BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. QWEST CORPORATION D/B/A CENTURYLINK QC, Respondent.	DOCKET NO.: UT-171082 CENTURYLINK'S ANSWER IN OPPOSITION TO STAFF'S MOTION FOR PARTIAL SUMMARY DETERMINATION

I. INTRODUCTION

1 On June 22, 2018 Commission Staff (Staff) filed a Motion for Partial Summary Determination (Motion) in this matter. The hearing is scheduled for July 23, 2018.

2 Pursuant to WAC 480-07-375, CenturyLink hereby files its Answer in Opposition to Staff's Motion for Partial Summary Determination. Century link disagrees that this matter should be decided without hearing and therefore opposes Staff's Motion. Staff's Motion was filed before the final round of testimony was filed, and therefore does not take into consideration the evidence submitted on July 3, 2018 by all of the parties.

3 Furthermore, Staff's Motion, even if granted in its entirety which CenturyLink strongly opposes, would not fully resolve all of the issues in this case, and a hearing would still be necessary regarding the application of RCW 80.36.090, the record keeping rules, and the issue of penalties. For these reasons, the Commission should deny Staff's Motion and proceed with the case schedule already established.

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

II. RELIEF REQUESTED/SUMMARY OF ARGUMENT

4 Staff asks the Commission to decide the Motion in Staff's favor on the issue of the interpretation of the line extension rule as it applies in developments, and on the issue of whether the line extension rule applies only in areas where CenturyLink receives federal high-cost support.

5 Specifically, Staff now asks the Commission to decide as a matter of law, that the line extension rule (1) requires carriers to extend service to occupied premises regardless of whether the dwelling was, at some point, part of a development; and (2) applies to CenturyLink throughout its service territories, regardless of how and where the federal high-cost support it receives is used. (Motion at ¶ 2.)

6 Staff's description of the issues to be decided misstates the issues. As to the question of the proper interpretation of the line extension rule, there is no dispute that the rule contains an exception for service to developments. The question really is whether the exception for developments has any meaning. Under Staff's interpretation of the rule, it does not. As such, Staff's interpretation must fail, as the basic rules of statutory construction require the Commission to give meaning to all of the terms in the line extension rule, including that term that states that the rule does not apply to service to developments.

7 The applicant in this case is in a development where CenturyLink was not able to deploy facilities due to the developer's refusal to contribute to the cost of placing those facilities. To interpret the rule to essentially let an individual applicant receive a free extension would negate the "developments" exception to the rule. It would also run contrary to the Commission's long-standing policy that the cost of service to developments must be

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

borne by those who gain economic advantage from the development and not by ratepayers in general.

8 With regard to the issue of federal high-cost support, Staff also slightly misapprehends the issue by asking the Commission to read the rule as if nothing has changed since it was adopted. However, this is not the case. The Commission adopted the line extension rule, and created the line extension obligation, by linking the obligation to the receipt of federal high-cost support. At the time, CenturyLink and other carriers received such support on a state-wide basis.

9 Since that time, federal high-cost support has been dramatically reshaped, and CenturyLink receives that support only on a census-block by census-block basis. The question then is really a policy question: Did the Commission intend to link the obligations in the rule to the receipt of high-cost support? If so, why would the obligation exist in geographic areas where no such support is received, and in areas that are not unserved or underserved?

10 CenturyLink believes that these issues, and the others in the case, should be decided after a full hearing, with an opportunity for the parties' assertions to be tested under cross examination, and an opportunity for the Commissioners to explore the issues with the witnesses.

III. STATEMENT OF FACTS

11 Staff's Motion sets forth a very brief statement of facts at paragraphs 3-5, and states that Staff relies on the pre-filed testimony and other documents in this docket, as well as the documents from the two prior rulemakings that addressed the line extension rule. (Motion

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

at ¶ 7). CenturyLink believes that many other facts are relevant to a full and fair determination of the issues.

