public Benefits for the communities on and adjacent to JBLM. Unfortunately, it appears that the proposal for Commission consideration narrowly limits the beneficiaries of the distribution to a very few by allocating all but \$100,000 of the \$11.2 million to broadband deployment in unserved areas.³

DoD/FEA neither opposes the approved sale nor the \$11.2 million gain amount to be shared with consumers in support of the public interest. The DoD/FEA does oppose, however, the proposal before the Commission to distribute \$11.1 million to broadband deployment in unserved areas to the exclusion of all other projects. This proposal is inconsistent with the discussions during March 20, 2012 open meeting and inconsistent with the broader public interest.

II. The Proposal’s Weakness: Limited Benefits to a Very Narrow Class of Customers

² See, Staff Recommendation, dated March 20, 2012, p.3.

³ \$100,000 is proposed to be allocated to Community Voice Mail, and the remaining \$11.1 million is proposed exclusively for broadband deployment. See, Qwest’s Second Supplemental Information filing, dated June 4, 2012, para. 4.

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Allowing Qwest to use the \$11.1 million to deploy broadband along the identified routes to customers who do not have broadband available today will certainly benefit some of those customers on those routes. Unfortunately, and according to both Staff and Qwest, the facilities would be available to only about 4,000 customers. During the 36 years that the Qwest building and land were in use, those facilities served and were supported by hundreds of thousands or perhaps millions of residential, commercial and wholesale customers. To limit this distribution to a few thousand customers does not broaden the benefits to consumers in Washington; instead, it inappropriately limits the benefits.

III. The Proposal's Weakness: Broadband is an Interstate Service

While there is no question that availability of broadband is a national goal and important for our society and economy, this service is an interstate service currently being addressed by numerous federal programs. The \$11.2 million identified for distribution, however, is the intrastate portion of the gain. We do not argue that extending broadband, an interstate service, to those who lack such capabilities is not a worthy cause or that the deployment of such an interstate service should be entirely excluded from the distribution of the intrastate gain. However, the use of the \$11.1 million intrastate monies exclusively for deployment of an interstate service for the benefit of a very few customers is inappropriate, distorts the intent of the distribution and should be rejected. Indeed, as noted below, there are already numerous federal programs in place for broadband deployment that would address the very same unserved routes as currently proposed.

IV. The Proposal's Weakness: Programs Are Already in Place for Broadband Investment

DoD/FEA recognizes that there are areas within Washington State without broadband availability. Congress and the FCC have set in place various programs (e.g. Connect America Fund, expansion of the Lifeline and Link-Up programs to include broadband, National Telecommunications and Information Administration's ["NTIA's"] Broadband Technology Opportunity Plan) to further the deployment of broadband to unserved and under-served areas. The American Recovery and Reinvestment Act provided the Department of Commerce's NTIA and the U.S. Department of Agriculture's Rural Utilities Service ("RUS") with \$7.2 billion to expand access to broadband services in the United States. Of those funds, the Act provided \$4.7 billion to NTIA to support the deployment of broadband infrastructure, enhance and expand public computer centers, encourage sustainable adoption of broadband service, and develop and maintain a nationwide public map of broadband service capability and availability.⁴

Given the national focus on broadband and the many new programs established to accomplish broadband availability, using the entire \$11.1 million for this same interstate purpose appears to be excessive, unnecessary, and inappropriate.⁵ Instead, the public interest and consumers in general are better served by a broader distribution of the monies to include the two small projects proposed by the DoD/FEA.⁶

⁴ [About | BroadbandUSA - NTIA](#) The NTIA alone has provided grants totaling \$289,347,208 for organizations in Washington State; the vast majority of which were for broadband infrastructure.

⁵ See, Staff Recommendation, dated March 20, 2012, p. 3. The Staff specifically noted that these proposed broadband projects "...will not be counted towards the company's broadband extension when the company applies for Connect America Fund Phase I projects in the near future." In other words, if these intrastate monies are not allocated to these unserved areas, Qwest could apply for federal funds to expand broadband capabilities to these same consumers and routes.

