

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION D/B/A
CENTURYLINK QC,

Respondent.

DOCKET UT-171082

PUBLIC COUNSEL'S RESPONSE IN
SUPPORT OF STAFF'S MOTION
FOR PARTIAL SUMMARY
DETERMINATION

1. The Public Counsel Unit of the Washington Office of the Attorney General (Public Counsel) responds to Staff's Motion for Partial Summary Determination, filed on June 22, 2018. Public Counsel supports Staff's Motion and entry of an order requiring Qwest Corporation d/b/a CenturyLink QC (CenturyLink) to provide an allowance of 1,000 feet at no charge to extend service to the consumer.

I. RELIEF REQUESTED

2. Public Counsel respectfully requests that the Commission grant Staff's Motion and find that CenturyLink is required to extend service by extending its line up to 1,000 feet at no charge to the consumer, Mr. Robert Saum.
3. Public Counsel further requests that the Commission, in granting Staff's Motion, find that the development exception in WAC 480-120-071 does not apply to homes and that the obligation to provide line extensions to qualified applicants exists throughout a telecommunications company's service territory.

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II. RESTATEMENT OF FACTS

4. Mr. Saum requested phone and other services from CenturyLink on December 22, 2016.¹ Mr. Saum's residence is located in the Anna Marie Lane subdivision in Vancouver, Washington, which is located within CenturyLink's service territory.² The Anna Marie Lane subdivision consists of 12 homes.³
5. CenturyLink sent a technician to Mr. Saum's residence on January 5, 2017, to install the requested services.⁴ The technician discovered that CenturyLink did not have facilities in place to serve Mr. Saum.⁵ CenturyLink's pedestal is within 45 to 152 feet of Mr. Saum's residence.⁶
6. CenturyLink refused to provide service, asserting that Mr. Saum was responsible for providing a pathway from the pedestal to his residence.⁷ Mr. Saum filed a complaint with Commission Staff on February 3, 2017,⁸ and CenturyLink has not provided service.⁹
7. CenturyLink is designated as a wireline Eligible Telecommunications Carrier (ETC) in Washington and receives federal high-cost universal service support.¹⁰ CenturyLink provides

¹ Susie Paul, Exh. SP-5 at 1 (Mr. Saum's order confirmation from CenturyLink; the date of the order is listed in the top left corner). *See also*, Response Testimony of Susan M. Baldwin, Exh. SMB-1T at 6:1-2 and 14:18-20.

² Testimony of Susie Paul, Exh. SP-1T at 7:15-23; Paul, Exh. SP-4.

³ Paul, Exh. SP-3 at 6.

⁴ Baldwin, Exh. SMB-1T at 5:1-2.

⁵ Baldwin, Exh. SMB-1T at 5:1-4.

⁶ Paul, Exh. SP-6 (photo showing a pedestal marked as 45 feet from Mr. Saum's residence); Baldwin, Exh. SMB-1T at 20:19 - 21:4; Baldwin, Exh. SMB-7C (explaining that the pedestal may be up to 152 feet from Mr. Saum's residence). No party disputes that the pedestal is well within 1,000 of Mr. Saum's residence.

⁷ Paul, Exh. SP-2 at 2 ("The customer contacted the CenturyLink engineer three times, and the engineer said that the customer was responsible to provide a way for the company to run line to their house.")

⁸ Paul, Exh. SP-1T at 8:17-19.

⁹ Paul, Exh. SP-1T at 8:19-20.

¹⁰ Paul, Exh. SP-1T at 4:1-4.

telecommunications services in Washington under an Alternative Form of Regulation (AFOR). CenturyLink's current AFOR does not waive RCW 80.36.090 or WAC 480-120-071.¹¹

III. RESTATEMENT OF ISSUES

8. (1) Whether Mr. Saum is "reasonably entitled" to receive service from CenturyLink.
9. (2) Whether Mr. Saum and his residence fall outside of the terms "developer" and "development" for purposes of the line extension provisions in WAC 480-120-071, resulting in CenturyLink being required to provide a line extension to Mr. Saum at no charge for up to 1,000 feet of service line.
10. (3) Whether CenturyLink is required to provide line extensions and service to applicants who are reasonably entitled to service throughout its service territory or just in select census blocks when it is designated a wireline Eligible Telecommunications Carrier (ETC) and receives federal high-cost universal service support.

