

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	ORDER 19
INTERNATIONAL INC. AND)	
CENTURYTEL, INC.)	FINAL ORDER GRANTING IN
)	PART AND DENYING IN PART
For Approval of Indirect Transfer of)	CENTURYLINK’S PETITION TO
Control of Qwest Corporation, Qwest)	RELEASE ESCROWED FUNDS AND
Communications Company LLC, and)	ELIMINATE FUTURE ESCROW
Qwest LD Corp.)	PAYMENTS
.....)	

1 **PROCEEDING.** On March 30, 2012, CenturyLink, Inc. (CenturyLink or the Company) filed a Petition for Release of Funds from Broadband Escrow Account and Elimination of Requirements for Future Escrow Payments (Escrow Petition).¹ Specifically, CenturyLink seeks reimbursement of the \$30 million the Company has deposited into the escrow account as well as elimination of our requirement to make future deposits into the account.

2 **BACKGROUND.** On May 13, 2010, Qwest Communications International, Inc. (Qwest) and CenturyLink filed a joint application with the Washington Utilities and Transportation Commission (Commission) for expedited approval of the indirect transfer of control of Qwest’s operating subsidiaries, Qwest Corporation, Qwest LD Corp., and Qwest Communications Company LLC to CenturyLink.

3 On March 14, 2011, the Commission entered Order 14, approving the acquisition of Qwest by CenturyLink, subject to several conditions, one of which required CenturyLink to separate its \$80 million broadband deployment funding commitment from general corporate funds and place those monies in an irrevocable escrow

¹ CenturyLink’s Escrow Petition, ¶ 2. The Commission initially intended to treat CenturyLink’s request for reimbursement as a compliance filing in keeping with the general procedure established in Docket UT-090842, the Verizon/Frontier merger. The Public Counsel Section of the Washington State Attorney General’s Office (Public Counsel) has since questioned the adequacy of CenturyLink’s compliance with the escrow requirement. We address that argument below.

account over a three year period.² The Commission directed CenturyLink to deposit the first installment of \$30 million into the escrow account within 30 days after the transaction's close.³ The next two payments into the escrow account, in the amount of \$25 million each, would be due on the anniversary of the transaction's close in 2012 and 2013, respectively.⁴ The Commission authorized CenturyLink to petition quarterly for reimbursement of monies from the escrow account.⁵

4 In compliance with Order 14, the Company deposited its first escrow installment of \$30 million on June 16, 2011.⁶ Due to CenturyLink's instant Escrow Petition, the Commission suspended the second escrow deposit requirement pending review and determination of the Company's request.⁷

5 **PETITION FOR RELEASE OF FUNDS AND ELIMINATION OF ESCROW REQUIREMENT.** CenturyLink's Escrow Petition seeks two forms of relief: (1) reimbursement of \$30 million in broadband expenditures from the escrow account and (2) elimination of the remaining payments of the escrow requirement adopted by the Commission in Order 14. CenturyLink contends, and the Commission's regulatory staff (Staff)⁸ agrees, it has made substantial progress in meeting its merger-

² Order 14 – Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (Order 14), ¶ 249.

³ *Id.*

⁴ *Id.*

⁵ *Id.* ¶ 250.

⁶ Letter from Mark Reynolds, Director, Western Region Regulatory Affairs, CenturyLink, to David Danner, Executive Director, Washington Utilities and Transportation Commission, dated June 28, 2011. While the first installment was originally due by May 2, 2011, the Commission extended this deadline twice to June 16, 2011.

⁷ Order 18, *Order Granting Staff's Motion for Second Extension of Time to Respond to CenturyLink's Petition to Release Escrowed Funds and Eliminate Future Escrow Payments*, ¶ 8 (May 7, 2012).

⁸ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. RCW 34.05.455.

related broadband deployment commitments in Washington.⁹ The Company explains it has expended more than \$57 million on expansion of fiber-based high speed Internet services in 2011, which exceeds the amount CenturyLink was required to deposit into the escrow account in 2011 and 2012.¹⁰ Public Counsel disagrees, arguing that the Company's investments have not met its broadband deployment commitments from the Staff/Public Counsel Settlement Agreement.

