

**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

ANSWER

I Pursuant to WAC 480-07-370, Qwest Corporation d/b/a CenturyLink QC (CenturyLink) hereby files its answer to the above-captioned Complaint. The presiding Administrative Law Judge granted a continuance for this filing, and this answer is therefore filed on January 9, 2018. The name and contact information of the respondent and the individuals to receive service on behalf of the respondent as required under WAC [480-07-360\(3\)](#) are as follows:

Lisa A. Anderl
Senior Counsel for CenturyLink
1600 – 7th Avenue, Room 1506
Seattle, WA 98191
Lisa.anderl@centurylink.com
206-345-1574

Philip E. Grate
State Regulatory Affairs Director, CenturyLink
1600 – 7th Avenue, Room 1506
Seattle, WA 98191
phil.grate@centurylink.com
206-345-6224

I. INTRODUCTION

- 2 CenturyLink will set forth its admissions or denials, specifically and in detail, of all material allegations of the formal complaint. To the extent that a material allegation is not specifically admitted herein it is denied.

Answering paragraph 2 of the Complaint, CenturyLink admits that this Complaint arises from allegations that it failed to extend service within its service area to a consumer who resides in a subdivision (or development) in Vancouver, Washington. CenturyLink denies that every telecommunications company has an obligation to provide service to all persons within its service area. CenturyLink admits that when a consumer requests new local exchange service, and the telecommunications company does not have facilities at the location, a telecommunications company must comply with the Commission's line extension rule, Washington Administrative Code (WAC) 480-120-071, so long as the consumer is not in a development where the developer or builder previously had a chance to have CenturyLink deploy facilities and refused to do so.

CenturyLink admits that the line extension rule (with the exclusion for developments) requires all local exchange companies receiving federal high-cost universal support to provide extensions of service within their service territories up to 1,000 feet at no cost to the applicant. CenturyLink denies that it receives federal high-cost universal support for the census block in which this development is located. CenturyLink admits that there is an exception in the rule for line extensions to developments. CenturyLink denies that the rule begins to apply anew once the property is occupied. CenturyLink denies that it is obligated to provide an allowance at no cost to the consumer for the extension to his property and denies that it has improperly failed to serve the consumer.

II. BACKGROUND

- 3 Answering paragraph 3 of the Complaint, CenturyLink generally admits that it received a request for service as described in paragraph 3 from Mr. Robert Saum in the Anna Maria Lane subdivision. The subdivision consists of 12 lots. During the development of the subdivision CenturyLink was in contact with the developer and offered the developer the opportunity to have these 12 lots served by CenturyLink. In order to do this, the developer would have been required to enter into a Provisioning Agreement for Housing Developments, or PAHD. In general, PAHDs require the developer to provide open trenches and conduit during the development process – before streets are paved and sidewalks poured. In some cases CenturyLink also asks the developer to contribute to the cost of the deployment of the facilities, depending upon the calculated economic viability of the project. This enables CenturyLink to deploy facilities in a least-cost manner, and to avoid investing in areas where there is no reasonable likelihood of earning a return on that investment. In the Anna Maria Lane subdivision the developer refused the PAHD and CenturyLink did not deploy facilities.
- 4 Answering paragraph 4 of the Complaint, CenturyLink admits that it has a pedestal located across the street from the consumer's property. CenturyLink admits that Comcast is present in the subdivision and is verifying the distances alleged in this paragraph. Until CenturyLink can validate those allegations, they are denied.
- 5 Answering paragraph 5 of the Complaint, CenturyLink admits the allegations contained therein with regard to the timing of the informal complaint and CenturyLink's initial response thereto. CenturyLink further states that the relevance of the consumer's status as a retired employee is that he would be entitled to free telephone service if CenturyLink were able to serve him. If he or the developer would place a path to allow such service, CenturyLink would provide it. However, given that no charges would be assessed for

monthly telephone service, CenturyLink would have no way to ever recover its costs if it were forced to extend facilities at its own cost.

- 6 Answering paragraph 6 of the Complaint, CenturyLink admits that Staff informed CenturyLink that in Staff's view the development exception does not apply here and the Company is in violation of the line extension rule for not allowing an extension of service within its service territory up to one thousand feet at no charge to the applicant. CenturyLink admits that Staff explained that in Staff's view the consumer is not asking for an extension of service to "land which is divided or proposed to be divided," which is the relevant part of the definition of "development" in the line extension rule. CenturyLink admits that it stated that it did not believe the line extension rule applied to this situation because of the exception in the rule regarding developments, and further stated that it would appeal an assessed violation up through the consumer affairs group.
- 7 Answering paragraph 7 of the Complaint, CenturyLink admits that Staff upheld the consumer's complaint and, on April 14, 2017, recorded two violations by CenturyLink of WAC 480-120-071, the line extension rule. Specifically, Staff recorded one violation of WAC 480-120-071(3) for failure to provide the consumer with an application for extension of service within seven business days, and one violation of WAC 480-120-071(4) for failure to allow an extension of service up to 1,000 feet at no charge to the consumer. CenturyLink admits that Staff instructed CenturyLink to provide service to the consumer, but does not admit or agree that such an instruction has the force or effect of a Commission order.
- 8 Answering paragraph 8 of the Complaint CenturyLink admits that it escalated the consumer complaint to the Commission's Assistant Director for Consumer Protection, and admits the balance of the allegations in this paragraph, except that CenturyLink denies that this issue does not involve service to a development. CenturyLink further