IV. EVIDENCE RELIED UPON

11. Public Counsel relies upon the testimony and exhibits of the parties filed to date, which includes the following prefiled testimonies and exhibits:
 - Susie Paul (Commission Staff), Exhibit SP-1T, Exhibit SP-2 through Exhibit SP-23, Exhibit SP-24T, and Exhibit SP-25 through Exhibit SP-26.
 - Philip E. Grate (CenturyLink), Exhibit PEG-1T, Exhibit PG-2 through Exhibit PG-10, Exhibit PEG-11T, and Exhibit PG-12.

¹¹ Paul, Exh. SP-1T at 12:4-12.
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- Susan M. Baldwin (Public Counsel), Exhibit SMB-1T, Exhibit SMB-2 through Exhibit SMB-10, and Exhibit SMB-11T.

V. ARGUMENT

A. Staff's Motion Meets the Standards for Partial Summary Determination

12. While the Washington Administrative Procedures Act, Chapter 34.05 RCW does not expressly authorize summary determination, agencies may allow summary proceedings.¹² The Commission's rules provide for the opportunity for summary determination under WAC 480-07-380(2). When ruling on a motion for summary determination, the Commission will consider the standards applicable to a motion made under Washington superior court civil rule 56 (CR 56).¹³ Summary determination is appropriate if the pleadings and all evidence demonstrate that (1) there is no genuine issue of material fact and (2) the moving party is entitled to judgment as a matter of law.¹⁴ Staff's Motion meets the standard for partial summary determination because there is no issue of material fact, and Staff is entitled to judgment as a matter of law.¹⁵

13. The key issue in this case is whether CenturyLink has fulfilled its obligations under statute and Commission rule, and if not, what the appropriate sanction is.¹⁶ As discussed below, CenturyLink is obligated under statute and rule to extend its line and provide service to the

¹² *Alpine Lakes Protection Society v. WA Dept. of Nat. Res.*, 102 Wn. App. 1, 13-14, 979 P.2d 929, 935-936 (1999).

¹³ WAC 480-07-380(2)(a).

¹⁴ CR 56; *Bowers v. Pollution Control Hearings Bd.*, 103 Wn. App. 587, 623, 13 P.3d 1076, 1097 (2000).

¹⁵ "Judgment" in this case would consist of the Commission ruling in favor of Staff's arguments and determining that CenturyLink is obligated to serve the consumer and provide a line extension at no charge. Judgment could also include imposition of penalties upon CenturyLink for statutory and rule violations.

¹⁶ Baldwin, Exh. SMB-1T at 6:14-16.

applicant, Mr. Saum. Because CenturyLink failed to provide a line extension and service to Mr. Saum, Staff's Motion should be granted.

B. Mr. Saum Is "Reasonably Entitled" to Service from CenturyLink

14. CenturyLink's obligation to serve is found in RCW 80.36.090, which requires telecommunications companies subject to Commission regulation to provide service to all persons applying for service and who are "reasonably entitled thereto." The statute does not define the phrase "reasonably entitled thereto;" however, the Commission's rules provide context and definition.

15. First, WAC 480-120-071 requires telecommunications companies designated as a wireline ETC to extend service lines up to 1,000 feet at no charge to an applicant requesting service.¹⁷ An applicant is responsible for the cost of the line exceeding the 1,000-foot allowance.¹⁸ WAC 480-120-071 applies to local exchange companies receiving federal high-cost universal service support.¹⁹

16. Second, WAC 480-120-061 defines when a telecommunications company may refuse service. A company may refuse service when (1) the new service will adversely affect existing customers, (2) installation is hazardous, (3) the applicant has not complied with various requirements, (4) the company cannot verify the applicant's identity, (5) the applicant has previously lied to the company, (6) the applicant has not satisfied a debt obligation to the company, or (7) the necessary rights of way, easements, and permits have not been secured.²⁰

¹⁷ WAC 480-120-071(3) and (4)(a).