12 One fact the Commission should consider, which CenturyLink believes is material to the outcome of this case, is the question of whether the developer initially agreed to install a conduit for an extension of the facilities. The record establishes that he did initially agree to do so and then later declined. (Exhibit SP-2, p. 5.) Staff apparently does not contest this fact, but this fact makes it all the more clear that a developer will seek to avoid paying for deployment of facilities if the line extension rule would operate to provide a free extension.

13 Other facts, which are critical from CenturyLink's point of view, include the presence of various other providers for voice service, which include, but are not limited to, the presence of cable and wireless voice options at this customer's premises; the various changes to the monopoly-based concept of the "regulatory compact" driven by competition and changes in regulation; the intensely competitive market for local service; the steeply declining subscription rate for landline service; and, the changes in the federal funding program which no longer supports deployment of voice only service.

14 Further, there is a significant dispute as to what constitutes a development. Staff states that the first issue it wants the Commission to decide without a hearing is whether a development includes occupied homes. In paragraph 6, the Motion identifies the issue to be decided as "whether the term 'development,' which is defined as 'land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units,' includes occupied homes." From this, CenturyLink understands that Staff believes that once a home is occupied, the property is no longer a development, or no longer in a development. However, this is really only the tip of the iceberg, as there

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

are various other relevant stages at which CenturyLink will need to know if it is obligated, in Staff's view, to offer a line extension.

15 This is a topic that CenturyLink will seek to explore on cross examination with both Staff and Public Counsel witnesses. CenturyLink first sought some clarification on this issue through its data request No. 18 to Staff, asking Staff at which stages of development, construction, sale, and occupancy, the property stops being a development. The response, which consists largely of an objection, is included in Mr. Grate's Response Testimony as Exhibit PEG-6. It is also attached here for convenience. CenturyLink requires a hearing to further explore Staff's position on this issue.

16 In CenturyLink's view, a development is as defined in the rule as: "land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units." The land does not cease to be a development once the homes are sold or occupied. This is the only interpretation that makes sense, and that preserves the integrity of the line extension rule and the exception for developments.

17 As CenturyLink will demonstrate during the hearing, and as supported by documents in this case and to be used on cross-examination, a small subdivision, consisting of four or six or even 12 lots, can be less than 1,000 feet end to end. All a developer would need to do to get a free facilities deployment to the entire development would be to build and sell the house at the far end of the street first, and then have the owner request a line extension. CenturyLink would, at that point, effectively have no choice but to install sufficient facilities to serve each house it passes on the way to the far end of the development, or be faced with potentially more expensive deployments on a customer-by-customer basis under the line extension rule. As such, the development exception in the rule is rendered meaningless, and the developer who, under long-standing

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

Commission policy, should bear the costs of this benefit to the development, has skirted the requirement.

IV. STANDARD FOR SUMMARY DETERMINATION

18 CenturyLink does not dispute the applicable standard for considering a motion for summary determination as set forth in paragraphs 7-10 of Staff's Motion. In particular, CenturyLink agrees that the Commission's line extension rule should be interpreted as if it were a statute (Motion at ¶ 10), and should be subject to the basic canons of statutory construction. That does not mean that CenturyLink agrees that there are no issues of fact, or that a hearing is unnecessary, as noted above and discussed below.

19 One guide to proper statutory interpretation is that the court, or Commission in this case, should avoid interpreting a provision in a way that would render other provisions of the act superfluous or unnecessary.[1] It is CenturyLink's position that the interpretation of the line extension rule advanced by Staff, and seconded by Public Counsel, effectively nullifies the "development" exception in the rule and is thus an incorrect interpretation.

20 Furthermore, Washington statutes themselves provide guidance on statutory construction. RCW 1.12.020 contains the general policy against implied repealers – statutory provisions that are substantially the same as those in a pre-existing statute are deemed a continuation of that statute.[2] As such, even though the line extension rule has been amended to streamline its provisions, there can be no argument that the Commission ever impliedly repealed the policy, previously explicitly stated in the rule, underlying the

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[1] See generally, "A New Approach to Statutory Interpretation in Washington," Seattle University Law Review, Vol. 25:79 by Philip A. Talmage, and specifically cases cited at FN 76.