admits that consumer affairs Staff instructed CenturyLink on May 8, 2017 to move forward with providing service to this customer under WAC 480-120-071, but denies that the rule applies, or that the instruction to serve has the force or effect of a Commission order.

9 Answering paragraph 9 of the Complaint, CenturyLink admits that it escalated the consumer complaint to the Commission's Director of Safety and Consumer Protection, and that the Director also concluded that the consumer should be upheld. CenturyLink admits that in her letter to the Company, dated June 9, 2017, the Director noted that the rule does not relieve a company from its obligation to serve based on the actions of a developer and, to the extent that the Company believes market changes render the line extension rule unreasonable, the proper action is to file a petition for rule exemption under WAC 480-120-015. CenturyLink denies that the line extension rule imposes an obligation to serve in developments, as the rule contains a clear exception for developments. As such, CenturyLink also denies that it would have been obligated to seek a waiver of a rule that, by its own terms, does not apply to the circumstances presented.

10 Answering paragraph 10 of the Complaint, CenturyLink admits that it has not filed a petition for an exemption from the requirements of extending service to this consumer under WAC 480-120-071, and denies that such a petition is necessary when the rule does not apply in this case.

11 Answering paragraph 11 of the Complaint, CenturyLink admits that Staff opened an investigation into CenturyLink's refusal to extend service to the Vancouver consumer. CenturyLink admits that Staff requested information from CenturyLink on requests for service that the company has denied based on lack of facilities. CenturyLink responded July 25, 2017, that it does not retain records of service denials of this nature in a

searchable database and that it is possible that other customers have contacted CenturyLink asking for service and have been told that service is not available in a development where the developer has refused to enter into a PAHD. This is because under the terms of the line extension rule, CenturyLink is not obligated to serve in such a development, and as such is not obligated to maintain records of any such instances.

- 12 Answering paragraph 12 of the Complaint, CenturyLink admits that on October 9, 2017, Staff asked CenturyLink if it had included consumer complaints in its response to the June 21, 2017 data request. CenturyLink responded on October 12, 2017 that it had not considered consumer complaints in its response. The Company reviewed its complaint database, stating in its response that its database goes back only to the beginning of 2016. The Company located one complaint that would have been responsive but had been opened after Staff propounded the data request.

III. PARTIES

- 13 Answering paragraph 13 of the Complaint, CenturyLink admits that the Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including telecommunications companies, under Revised Code of Washington (RCW) Title 80. CenturyLink further states that the Commission has waived a number of the regulatory requirements of CenturyLink under its Alternative Form of Regulation (AFOR), including rate regulation under RCW Title 80.

- 14 Answering paragraph 14 of the Complaint, CenturyLink admits that it is a telecommunications company providing service in the state of Washington and is a wholly owned subsidiary of CenturyLink, Inc. CenturyLink admits that it is a local exchange company certified in Washington as a wireline Eligible Telecommunications Carrier (ETC) that receives federal high-cost universal service

support, but denies that it receives such support in the census block in which the Anna Maria Lane subdivision is located.

IV. JURISDICTION

15 Answering paragraph 15 of the Complaint, CenturyLink states that the cited statutes and rules speak for themselves, and that this paragraph sets forth legal conclusions and questions of law to which no response is required.

16 Answering paragraph 16 of the Complaint, CenturyLink states that this paragraph sets forth legal conclusions and questions of law to which no response is required.

V. APPLICABLE LAW

17 Answering paragraph 17 of the Complaint, CenturyLink denies that this paragraph correctly characterizes RCW 80.36.090. The statute reads in relevant part that “[e]very 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.” This statute was enacted in 1911.

18 Answering paragraph 18 of the Complaint, CenturyLink admits that local exchange companies receiving federal high-cost universal service support are subject to the Commission’s line extension rule, WAC 480-120-071.

a. CenturyLink denies that it receives such support for the census block in which the Anna Maria Lane subdivision is located, and therefore denies that the rule applies.

b. CenturyLink denies that WAC 480-120-071(3) requires a wireline ETC to provide the applicant with an application for extension of service when the

applicant is in a development where the developer has refused or not sought placement of CenturyLink facilities during the development phase.