¹⁸ WAC 480-120-071(4)(b).

¹⁹ WAC 480-120-071(1).

²⁰ WAC 480-120-061(1)(a)-(h).

For example, the Commission has recognized a company's right to refuse an extension of service under RCW 80.36.090 based on an applicant's payment delinquency. The delinquency resulted in the applicant not being reasonably entitled to extension of service.²¹

17. Additionally, the Commission recognizes the special obligations of a designated incumbent in its service territory. The designated incumbent carrier has the burden of being the carrier of last resort, unless it seeks a waiver or is otherwise relieved of the obligation by the Commission. Inland Telephone Company made such a request in Docket UT-050606 when it sought to remove the Suncadia resort from its service territory. Suncadia was located in Inland Telephone Company's Roslyn service territory. The Commission denied Inland Telephone Company's request because the Commission deemed it inappropriate to leave customers without a carrier of last resort. The Commission stated, "[A]s the designated incumbent in the territory, Inland has had an obligation to provide tariffed service within the Roslyn exchange. If its proposal is approved, no carrier will have that obligation and customers will not have the same rights to service that they do with a tariffed incumbent."²²

18. CenturyLink is the incumbent provider for the Vancouver, Washington exchange, and as a result, bears the burden of being the carrier of last resort. Like Inland Telephone Company, CenturyLink's recourse "is to seek the appropriate waivers from the Commission rather than acting unilaterally to deny service to individuals who are reasonably entitled to service."²³

²¹ *Prof'l Bus. Servs., Inc. v. US West Commc'ns*, Docket UT-900162, 1991 WL 11864545 (1991) (see Conclusion of Law No. 3).

²² *WUTC v. Inland Tel. Co.*, Docket UT-050606, Order 09, Final Order Affirming Initial Order; Rejecting Tariff Revision ¶ 37 (Nov. 30, 2006).

²³ Baldwin, Exh. SMB-1T at 3:22-4:2.

19. CenturyLink has not sought waiver of its carrier of last resort obligation. In this case, CenturyLink seems to argue that it should be relieved of its obligation, but that request is beyond the narrow scope of this complaint proceeding. This proceeding evaluates whether CenturyLink violated the statutes and rules as they exist and apply to CenturyLink, not as CenturyLink wishes the policies to be.²⁴

20. There is no dispute that CenturyLink is designated as a wireline ETC for the Vancouver exchange or that Mr. Saum's residence is located in the Vancouver service territory. Similarly, although CenturyLink argues that it does not receive support for the specific census block in which Mr. Saum resides,²⁵ no party disputes that CenturyLink receives federal high-cost universal service support. As a result, the provisions of WAC 480-120-071 require CenturyLink to extend its line and to provide a 1,000-foot allowance. Furthermore, there is no evidence indicating that any of the conditions in WAC 480-120-061 exist that would allow CenturyLink to refuse service to Mr. Saum.²⁶ Thus, CenturyLink violated Commission statute and rule when it failed to provide a line extension and service to Mr. Saum.

C. The Development Exception Does Not Apply to Mr. Saum's Residence

21. CenturyLink points to the exception in WAC 480-120-071 applicable to "developments." A "development" is land divided, or proposed to be divided, for the purpose of disposition into four or more units.²⁷ A "developer" is an owner of a development who offers the land for disposition.²⁸ Under the rule's plain language, Mr. Saum is not a developer who is offering a

²⁴ Baldwin, Exh. SMB-1T at 7:4-6.

²⁵ Response Testimony of Phil E. Grate, Exh. PEG-1T at 18:8-23.

²⁶ Baldwin, Exh. SMB-1T at 10:4-19.

²⁷ WAC 480-120-071(2).

²⁸ *Id.*

development for disposition into four or more units. Rather, Mr. Saum is an individual seeking telephone service to his single residence.

