BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF: RULEMAKING TO CONSIDER POSSIBLE CHANGES TO RULES IN CHAPTER 480-120 WAC, RELATING TO SERVICE OBLIGATIONS OF TELEPHONE COMPANIES	DOCKET NO. UT-180831 COMMENTS OF CENTURYLINK

CENTURYLINK WRITTEN COMMENTS:

CenturyLink files comments in this proposed rulemaking. Pursuant to the Commission's request, CenturyLink provides comments in response to the following questions and issues:

(1) RCW 80.36.090 provides, in relevant part, "Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded."

a. Under what circumstances are persons "reasonably entitled" to "suitable and proper facilities and connections for telephonic communication"?

RESPONSE:

A multitude of providers offer voice service in Washington using a variety of technologies. In addition to facilities based Local Exchange Carriers (LECs) and resellers under the Commission's jurisdiction, the providers of voice service include cable companies, interconnected Voice over Internet Protocol (VoIP) providers, nomadic VOIP providers, four national and several smaller wireless providers, and satellite providers. The Commission has largely deregulated CenturyLink and Frontier—two Incumbent LECs (ILECs) that, combined, serve 95% of the ILEC access lines in the state—on the basis that they are subject to effective competition. Under these market conditions and circumstances, it is reasonable for the Commission to ask how a 1911 statute should apply to a telecommunications marketplace that the legislature could not possibly have envisioned. The Commission should ask what "reasonably entitled" to "suitable and proper facilities and connections for telephonic communication" means or should mean in 2018 and beyond.

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It bears noting that the statue applies to every telecommunications company. Because it applies to every telecommunications company the statute does not discriminate against one group of telecommunications companies (such as the ILECs) in favor of another group of telecommunications companies (such as the Competitive LECs aka CLECs).

CenturyLink believes "reasonably entitled" is a term meant to protect telecommunications companies from state-compelled imprudent investments. And because the statute applies to every telecommunications company, it follows that a person is "reasonably entitled to suitable and proper facilities and connections for telephonic communication" when the telecommunications company from which services are requested determines that investment in those facilities is financially prudent. This may be on a stand-alone basis, or in conjunction with a financial commitment by the person making the request that is sufficient to make the deployment of facilities financially prudent.

b. Should the Commission require local exchange companies (LECs) to furnish residential basic local telecommunications service to any applicant who resides within that company's service territory in Washington? If not, why not?

RESPONSE:

Not necessarily. If the obligation to serve is conditioned on the beneficiary of the service making a financial commitment sufficient to render the provider's investment financially prudent, then yes, every telecommunications company should be required to serve "on demand." On the other hand, if the obligation to serve were to have no such condition and were to risk compelling a telecommunication company to make an imprudent investment, then the answer must be "no" because **in a competitive market**, no applicant is reasonably entitled to demand facilities for which they do not pay and no provider should be compelled to make imprudent investments.

c. Should all LECs have the same obligation to furnish residential basic local telecommunications service upon request from an applicant within the company's service territory in Washington? If not, what obligations should different LECs have, and what is the basis for the varying obligations?

RESPONSE:

Not necessarily. Because the statute applies to all telecommunication companies, one could argue that all LECs should have the same obligation to furnish service. That obligation should be subject to the condition discussed in "b" above that the investment to furnish facilities be financially prudent to the LEC. That said, the obligation of ILECs receiving support from Washington's Universal Communications Services Program might be different from unsupported LECs. The possible differences should be discussed at the workshop after input from all stakeholders.

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d. Should the Commission promulgate a rule that establishes the circumstances under which a company must furnish basic local telecommunications service upon request other than, or in addition to, WAC 480-120-071?

RESPONSE:

No new rule is needed. WAC 480-120-071 can be modified to accommodate any required changes.

(2) What is a "carrier of last resort"? Should the Commission designate a carrier of last resort in each LEC's service territory in Washington? If so, what criteria, factors, or other considerations should the Commission use to make such a designation?

RESPONSE:

A carrier of last resort or COLR is, as the name implies, the provider to whom an end user would turn for basic local telephone service to the end user's location when no other voice service is available at that location. In the Commission's more than century-long history it has not designated COLRs. The advent of robust competition for voice service in Washington leaves few, if any, end users without multiple choices of providers for basic local telephone service. So even if designated COLRs were necessary in the many decades before robust competition developed (and, apparently, they were not), they certainly are not necessary now.

