

**BEFORE THE WASHINGTON STATE 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 NO. UT-100820

CENTURYLINK'S SURREPLY TO
PUBLIC COUNSEL REGARDING
BROADBAND ESCROW ISSUES

I. INTRODUCTION

- 1 Pursuant to the Commission's July 13, 2012 Notice, CenturyLink hereby provides the following surreply to Public Counsel's July 17 Supplemental Response regarding the release of escrow funds and the elimination of the escrow requirement.
- 2 Public Counsel opposes a full disbursement of the \$30 million escrow at this time, and recommends that only a small amount of the fund should be disbursed, even though Public Counsel does not take issue with the fact that CenturyLink has already spent \$57 million on broadband deployment, and over \$18 million on unserved and underserved areas. Public Counsel's position and rationale on this argument is based on an unsupported and unsupportable interpretation of the Settlement Agreement, and should be rejected.
- 3 Public Counsel does not object to suspension of future payments into the escrow account, but asks the Commission to retain the account as described above, and to require CenturyLink to continue to file requests for future disbursements. Given that CenturyLink has made

substantial progress toward meeting its commitments in the Settlement Agreement, and given that there is no support for Public Counsel’s claim that CenturyLink has not invested appropriately in unserved and underserved areas, CenturyLink respectfully asks the Commission to reject Public Counsel’s arguments.

II. ARGUMENT

4 Public Counsel’s post hoc analysis and interpretation of the Settlement Agreement is flawed and unreasonable. Further, it is inconsistent with the clear terms of the agreement, and is also inconsistent with testimony given during the hearings.

A. The Settlement Agreement and Testimony Support CenturyLink and Staff’s Position.

5 The Settlement Agreement itself is clear – Condition 14 requires CenturyLink to invest \$80 million in broadband in Washington during the period 2011-2015; it requires that one-third of the commitment be expended in unserved or underserved areas, as those areas are defined in the Agreement; it requires deployment in five named central offices; and, it requires that CenturyLink *evaluate* the unserved and underserved areas, with an emphasis on those wire centers with 85% or less broadband availability, to see if the combined networks overcome the existing challenges in the provision of broadband service.

6 With regard to the commitment of \$80 million, Public Counsel does not argue with CenturyLink’s evidence that it has spent roughly \$57 million toward fulfillment of this commitment. In fact, Public Counsel does not dispute that CenturyLink spent more than \$18 million to enable service to unserved areas and to upgrade speeds in underserved areas. CenturyLink and Public Counsel also agree that the commitment to unserved and underserved areas is \$26.67 million. No party has taken issue with the deployment to the five named wire centers, all of which are planned or completed. Finally, the information in this docket

unequivocally shows that CenturyLink evaluated all of its wire centers – those at 85% availability, those at less than 85% availability, and those at greater than 85% availability, in determining where to deploy its broadband investment. There are no other obligations imposed by the Settlement Agreement.

7 Given this, Public Counsel has absolutely no basis upon which to oppose full release of the escrowed funds. But Public Counsel does oppose that release, on the basis of a fictional condition that it now reads into the Settlement Agreement which would allow CenturyLink to spend the \$26.67 million *only* in wire centers with less than 85% availability.¹ However, that is not the requirement in the agreement, nor is it one that CenturyLink ever would have agreed to. It was never the expressed or implied intent of the Agreement.

8 The Agreement requires only that CenturyLink evaluate its wire centers, with an emphasis on the less than 85%. CenturyLink did that.² The Agreement does not mandate deployment in any particular wire centers other than the five that are named. This is clear from the plain language of the agreement, and from the testimony in the hearings. Ms. Johnson for Public Counsel was asked by Commission Oshie “So, other than Clearwater, Glenwood, Willard, Nespelem and Eureka, we wouldn’t know as the Bench where the money is going to be spent?”

¹ Public Counsel’s Supplemental Filing asserts that the \$18 million “does not reflect an adequate emphasis” on the lower availability wire centers, and that a large portion of that investment “should not qualify. . . . because it was spent in areas with very high broadband availability.” ¶ 7. Needless to say, CenturyLink does not endorse that new interpretation of the Agreement, nor is it supported by the record, as discussed below. Further, Public Counsel does not assert that the \$18 million was not spent in areas that meet the definition of unserved and underserved, which are based only on location and speeds.