[2] RCW 1.12.020 ***Statutes continued, when.*** *The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof.*

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

development exception and the requirement that costs to deploy to developments should be borne by developers.

V. ARGUMENT

21 CenturyLink's position in this case is that the applicant is in a home located on land, in a development, and the exception in the line extension rule regarding service to developments applies. CenturyLink is not obligated to extend facilities under the rule. There is no dispute that the developer refused to pay the cost of deploying the facilities, a cost which CenturyLink is entitled under law and sound public policy, to recover from the developer.

22 Regarding the issue of federal high-cost support, CenturyLink notes that the line extension rule is already geographically limited to those areas within a carrier's historic service territory. CenturyLink believes that the better interpretation of the line extension rule is that it also only applies in the geographic area in which CenturyLink receives federal money in the form of CAF funds to deploy facilities to unserved and underserved areas. The census block in which the applicant lives in this case is not such a location.

23 As noted above, CenturyLink disagrees with Staff's premise that this matter should be decided without a hearing. At a minimum the Commission should hear the parties' positions developed and tested through cross-examination. Further, CenturyLink has identified the above disputed facts with regard to when and whether a "development" ever changes into "not a development for purposes of the line extension rule." CenturyLink further believes that the Commission should consider the important issue of whether the line extension rule in fact requires uncompensated deployment of facilities in areas that do not receive high-cost support.

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

A. OCCUPIED HOMES ON LAND IN A DEVELOPMENT ARE IN A DEVELOPMENT.

24 A development is "land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units." Staff argues that "land" is not the same as an occupied home, and that the moment the houses in a development are sold, the land's identity as a development ceases and they become "occupied homes." Staff argues that the onus is then on CenturyLink to provide facilities and service to each and every home in the development (if requested by an applicant) under the line extension rule – the very rule that does not require CenturyLink to deploy facilities in a development for free, and as a consequence allows CenturyLink to ask the developer to contribute to the cost of deployment in the deployment.

25 CenturyLink believes that Staff is making an unsupportable distinction here. Occupied homes (always) exist on land. Occupied homes are built, not exclusively, but often, in developments. To give a carrier an exception for developments under the line extension rule, and then to yank that exception away after the houses are sold is untenable. CenturyLink has never heard this assertion by the Commission or Staff prior to this complaint, and in fact the history of the development exception in the line extension rule and CenturyLink's requirement for contributions by builders are long standing. Mr. Grate discusses the use of a Provisioning Agreement for Housing Developments (PAHD) in both his response and cross-answering testimony, and discusses the history of the line extension rule in his cross-answering testimony.

26 Staff claims that it is "intuitively sensible to place facilities during construction, when land is being developed." CenturyLink agrees, which is why it offers to place facilities during construction for those developers who enter into a PAHD and pay some of the

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

cost. However, Staff then goes on to blame CenturyLink for developers who do not enter into a PAHD.

27 The fact is that Staff wants to shift the economic burdens of development and the consequences of the developer's decision to CenturyLink, contrary to law. This is evident in paragraph 12 of the Motion where Staff states "CenturyLink could have installed facilities at Anna Marie Lane when it was being developed but did not do so." Staff further states, at paragraph 15 of the Motion, that CenturyLink's interpretation of the rule "unfairly burdens the consumer rather than the parties who are responsible for the situation – the developer and the telecommunications carrier. When a carrier has the opportunity to place facilities during development of a property but does not, the carrier should not be heard to complain later that extending service under the line extension rule is expensive and inefficient."

28 Both of these assertions should be seen for what they are – an attempt to broaden CenturyLink's obligation to deploy facilities to developments at no cost to the developer. Staff points to nothing in the rule that obligates CenturyLink to extend facilities into a development for free, but Staff's consequences for CenturyLink's failure to do so would be so punitive to the company that it would essentially be left with no choice but do so, and no mechanism to require developers to contribute to the cost.