If the Commission were to designate a carrier as a COLR in any area, the designation should be only where no other provider offers voice service. And the state would have to protect a designated COLR against compulsory imprudent investments. That protection could be afforded by financial mechanisms such a state universal service fund.

(3) Are there any populated areas in Washington in which a LEC is the only source of reliable basic local telecommunications service? If so, where?

RESPONSE:

CenturyLink is not aware of such areas. Wireless service is available in most of Washington and has been shown to be a full substitute for wireline voice service. According to ongoing studies by the Center for Disease Control, a majority of households in Washington rely exclusively on wireless technology for voice service.
For areas with inadequate wireless service, voice service over satellite is available and also serves as a substitute for wireline service. In the recently concluded FCC's Connect America Fund Phase II (CAF II) auction for broadband **and** voice service, satellite providers were major award winners. The FCC awarded auction funds to serve approximately 17,000 total locations in Washington. Out of that total, the FCC awarded satellite provider Viasat, Inc. CAF II funds to serve 11,000 locations with broadband **and** voice.

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(4) WAC 480-120-071(4) requires each LEC that receives federal high-cost universal service support to "allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The company may allow for an extension of service for distances over the allowance," but "[t]he applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance."

a. Should the Commission continue to require these or any other LECs to provide an extension of service for up to 1,000 feet at no charge to the applicant? If not, why not? Would a different distance be more appropriate? If so, why?

RESPONSE:

No. The Commission should not require an extension of service for up to 1,000 feet at no charge to the applicant and the Commission should repeal that portion of the rule. In a competitive market such as Washington's, the availability of any amount of free line extension distorts the economic signals that users and providers should observe in making purchase and investment decisions.

Changing the free allowance distance would not solve the underlying problem with free allowances; users would still receive false signals about the cost of the service and providers would be financially harmed by the unreimbursed cost of financially imprudent line extensions. The Commission should allow providers to charge the beneficiary of a line extension the actual cost of deployment the provider deems imprudent.

b. Under what circumstances should an applicant be responsible for the costs of an extension of service?

RESPONSE:

An applicant should be responsible for the costs of an extension of service to the extent that the provider determines the cost to deploy is financially imprudent.

c. Should the Commission continue to exclude "developments," as that term is defined in the rule, from extensions of service? If so, under what terms and conditions? If not, why not, and should the Commission modify the definition of "developments"?

RESPONSE:

Yes, the Commission should continue to exclude "developments" from the rule. Developments have been excluded from the line extension rule since at least 1971. This does not mean that developments have not been served. To the contrary, it simply means that the beneficiaries of developments—the developers and their customers—continue to receive undistorted economic signals about the costs and benefits of telecommunications infrastructure from various providers. In many cases the developers have concluded that the cost of ILEC infrastructure for telecommunications service in the development is financially justified and have entered into agreements for the ILECs to provision facilities

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in their developments. In other cases, the developer has selected Comcast, Charter, or another cable company to serve. In high-cost areas it is not unlikely that future developers will choose to rely exclusively on the availability of wireless and satellite solutions. That choice will be driven by economic signals about the relative cost and benefit of competing technologies. Following undistorted economic signals maximizes overall welfare by ensuring decision makers chose the technology that most efficiently uses scarce telecommunications capital.

WAC 480-120-071 defines a development as land which is divided or proposed to be divided into four or more lots. This exclusion should be maintained. If it is not maintained, the Commission will be forcing a LEC to subsidize the developer's for-profit venture with the availability of some amount of free line extension. Without state subsidies, a LEC operating outside rate-of-return regulation in Washington's competitive market would not recover the costs of imprudent line extensions. The Commission should clarify that the exclusion applies to individual housing units on individual lots after the development is complete. That said, if the Commission were to eliminate free line extension allowances altogether, then the developer exclusion would become unnecessary because the applicants would bear the portion of the line extension the provider deems financially imprudent.

d. Should the Commission revise its rules to require all LECs to keep records of instances in which they have denied requests for residential basic local telecommunications service due to lack of facilities?