- c. CenturyLink denies that WAC 480-120-071(4) obligates a company to allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant under the circumstances presented in (a) and (b) above.

19 Answering paragraph 19 of the Complaint, CenturyLink admits that WAC 480-120-071(2) does not apply to an extension of service to “developments.” CenturyLink further admits that a development is 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,” that an “applicant” is defined as “any person applying to a telecommunications company for new residential basic local exchange service,” and that the definition specifically excludes “developers requesting service for developments.”

20 Answering paragraph 20 of the Complaint, CenturyLink admits that the Commission requires telecommunications companies to retain certain records .

- a. CenturyLink admits that under WAC 480-120-166, each company must keep a record of all Commission-referred complaints concerning service or rates for at least two years and, on request, make them readily available for Commission review. CenturyLink specifically denies that this rule requires it to retain records of inquiries regarding service where the line extension rule does not apply, and where the applicant has not complained to the Commission.
- b. CenturyLink admits that companies must also retain records under WAC 480-120-349 as well, but denies that this rule applies in this case, as it is limited to financial records and reporting requirements.

21 Answering paragraph 21 of the Complaint CenturyLink states that this paragraph sets forth legal conclusions and questions of law to which no response is required. CenturyLink denies that any penalties are warranted or applicable in this case.

VI. CLAIMS AND CAUSES OF ACTION

A. FIRST CAUSE OF ACTION (RCW 80.36.090, obligation to serve)

22 Answering paragraph 22 of the Complaint, CenturyLink restates its admissions and denials in paragraphs 2 through 21 above.

23 Answering paragraph 23 of the Complaint, CenturyLink admits that RCW 80.36.090 requires telecommunications companies subject to Commission regulation to “furnish to all persons [] who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.” CenturyLink denies that the applicant in this case was reasonably entitled to service.

24 Answering paragraph 24 of the Complaint, CenturyLink denies that it violated RCW 80.36.090 for the reasons stated previously herein. Specifically, the applicant requested service to a development, consisting of a subdivision of 12 lots and/or homes. The line extension rule, which implements RCW 80.36.090, exempts a development from the obligation to extend service. The rule cannot mean that individual applicants can circumvent the “developer” exception and force CenturyLink to extend service at no cost when the developer previously refused CenturyLink the opportunity to do so with a reasonable chance to earn a return on the investment. Further, the line extension rule only applies when a carrier receives federal high cost support, which CenturyLink does not for this census block. CenturyLink is to be treated as a competitively classified company under its AFOR, and a competitive company may choose where to serve –

forcing a carrier to enter a market already served by a competitor is the antithesis of free competition. Finally, the applicant in this case has the option to obtain either landline service or wireless service from competitive companies, and the Commission has previously determined that such services offer a reasonable comparable competitive alternative to CenturyLink's landline service. As such, he is not reasonably entitled to service from another provider.

**B. SECOND CAUSE OF ACTION
(480-120-071(3), provision of application for extension of service)**

- 25 Answering paragraph 25 of the Complaint, CenturyLink restates its admissions and denials contained in paragraphs 2 through 24 above.
- 26 Answering paragraph 26 of the Complaint, CenturyLink admits that if WAC 480-120-071(3) applies, it requires each wireline ETC to provide the applicant with an application for extension of service within seven business days of the initial request. CenturyLink specifically denies that the rule applies in this case.
- 27 Answering paragraph 27 of the Complaint, CenturyLink denies that it violated WAC 480-120-071(3) because, for the reasons stated previously, the rule does not apply.

**C. THIRD CAUSE OF ACTION
(WAC 480-120-071(4), allowance of extension of service up to 1,000 feet)**

- 28 Answering paragraph 28 of the Complaint, CenturyLink restates its admissions and denials contained in paragraphs 2 through 27 above.
- 29 Answering paragraph 29 of the Complaint, CenturyLink admits that if WAC 480-120-071(4) applies, it requires an ETC to allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. CenturyLink specifically denies that the rule applies in this case.

30 Answering paragraph 30 of the Complaint, CenturyLink denies that it violated WAC 480-120-071(4) because, for reasons stated previously, the rule does not apply in this case.

**D. FOURTH CAUSE OF ACTION
(WAC 480-120-166, retention of Commission-referred complaints)**

31 Answering paragraph 31 of the Complaint, CenturyLink restates its admissions and denials contained in paragraphs 2 through 30 above.

32 Answering paragraph 32 of the Complaint, CenturyLink admits that WAC 480-120-166 requires telecommunications companies subject to Commission regulation to keep a record of all Commission-referred complaints concerning service or rates for at least two years and, on request, make them readily available for Commission review.