29 CenturyLink's uncontroverted evidence in this case is that the developer of Anna Marie Lane was offered a PAHD to enable CenturyLink to deploy facilities but refused to do so. It is also uncontroverted that Comcast did deploy facilities in this development, that wireless carriers offer service in this area, and that the applicant currently subscribes to wireless service. To state that CenturyLink has an obligation to serve, or is in any

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

fashion a carrier of "last resort" to a customer who has multiple service options, absolutely perverts any reasonable interpretation or application of those concepts.

30 Staff next argues, at paragraphs 16-17 of the Motion, that during the 2008 rulemaking the Commission streamlined the "developments" exception, but that nothing in that rulemaking sheds any particular light on what "development" might mean. To the contrary, CenturyLink believes that the rulemaking, which was conducted during a time prior to CenturyLink being granted significant regulatory flexibility based on competition, does inform the decision in this case.

31 As discussed in pre-filed Exhibit PEG-11T, pages 15-16, the Commission had previously articulated its strong policy position that those who receive the economic benefit from developments should be required to pay for the cost of the deployment of facilities to developments. In other words, the developer pays. Indeed, the Commission felt so strongly about this issue that even though carriers were given a mechanism to recover the costs of line extensions from ratepayers generally, the costs of deployment to developments were excluded from that mechanism. When the rule was streamlined, many provisions regarding cost recovery, reporting, etc., were eliminated, and so there was no need for the policy discussion regarding developments. But the Commission did not indicate it was going to reverse course on the "development" exception. It would be contrary to all reason to suggest that ten years further into a competitive market, with multiple service providers vying to serve, that the Commission would reverse that policy without so much as a passing comment.

32 Finally, Staff argues that CenturyLink raises the "specter" of the competitive market as a basis for refusing service. (Motion at ¶ 18). However, Mr. Grate's undisputed testimony shows that the competitive market is no ghost or illusion – it is very real, and has eroded

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

CenturyLink's market share by more than 80%. Mandates to deploy facilities that might have made sense in a monopoly environment make no sense in a competitive market.

33 CenturyLink's discussion of the market, and the relevance of the state of competition, is in response to Staff's allegation that CenturyLink has violated the "service on demand" statute, RCW 80.36.090. That statute imposes an obligation to extend facilities and service to those persons who are "reasonably entitled thereto." CenturyLink has suggested that the presence of competitive alternatives is relevant to the interpretation of that statute and to the determination of who is "reasonably entitled" to service, and that a carrier in a competitive market should not be forced to offer service when equivalent options are available from other providers.

34 Staff then argues, also based on the 2008 rulemaking, that the Commission has already rejected consideration of an alternative provider as relevant in determining whether an exemption to the line extension rule should be granted. (Motion at ¶ 18). CenturyLink disagrees with Staff's analysis and conclusions here. The Commission did not say that the existence of other providers would be irrelevant, only that they did not need to specifically include that circumstance as one which might support an exemption, because the Commission could consider all pertinent information, including the existence of another provider, when it considered a request for exemption.

35 CenturyLink also disagrees that it should have sought an exemption from the rule in this case, as there is more than enough evidence that CenturyLink has had a good faith interpretation of the rule which was contrary to Staff's and under which an exemption would not be necessary because the rule does not apply.

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

B. CENTURYLINK'S OBLIGATION TO EXTEND FACILITIES SHOULD BE CONSISTENT WITH THE GEOGRAPHIC AREAS IN WHICH IT RECEIVES FEDERAL FUNDING FOR DEPLOYING FACILITIES TO UNSERVED AND UNDERSERVED AREAS.

36 Staff next asks the Commission to grant summary determination on the issue of the proper geographic scope of the line extension obligation. (Motion at ¶¶ 19-23.) Staff correctly identifies that there is an issue regarding whether the line extension obligation exists throughout a carrier's service territory or only in those areas where it receives federal high-cost support. Staff advocates for a broad application of the rule, but ignores the changed circumstances from when the rule was originally adopted. Staff also mischaracterizes the nature and purpose of the high-cost support, claiming that CenturyLink seeks to limit the line extension obligations to those census blocks for which it receives high-cost support for voice telephony, noting the possible irony that CenturyLink seeks to obligate itself only in the least economic areas to serve.