² CenturyLink not only evaluated all of its wire centers at the time it prepared and filed its 180-day plan in 2011, it evaluated all of its wire centers again this year prior to filing its 2012 Broadband Plan. Further, at the request of Staff and Public Counsel, CenturyLink evaluated a subset of 25 wire centers again this year, all of which were at or less than 85% broadband availability. In the hope that it could reach an agreement with the parties on this issue, CenturyLink agreed to modify its 2012 plan and make a firm commitment to deploy to a significant number of additional living units in 18 of those wire centers. Of the remaining seven wire centers, all received investment in 2011, and two of them also benefit from the proceeds from the sale of the Bell Plaza Building.

Ms. Johnson responded “No, not that I know of.”³ In addition, the record cites provided in Public Counsel’s footnote 12 do not support the proposition that a specific commitment was made to serve or invest in a particular set of wire centers – those portions of the record merely reflect the actual commitment that the planning process would “look at the wire centers with lower deployment numbers.”⁴

B. The “High Cost” Provision in the Agreement Does Not Support Public Counsel’s Position

9 Public Counsel next argues that the deployment must have been targeted to low availability wire centers, or there would have been no need for the provision allowing CenturyLink to petition for an exemption to the one-third investment if it is cost prohibitive.⁵ This argument is incorrect.

10 At least one reason for the high cost provision was the fact that, as previously discussed, there was no specific commitment to any geographic area other than the five named wire centers. As such, this provision was important to CenturyLink because it was impossible to know in 2010 exactly where deployment would take place, and whether some portion of that one-third investment might be cost prohibitive. The high cost provision says nothing at all about where the investment would actually take place.

C. Highly Confidential Attachment B is Flawed

11 Public Counsel argues that the calculation in Highly Confidential Attachment B illustrates how CenturyLink’s investment should be counted for purposes of determining whether the

³ Tr. 304:8-11.

⁴ Tr. 303:18-19.

⁵ Public Counsel Supplemental Filing, ¶ 9.

one-third commitment is met, and for purposes of releasing funds from escrow. However, Public Counsel's analysis is incorrect in several respects.

- 12 First, Public Counsel argues that CenturyLink spent only a small percentage of the \$57 million in wire centers with less than 85% availability, and that only that amount should be counted. Public Counsel's percentage calculations mean nothing, because they assume that all wire centers are equal, which they are not. Many wire centers with low availability are small. Thus, the corresponding investment might also be small. This does not mean that those are the only investments that benefitted unserved and underserved customers, as defined in the Settlement Agreement, because those customers exist in virtually every wire center.
- 13 Furthermore, Public Counsel's analysis suggests that customers who are unserved in a 90% wire center are less deserving of broadband enablement than customers in a 70% wire center. This is also incorrect – an unserved customer is an unserved customer – it does not make a difference to the customer whether the serving wire center has high or low deployment – those unserved customers remain unserved, and Public Counsel's analysis would create a great disincentive to serve them by disallowing that investment from fulfillment of the one-third commitment. This argument applies with equal force to underserved customers.
- 14 Finally, even if it were appropriate to perform the types of calculations that Public Counsel performed, a more accurate analysis would have to look at the investment in low availability wire centers compared with the total investment on a per living unit basis. Highly Confidential Attachment A shows that in wire centers with less than 85% availability, those subscribers received a very significant overall investment in 2011. Many of them saw significant additional new deployment as well as increases in speeds. Indeed, the attachment shows that based on the number of living units in those wire centers as a percentage of total living units, the percent of the investment exceeded the share they might have expected if

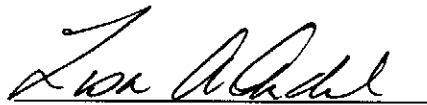
investment had been allocated in accordance with the number of living units.

15 Because Public Counsel has not supported its request to retain part of the \$30 million in escrow, there is no need to condition any future escrow payments on the recommendations in Public Counsel's Highly Confidential Attachment B.

16 Therefore, for the reasons stated in CenturyLink's original filing, Staff's filing, and this Surreply, as well as based on the information in CenturyLink's 2011 Broadband investment filing, CenturyLink asks the Commission to release the \$30 million escrow, and to suspend future escrow payments, conditioned on CenturyLink's continued compliance with the Merger Settlement Agreement and Order.

17 Respectfully submitted this 19th day of July, 2012.

CENTURYLINK



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