22. Indeed, Mr. Saum fits squarely into the definition of “applicant,”²⁹ which is “any person applying to a telecommunications company for new residential basic local exchange service.”³⁰ As observed by Staff, “Mr. Saum is now in the position of any other line extension applicant.”³¹

23. In adopting WAC 480-120-071, the Commission noted that line extensions are often sought for “comparatively new developments or second homes,” indicating contemplation that companies are obligated to serve applicants who purchase homes built by developers.³² Additionally, the Commission explained that the line extension allowance of 1,000 feet “strikes a reasonable balance between the costs that should be borne by the company and those that should be borne by the customer.”³³ Moreover, the rule establishes a “bright line standard for companies concerning the obligation to construct a line extension.”³⁴ The Commission declined to establish an automatic waiver of the requirement based on the existence of an alternative service provider, stating that the waiver option would detract from the bright line standard and that companies are able to seek waiver without adding the requested language.³⁵

24. The exception for developments and developers applies to something other than individual customers seeking phone service for their residences. Public Counsel believes that the

²⁹ Baldwin, Exh. SMB-1T at 12:13-18.

³⁰ WAC 480-120-071(2). The term “applicants” expressly excludes “developer.”

³¹ Staff Motion ¶ 12.

³² *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551, Order Amending and Adopting Rules Permanently ¶ 21 (Sept. 3, 2008).

³³ General Order R-551 ¶ 23.

³⁴ General Order R-551 ¶ 26-28.

³⁵ *Id.*

exception applies during construction of developments to allow developers to ensure that their projects have broad availability of telecommunication services.³⁶

25. Without the obligation to provide a line extension at no cost, telephone companies like CenturyLink are able to negotiate the cost of providing the infrastructure with the developer and obtain a contribution from the developer.³⁷ If the line extension rule applied to developers and their developments during construction, telephone companies would be unable to negotiate contribution from developers. This scenario simply does not exist for individual consumers, particularly because the Commission has balanced the costs that should be borne by the company and the customer for line extensions.

26. Mr. Saum requested service as an individual consumer for use in his residence. The development exception of WAC 480-120-071 does not apply to Mr. Saum's request for service, and CenturyLink is obligated to provide up to 1,000 feet of line at no charge to the consumer.

D. WAC 480-120-071 Applies across CenturyLink's Service Territory, Not Just In the Geographic Areas In which It Receives Federal High-Cost Universal Service Support

27. Staff's Motion explains well why the obligations under WAC 480-120-071 apply across CenturyLink's service territory and not simply in the geographic areas in which it receives federal high-cost universal service support. In addition to Staff's analysis, the Federal Communications Commission (FCC) order regarding forbearance under Section 214(e) supports a finding that CenturyLink is required to provide line extensions to qualifying applicants throughout its service territory.

³⁶ Baldwin, Exh. SMB-1T at 18:19 – 19:11; Exh. SMB-11T at 14:15-18.

³⁷ Baldwin, Exh. SMB-1T at 18:9 – 19:11.

28. In December 2014, the FCC issued its order in *In the Matter of Connect America Fund*, in which the FCC addressed service obligations of ETCs.³⁸ In particular, the FCC “sought to develop the record further on how relieving incumbent local exchange carriers (LECs) of their ETC obligations would comport with section 214 of the Communications Act and what specific obligations incumbent LECs would be relieved of in areas where they do not receive high-cost support.”³⁹
29. The FCC determined that limited forbearance was appropriate, relieving carriers of certain obligations federally. In particular, the FCC determined that it would forbear from enforcing the requirement that price cap carriers offer voice telephony service in three geographic areas: low-cost census blocks, census blocks served by an unsubsidized competitor, and census blocks served by a subsidized competitor.⁴⁰ Carriers remain federally obligated to provide service, however, unless and until they receive authority under Section 214(a) to discontinue providing service. They also remain federally obligated to provide Lifeline service to qualifying low-income households throughout the service territory.⁴¹
30. States continue to have primary authority for designating ETCs and defining their service areas.⁴² CenturyLink is designated and certified as an ETC in Washington.⁴³ Its exchange areas,

³⁸ *In re: Connect America Fund*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, ¶¶ 50-70 (Dec. 18, 2014) (hereinafter *Connect America Order*).