⁶ DoD/FEA originally had proposed three projects. After reviewing the cost estimates for the Yakima Training Center project, DoD/FEA withdrew that request since it appeared that the costs outweighed the benefits for the purposes of a distribution of the gain with a broad public benefit. The remaining two DoD/FEA proposed projects are detailed with CenturyLink's tentative costs on CONFIDENTIAL ATTACHMENT 1.

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V. The Proposal's Weakness: No Guarantee of Cost Recovery or Revenues for Qwest

Unfortunately, there is no guarantee that the 4000 consumers, to whom the proposed broadband deployment is made, will purchase broadband services from Qwest even if the service becomes available due to the additional \$11.1 million investment. Those consumers may not want broadband or they may find it too expensive. As such, Qwest may spend these monies with no concomitant return or revenues to offset the expense. Further, assuming the investment is not utilized to the fullest extent, the monies would have been better used elsewhere.

VI. WHY IT IS APPROPRIATE FOR DOD/FEA TO BENEFIT FROM A PORTION OF THE \$11.2 MILLION DISTRIBUTION

1. *Constant Consumer of Qwest Services* – Unlike most residential and business consumers, DoD/FEA has been purchasing commercial services from Qwest during the entire 36 year period that the sold Headquarters land and building were in the rate base. Thus, having purchased significant intrastate commercial services supporting the Headquarters asset during that entire period, DoD/FEA is entitled to benefit from a portion of the sale gain.
2. *Significant Consumer of Qwest Services* – The federal government and particularly the large component of DoD and all the military services have been and continue to be some of the largest purchasers of intrastate telecommunications services in Washington State. Our best conservative estimate is that DoD/FEA has over the past 36 years and continues to purchase

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about five (5) percent (measured by revenue) of the total intrastate telecommunications services that Qwest provides on an annual basis.⁷

3. **DoD/FEA Projects Represent a Very Small Portion of the \$11.2 Million** -- DoD/FEA is asking the Commission to dedicate only a very small portion of the \$11.2 million to its national security and safety projects. DoD/FEA recommends two projects that would represent a small percentage – less than eight percent – of the total monies.⁸ Assuming the Commission keeps the Community Voice Mail distribution at \$100,000, more than \$10.2 million would still be available for other projects – including broadband deployment in unserved areas as currently proposed – even after the two DoD/FEA projects are funded.

4. **Post-9/11 National Security and Safety Requirements Support the Need for the DoD/FEA Projects** – The remaining two projects proposed by the DoD/FEA would deploy critical telecommunications infrastructure at JBLM. The proposed projects, diverse fiber pathways, are necessary to provide diversity and backup for critical services, including intrastate local exchange services, where none exist today. Not only do the projects allow DoD/FEA to complete its mission in the event of a natural or man-made equipment or network failure, they

⁷ Over the past 36 years (and more), the intrastate services purchased by DoD/FEA in Washington State are commercial business services which, by design, have provided subsidies to other services (e.g., basic residential local services) that have historically been priced below cost for public policy reasons. It could be argued that purchasers of subsidized services should not receive a share of the \$11.2 million (but DoD/FEA does not make that argument here) because they have already benefited from subsidies in the rate design. Additionally those subsidized rates generated little, if any, support for the Headquarters asset resulting in little, if any, contribution to the gain realized on the sale of the Headquarters.

⁸ The Qwest estimates of the cost of the remaining two DoD/FEA proposed projects are detailed on CONFIDENTIAL ATTACHMENT 1. While DoD/FEA engineers believe these estimates far exceed the cost of the projects, even accepting Qwest's estimates the projects would represent less than 8 percent of the \$11.2 million.

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also provide other benefits to the Public. In the event of an outage, for instance, the projects would allow a quick restoration of local service to and from both Madigan Army Medical Center (“Madigan Army Hospital”) as well as the Washington National Guard, both of which are located on JBLM. Both of these organizations provide critical services to the civilian community and State and Local governments in Washington on a regular backup basis and in times of crises (e.g., flood relief, forest fires). Madigan Army Hospital provides backup and overflow care for the neighboring communities and civilian hospitals. The citizen soldiers and airmen of The Washington Air and Army National Guard organizations are dedicated to the mission of safeguarding lives and property in Washington State.