37 The Commission first linked the obligation to provide a line extension to the receipt of high-cost support in a rulemaking started in April of 2014. At that time the FCC provided CenturyLink QC federal high-cost support throughout its service area. As Mr. Grate notes in his testimony, the line extension rule is really a subsidy rule, requiring one thousand feet of line extension at no charge to the applicant. So, the obligation to extend service at no charge was presumably linked to the concept that the carrier received compensation for the free extension via the high-cost support. That made sense at the time.

38 Since then, the world has changed. Again, as described by Mr. Grate, the FCC limits high-cost support to less than 5 percent of the census blocks CenturyLink QC serves and has relieved CenturyLink of the Section 214(e)(1)(A) obligation to provide voice telephony service in over 95% of the census blocks it serves.. Under the Connect

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

America Fund (CAF), federal funding is narrowly circumscribed to discrete census blocks, and offers support only for deployment of broadband capable networks in census blocks defined as unserved or underserved by broadband. It is undisputed that the applicant in this case is not in such a census block. It is unclear why Staff advocates an interpretation of the rule that would require free service with no funding source to cover the costs of the free service.

39 Staff is correct that CenturyLink called out this issue in its comments in the rulemaking docket in June of 2014. CenturyLink specifically noted that federal funding would soon become geographically specific, and that the application of the line extension rule should follow suit. Staff states that because the rule as adopted did not incorporate CenturyLink's suggestion, "there is no indication that the Commission intended the geographical application of the rule to change." This is true. There is also no indication that the Commission expected carriers to provide uncompensated free extensions. The rule could be interpreted either way, though CenturyLink's interpretation is the more reasoned of the two outcomes, linking the obligation to provide free extensions with a compensation method.

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

VI. CONCLUSION

40 For the reasons stated, the Commission should deny Staff's Motion for Partial Summary Determination. This case presents important questions of both law and policy that should not be determined on a paper record, but rather should only be decided after a full hearing. Disputed or undecided facts relevant to the decision in this case that warrant further exploration include the various stages in a development, and when or whether a development becomes merely "houses," all of which are entitled to a free extension of service. CenturyLink looks forward to further developing the evidentiary record at the hearing, to fully inform the Commission on the important issues raised in this case.

Respectfully submitted this 12th day of July 2018.

CENTURYLINK

/s/ Lisa A. Anderl

Lisa A. Anderl (WSBA # 13236)
Senior Associate General Counsel
1600 – 7th Ave., Room 1506
Seattle, WA 98191
lisa.anderl@centurylink.com

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 345-1574

Docket No. UT-171082
Exhibit PG-6
June 1, 2018

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO DATA REQUEST

DATE PREPARED:	May 1, 2018	WITNESS:	Susie Paul
DOCKET:	UT-171082	RESPONDER:	Susie Paul
REQUESTER:	CenturyLink	TELEPHONE:	(360) 664-1105

REQUEST NO. 18:

Regarding Ms. Paul's direct testimony, SP-1T, page 18, lines 16-19, and page 21, lines 1-8, please provide a full and complete explanation of Staff's position with regard to the point(s) in time at which the lots in a "development" are not subject to the line extension rule, and the point(s) in time that each lot becomes subject to the line extension rule. Specifically,

a. After the developer has established separate lots in the development;
b. After the developer sells the lot to housing contractor;
c. After the developer sells the lot to a consumer;
d. After construction of a dwelling has commenced on the lot;
e. After completion of construction of a dwelling on the lot;
f. After local government authorizes human occupancy of the dwelling;
g. After the dwelling is offered for sale to potential home owners or investors;
h. After a housing contractor sells the lot with completed dwelling to a consumer or landlord;
i. After the dwelling is occupied by a resident.

For each of these points in time explain how Staff concludes the line extension rule does or does not apply.

RESPONSE:

Objection: Not relevant to this issues in this proceeding with respect to subparts a through h. Only subpart i. reflects the fact scenario in this case.

With regard to subpart i., please refer to Ms. Paul's testimony at Exh. SP-1T at 21:1-8.