RESPONSE:

No, such a revision would impose a financially burdensome administrative requirement on some voice services providers but not on cable companies or wireless providers that, combined, serve a large majority of the voice subscriptions in the state. According to data published by the FCC, as of June 30, 2017, wireless providers served 74 percent of all voice subscriptions in Washington; while the ILECs served only 10 percent. The remaining 16 percent of voice subscriptions were served by CLECs and cable companies, although the FCC data does not provide a split between the two. So, the data gathered from just telecommunications companies would not answer the real universal service question which is whether there are Washingtonians that cannot get voice service from any provider.

e. Should the Commission otherwise modify WAC 480-120-071? If so, how and why?

RESPONSE:

CenturyLink has attached a redline of its recommended changes to WAC 480-120-071 and looks forward to discussing them in the workshop.

(5) Should the Commission modify or repeal any other rules in chapter 480-120 WAC with respect to telecommunications companies' obligation to provide service on demand or

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request? If so, please identify those rules and explain how and why the Commission should modify or repeal them.

RESPONSE:

CenturyLink has no recommended changes at this time to other rule governing the provision of new service to an applicant.

Submitted this 7th day of December, 2018.

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WAC 480-120-071

Extension of service.

(1) This rule applies to local exchange companies. ~~receiving federal high-cost universal service support.~~

(2) **Definitions.** The following definitions apply to this section unless the context clearly indicates otherwise:

"Applicant" means any person applying to a telecommunications company for new residential basic local exchange service. Applicant does not include developers requesting service for developments.

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, permitting fees, rights of way fees, and payments to subcontractors, and ~~does not~~ includes the cost of reinforcement, network upgrade, or similar costs.

"Developer" means any owner of a development who offers it for disposition, or an agent of such an owner.

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

"Distribution plant" means telephone equipment and facilities necessary to provide new residential basic local exchange service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premises and the company distribution plant at the applicant's property line. For drop wire installed after January 15, 2001, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.

"Extension of service" means an extension of company distribution plant for new residential basic local exchange service to a location where no distribution plant of the extending company exists at the time an extension of service is requested. An extension is constructed at the request of one or more applicants for service. Extensions of service do not include trenches, conduits, or other support structure for placement of company-provided facilities from the applicant's property line to the premises to be served. Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.

~~"Extraordinary cost" means a substantial expense resulting from circumstances or conditions beyond the control of the company that are exceptional and unlikely to occur in the normal course of planning and constructing facilities contemplated by this rule.~~

"Order date" as defined in WAC 480-120-021 (Definitions) means the date when an applicant requests service unless a company identifies specific actions a customer must first complete in order to be in compliance with commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required to be completed by the applicant, the order date becomes the date the company receives the completed application for extension of service.

"Premises" means any structure that is used as a residence, but does not include predominantly commercial or industrial structures.

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when the intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for construction huts, sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

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

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

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

~~(4) **Allowances.**~~

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

~~(b) The applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance. The company must permit multiple applicants to aggregate their allowances when an extension of service to two or more applicants would follow a single construction path.~~

(~~5~~4) **Determining costs and billing for extensions of service ~~longer than allowances~~.**

(a) The company must estimate the cost of the service extension that is attributable to distribution plant that must be extended to provide service to the applicant. ~~beyond the applicable allowance established under subsection (4)(b) of this section.~~

(b) At the completion of the construction of the extension of service, the company must determine the difference between the estimated cost and the actual cost of construction. The company must provide to the applicant detailed construction costs showing the difference. The company must refund any overpayment and may charge the applicant for reasonable additional costs up to ten percent of the estimate.

(~~6~~5) **Requirements for supporting structures and trenches.**

(a) A company may condition construction on completion of support structures, trenches, or both on the applicant's property.

(i) Applicants are responsible for installation of all supporting structures required for placement of company-provided drop wire from the applicant's property line to the applicant's premises. The company may offer to construct supporting structures and dig trenches and may charge for those services, but the company must not require that applicants use only company services to construct supporting structures and dig trenches. The offer must clearly state that the applicant may choose to employ a different company for construction services.

(ii) The company may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with reasonable company construction specifications. The company must require that, once in place and in use, all supporting structures and drop wire will be maintained by the company as long as the company provides service, and any support structure and trenches constructed at company expense are owned by the company.

(b) Once supporting structures, trenches, or both, have been constructed, the company must provide drop wire to applicants at no charge.

(6~~7~~) **Temporary service.** A company may not provide allowances ~~(e.g., one thousand feet without charge)~~ or discounts on the cost of construction for extension of temporary service.