³⁹ *Connect America Order* ¶ 50.

⁴⁰ *Connect America Order* ¶ 51.

⁴¹ *Id.*

⁴² *Connect America Order* at ¶ 53.

⁴³ Paul, Exh. SP-1T at 4:1-2 (citing Docket UT-170765).

local calling areas, and maps remain in tariff.⁴⁴ The *Connect America Order* does not limit the states' authority to require ILECs to offer voice service throughout their ETC service areas.

31. Indeed, the FCC explicitly preserved state authority.⁴⁵ The FCC noted that its decision “to grant forbearance in these limited circumstances does not disturb existing state carrier of last resort obligations and does not preclude states that do not have carrier of last resort obligations from imposing such obligations.”⁴⁶ As discussed above, CenturyLink bears the carrier of last resort obligation in its service territory as the incumbent service provider. Preserving the state carrier of last resort obligations protects consumers, despite the limited federal forbearance provided under the *Connect America Order*.⁴⁷

32. Further, the FCC declined to require states to re-designate ETCs so that their service areas only included high-cost funded areas.⁴⁸ The FCC's forbearance “does not redefine price cap carriers' service areas or revoke price cap carriers' ETC designations.”⁴⁹ Moreover, the FCC's forbearance “does not preempt price cap carriers' obligation to continue to comply with any state requirements, including carrier of last resort obligations to the extent applicable.”⁵⁰

33. Thus, as Ms. Baldwin testifies, “[W]hile forbearance means that the FCC will not (in specific cases) be enforcing the supplementary obligation imposed by Section 214(e)(A)(1) obligating an ETC that received high cost support to make the supported service universally

⁴⁴ *In re: CenturyLink Companies to be Regulated under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-130477, Order 04, Final Order Approving Settlement Agreements and Establishing Alternative Form of Regulation (hereinafter *AFOR Order*), Appendix A (CenturyLink/Staff/Public Counsel Settlement) (Jan. 9, 2014).

⁴⁵ Baldwin, Exh. No. SMB-11T at 11:11-15.

⁴⁶ *Connect America Order* ¶ 64.

⁴⁷ *Id.*

⁴⁸ *Id.* ¶ 67.

⁴⁹ *Id.*

⁵⁰ *Id.*

available, such forbearance does not eliminate the ETC's service obligations under other applicable state and federal law."⁵¹ In this case, CenturyLink is obligated to comply with RCW 80.36.090 and WAC 480-120-071.

34. Neither RCW 80.36.090 nor WAC 480-120-071 limit their scope to specific geographic locations within a carrier's service territory. Neither the statute nor the rule limit their scope to specific census blocks. Both the statute and the rule apply broadly across a carrier's service territory, unless the Commission otherwise limits the applicability of RCW 80.36.090 or WAC 480-120-071. CenturyLink's current AFOR does not limit the applicability of either provision.⁵²

VI. CONCLUSION

35. Under the facts presented in this case, CenturyLink is required to provide a line extension and phone service to Mr. Saum in the Vancouver, Washington exchange. Because CenturyLink failed to provide a line extension and phone service to Mr. Saum, CenturyLink violated RCW 80.36.090 and WAC 480-120-071.

36. The Commission should hold CenturyLink accountable and grant Staff's Motion. In doing so, the Commission should find that CenturyLink is required to extend service by extending its line up to 1,000 feet at no charge to the consumer. Additionally, the Commission should find that the developments exception in WAC 480-120-071 does not apply to homes, and

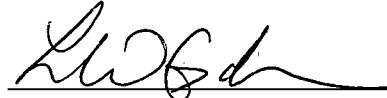
⁵¹ Baldwin, Exh. SMB-11T at 9:10-14.

⁵² *AFOR Order*, Appendix A, Attachment A to CenturyLink/Staff/Public Counsel Settlement (Amended Stipulated Plan for Alternative Form of Regulation).

that the obligation to provide line extensions to qualified applicants exists throughout a telecommunications company's service territory.

DATED this 12th day of July 2018.

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