It is of significant benefit to the community as a whole, that local service to and from JBLM (the military institution) and the military and civilian communities remains intact in time of natural or man-made crisis or disaster. It is also critical that the communities and the Washington State and Local governments are able to maintain local communications with State National Guard components, Madigan Army Hospital, and emergency first responders on JBLM.

5. **Proposed DoD/FEA Projects Would Continue to Pay for Themselves** – The new facilities proposed by DoD/FEA would immediately generate revenues. As JBLM procures new services over those facilities, which it will, the tariffed or contracted monthly recurring rate for those services would apply. Qwest would bill for and receive payment for those services and facilities for the foreseeable future. Unlike the proposed broadband deployment where revenues and cost recovery are questionable, the DoD/FEA projects will generate revenues at commercial

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rates from needed services. There is no doubt as to whether the JBLM facilities will be used or that Qwest will receive adequate compensation for the facilities.

6. **Other Public Benefits Associated with Proposed DoD/FEA Projects** – In addition to the important ancillary public benefits noted in section 4 above, the new facilities proposed by DoD/FEA also could provide other public benefits to the surrounding communities and to Qwest. Depending upon the fiber capacities Qwest places on the proposed diverse routes, that fiber might be available as another source, if needed, to expand services to the on-base non-official military population or neighboring communities. For instance, on base there are six elementary schools, more than 7, 800 (and growing) homes and various commercial businesses supporting the JBLM community. The new facilities might be another, closer source, if needed, to allow Qwest to increase broadband and DSL availability, capabilities and speeds thereby making those services more attractive to the military and to the neighboring civilian communities.⁹ As such, the very small portion of the \$11.2 million which should be devoted to the DoD/FEA proposed projects is more like “seed” money for other public benefits for the on-base and surrounding communities as well as meeting the critical National Security and safety requirements for DoD.

7. **Including the DoD/FEA Proposed Projects Substantially Broadens the Distribution of Benefits and Increases the Consumer Welfare** -- A modification of the Qwest proposal that

⁹ See CONFIDENTIAL ATTACHMENT 2 showing the number of living units, and DSL speeds at JBLM. It is particularly disconcerting that Qwest is generally proposing broadband deployment to 4000 living units in the unserved areas that far exceed the speeds which generally are currently available from Qwest’s network to the military family community on JBLM. The existing Qwest network is currently available at generally inadequate and inferior capabilities, if at all, to military families, schools and businesses. See for comparison Qwest’s Second Supplemental Information filing at paragraph 4, dated June 4, 2012.

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would make a broader distribution of the \$11.2 million to include the DoD/FEA proposed projects would provide public interest benefits that substantially outweigh the benefits of the current proposal before the Commission. The current proposal provides very limited benefits, some of which, if not all, could be obtained through federal programs and does not maximize consumer welfare and provides no assurance of revenues or cost recovery. Adding the DoD/FEA proposed projects, which represent only a small fraction of the total dollars available, provides substantial additional benefits, not only for the DoD/FEA and its National Security and safety missions, but also for Qwest and the communities surrounding JBLM.

VII. Funding Multiple Projects Balances and Broadens the Public Interest Benefits

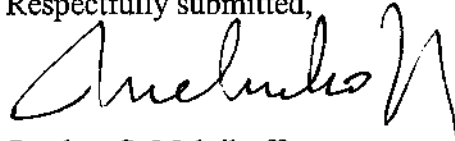
There is no good public policy reason to distribute essentially all the gain from the sale for one project or one type of project with very limited beneficiaries. Instead, the Commission should consider the benefits and costs of the various proposed projects and allocate monies accordingly. Funding the remaining two DoD/FEA proposed projects in addition to the rural broadband deployment projects is a better solution, providing more benefits to society and consumer welfare, than just funding the broadband projects.

WHEREFORE, DoD/FEA urges the Commission to modify the distribution proposal currently before it to include the remaining two DoD/FEA proposed National Security and safety projects for JBLM detailed on CONFIDENTIAL ATTACHMENT 2. Considering the

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importance of this matter, the undersigned DoD/FEA counsel will be available at the June 14, 2012 open meeting, if needed.

Respectfully submitted,



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For

THE UNITED STATES DEPARTMENT OF DEFENSE
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