33 Answering paragraph 33 of the Complaint, CenturyLink states that it complies with this rule and retains records of Commission-referred complaints for at least two years. Staff did not ask for information specifically on Commission-referred complaints, which would have been searchable for the relevant period of time by either customer name, customer telephone number, or service address. When CenturyLink stated that it kept complaint records going back only to “early January of 2016” CenturyLink was referring to a searchable database of both internal and Commission-referred complaints, and where the search parameters are categorized by the type of issue complained of as opposed to specific customer-identifying information such as phone number, name, or address. CenturyLink did not violate WAC 480-120-166 because it retains records for Commission-referred complaints about rates and service for at least two years.

E. FIFTH CAUSE OF ACTION
(WAC 480-120-349, retaining and preserving records)

- 34 Answering paragraph 34 of the Complaint, CenturyLink restates its admissions and denials in paragraphs 2 through 33 above.
- 35 Answering paragraph 35 of the Complaint, CenturyLink denies that WAC 480-120-349 applies in this case to impose a three year record-retention obligation. The rule requires telecommunications companies to keep all “financial” records and reports required by the Commission’s telecommunications rules or commission order for three years, not “all” records generally.
- 36 Answering paragraph 36 of the Complaint, CenturyLink denies that it violated WAC 480-120-349 because it does not apply in this case. CenturyLink further denies violation of this rule, even if applicable, because Staff has not alleged any facts showing a record or report that was not properly retained.

VII. REQUEST FOR RELIEF

- 37 Answering paragraph 37 of the Complaint , CenturyLink denies that any of the requests for relief are warranted. CenturyLink requests that the Commission dismiss or deny the Complaint and find that CenturyLink did not violate any statutes or rules.
- a.* There should be no finding of violations of RCW 80.36.090, because that statute only requires service to be furnished to applicants who are “reasonably entitled” to service, and under the facts of this case the applicant is not reasonably entitled to service when he resides in a development where the builder did not enter into an agreement to allow CenturyLink to deploy facilities and where another provider or providers are available to provide service.

- b.* There should also be no finding of violations of WAC 480-120-071, the line extension rule. The rule only applies when a carrier receives federal high cost support, which CenturyLink does not in the census block where this subdivision is located. Further, the FCC has specifically relieved CenturyLink of its ETC obligations in this census block. The line extension rule specifically states that the rule does not apply to service in developments. Service in a development is requested when land has or will be subdivided into four or more parcels. There is no dispute that the Anna Marie Lane subdivision is a development of land that has been subdivided into four or more parcels – there are 12 parcels in the development. That the service is now requested by a resident of one parcel as opposed to the developer is irrelevant – once CenturyLink has been denied the opportunity to serve a development in a cost effective manner the development is not entitled to service. Any other reading of the rule would essentially negate the “development” exception by allowing a developer to refuse the PAHD and then allowing the individual residents of the development to combine their 1,000 foot allowances to circumvent the rule. In the circumstances described not only would CenturyLink not receive the “development” exception, it would effectively be denied an opportunity to recover its deployment costs and worse, would be forced to deploy in the most expensive possible scenario – one in which streets, sidewalks and yards would be impacted.
- c.* There should be no finding of a violation of WAC 480-120-349, the records retention rule, for the reasons set forth above.
- d.* There should be no finding of a violation of WAC 480-120-166, the complaint retention rule, for the reasons set forth above.

- 38 Answering paragraph 38 of the Complaint, CenturyLink denies that monetary penalties are in any way supported by this Complaint.
- 39 Answering paragraph 39 of the Complaint, CenturyLink states that the Commission does not need to order CenturyLink to retain records of all requests for new service within the Company's service territory for three years, as there is no rule that requires this type of record retention. CenturyLink complies with WAC 480-120-349(1) and WAC 480-120-166 under its current practices.
- 40 Answering paragraph 40 of the Complaint, CenturyLink states that there is no other or further relief appropriate under the circumstances, except to issue an order directing Staff to apply the line extension rule so as to give effect to the exception for developments as described herein, and to enforce it only where a carrier receives federal high cost support.

VIII. CONCLUSION

- 41 In sum, CenturyLink believes that the complaint is not well-founded and that no relief is appropriate. Ordering CenturyLink to overbuild in a development that is already served by a competitor, where the developer refused to contribute to allow an economic investment opportunity, and where CenturyLink would have no opportunity to recover its costs, would be inconsistent with the reality of the competitive market, inconsistent with the line extension rule and state law, and contrary to good public policy.

Respectfully submitted this 9th day of January, 2018.

CENTURYLINK

/s/ Lisa A. Anderl

Lisa A. Anderl (WSBA # 13236)
Senior Associate General Counsel
1600 – 7th Ave., Room 1506
Seattle, WA 98191
206-345-1574
lisa.anderl@centurylink.com