

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of

QWEST COMMUNICATIONS
INTERNATIONAL INC. AND
CENTURYTEL, INC.

For Approval of Indirect Transfer of Control
of Qwest Corporation, Qwest
Communications Company LLC, and Qwest
LD Corp.

DOCKET UT-100820

COMMISSION STAFF'S
RESPONSE TO CENTURYLINK'S
PETITION TO RELEASE
ESCROWED FUNDS AND
ELIMINATE FUTURE ESCROW
PAYMENTS

1 Staff of the Washington Utilities and Transportation Commission (Staff) submits this response to CenturyLink's Petition for Release of Funds from Broadband Escrow Account and Elimination of Requirements for Future Escrow Payments (Escrow Petition). Staff generally supports granting the Escrow Petition for the reasons discussed below.

2 Staff has completed its detailed review of the broadband investment listed in CenturyLink's 2011 Annual Report of Broadband Deployment Progress (2011 Annual Report), attached to its Condition No. 14 compliance filing of March 30, 2012. The review process that Staff employed is similar to the process Staff has developed and used for escrow reimbursement in the Verizon/Frontier merger proceeding.¹ Staff's review of CenturyLink's investment documentation indicates that CenturyLink's broadband

¹ Docket UT-090842, *Joint Application of Verizon Communications Inc. and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.* See Order 07, Order Delegating authority to Executive Secretary to Review and Approve Petitions for Reimbursement of Escrow Funds (May 6, 2011). Note that in the instant proceeding Staff has been invited to file a response in the docket as an independent party rather than provide its analysis directly to the Executive Secretary.

investments comply with Order 14. Accordingly, Staff supports releasing to CenturyLink the \$30 million held in escrow.

3 Staff also supports suspending future payments into the broadband escrow account. CenturyLink already has documented in its 2011 Annual Report investment of over one third of the amount it committed to spend on broadband deployment in Washington. Furthermore, CenturyLink represents in its report that it has invested nearly another one third of the total. In addition, the 2011 Annual Report contains documentation that CenturyLink has fulfilled more than half of its commitment to target 33 percent of the investment to unserved and underserved living units. Finally, Staff, Public Counsel, and CenturyLink have resolved their disagreements relating to the “180-day plan.”²

4 The three parties elected to focus on CenturyLink’s 2012 broadband plan in lieu of revising the outdated 180-day plan. After consultation and negotiation with Staff and Public Counsel, CenturyLink agreed to supplement its broadband investment plan for 2012.³ The modified plan includes a hard commitment by CenturyLink to expand broadband penetration in certain rural areas with above-median population density, which otherwise would not have benefitted at this time from CenturyLink’s broadband investment.

5 Given the documentation so far of the \$30 million investment, including over \$18 million spent toward the 33 percent commitment, the representation of significant further investment already undertaken, and the hard commitment to invest in targeted wire centers

² Under Condition 14 of the settlement that Staff and Public Counsel entered into with CenturyLink, which the Commission adopted in Order 14, CenturyLink was obligated to file a “confidential filing identifying the initial wire centers targeted under the [broadband] commitment,” and CenturyLink committed to meet with Staff and Public Counsel to review the filing. CenturyLink timely filed the “180-day plan,” but a meeting with the Company, Staff and Public Counsel never took place. CenturyLink recognized this in its letter to the Commission, dated October 4, 2011, stating, “CenturyLink will discuss the report with Staff and Public Counsel, and commits to refile that report to the extent that there are any changes as a result of those discussions.” Meaningful discussions have now occurred.

³ CenturyLink filed this supplement July 11, 2012.

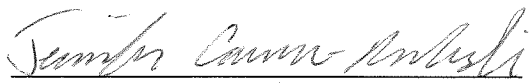
this year, CenturyLink appears to be well on its way to appropriately fulfilling its \$80 million investment commitment in Washington. Staff did not negotiate an escrow agreement with CenturyLink because the merging companies had an established record of meeting their commitments in the past. The investment to date represents significant good faith progress and, based on this performance, Staff perceives even less risk at this point that CenturyLink will fail to meet its commitment in this state.⁴

6 As CenturyLink continues to deploy broadband and to file annual reports on these investments, Staff will continue to review CenturyLink's documentation of its broadband investment and scrutinize data underlying those reports. Staff believes that CenturyLink will meet its commitment. As a precaution, however, Staff proposes that the Commission suspend, rather than eliminate, the escrow requirements, conditioned on CenturyLink's ongoing fulfillment of the broadband commitments adopted in Order 14. If CenturyLink were to fall out of compliance with its broadband commitments in the future, the escrow requirement would be reinstated.

DATED this 12th day of July, 2012.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General


JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

⁴ In Order 14, the Commission required CenturyLink to deposit the \$80 million into an escrow account in installments in part to "ensure that the entire Washington broadband commitment will be met and met wisely" as well as to "ensure that the combined company will not be distracted by similar commitments it has made in other states." Order 14, at p. 123, ¶ 248. From Staff's perspective, CenturyLink appears to be spending the broadband funds appropriately and making good-faith progress toward reaching the \$80 million minimum investment target.