I. Disbursement of escrow funds

6 As noted above, CenturyLink deposited its first escrow installment of \$30 million on June 16, 2011. Pursuant to its Escrow Petition, the Company requests disbursement of the entire escrow account balance based on the approximately \$57 million of broadband investment it has made since the Washington broadband investment requirements became effective. CenturyLink invested the funds in 187 of its 227 wire centers in Washington for "remote terminal expansion and upgrades, as well as feeder infrastructure, supporting transport and switching."¹¹ Simultaneous with its Escrow Petition, CenturyLink submitted its first annual report on broadband deployment progress (2011 Broadband Investment Report). Commitment 14 of the Staff/Public Counsel Settlement Agreement required the Company submit an annual broadband deployment report on the anniversary date of the transaction's closing detailing its progress towards the broadband investment requirements approved by the Commission in Order 14.¹² The 2011 Broadband Investment Report provided a look back at the actual broadband investments made by the Company during 2011 as well as a look forward at the progress it intends to make towards its broadband merger commitments in 2012.¹³

⁹ CenturyLink's Escrow Petition, ¶ 2.

¹⁰ *Id.* ¶ 8. As noted above, CenturyLink was required to deposit \$30 million in 2011, \$25 million in 2012, and \$25 million in 2013, in fulfillment of its agreement to invest at least \$80 million in broadband across the state over the five year period following completion of the merger.

¹¹ *Id.*

¹² The \$80 million broadband investment requirement originated from the Staff/Public Counsel Settlement Agreement.

¹³ See 2011 Broadband Investment Report (Highly Confidential).

7 On April 13, 2012, Public Counsel responded to CenturyLink’s Escrow Petition opposing the Company’s request. Public Counsel states that the Commission’s “reasons for imposing the escrow requirement have not been mitigated and still exist.”¹⁴ Public Counsel argues that the CenturyLink’s 180-Day Broadband Deployment Plan (180-Day Plan), which was intended to identify the initial wire centers to be targeted under the Company’s Washington broadband commitments including specifically those areas¹⁵ that qualify as unserved¹⁶ and underserved,¹⁷ has not been fully vetted and therefore, no parameters exist by which to evaluate CenturyLink’s actual broadband investment against the plan.¹⁸

8 On July 11, 2012, after a series of meetings with Staff and Public Counsel, the Company filed a supplement to its 2011 Broadband Investment Report that reflected hard commitments to expand broadband penetration in certain rural areas which were not previously targeted by the Company. On July 12, 2012, Staff indicated that it had completed review of CenturyLink’s 2011 Broadband Investment Report, which was similar to the review it employs for escrow reimbursement petitions arising from the Verizon/Frontier merger.¹⁹ Staff states that all of CenturyLink’s broadband investment covered by its Escrow Petition complies with the broadband deployment

¹⁴ Public Counsel’s Response, ¶ 4 (Highly Confidential).

¹⁵ “Areas” is defined in the Staff/Public Counsel Settlement Agreement as one or more living units.

¹⁶ “Unserved,” as defined in the Staff/Public Counsel Settlement Agreement, means either an area with no wireline broadband service from any carrier or no wireline service available from Qwest/CenturyLink.

¹⁷ “Underserved,” as defined in the Staff/Public Counsel Settlement Agreement, indicates an area with wireline broadband service but only at download speeds of 4 Mbps and upload speeds of 1 Mbps or less.

¹⁸ *Id.*, ¶ 8. The Staff/Public Counsel Settlement Agreement required CenturyLink to submit a broadband deployment plan no more than 180 days after closing of the merger. See Commitment 14. Although CenturyLink filed its 180-Day Plan on September 28, 2011, thereby meeting the broadband deployment plan commitment, Public Counsel states that the three parties have not been able to agree on the appropriate deployment parameters of the 180-Day Plan.

¹⁹ Staff’s Response, ¶ 2.

requirements in the Staff/Public Counsel Settlement Agreement and Order 14 and recommends that the Commission authorize disbursement.²⁰

- 9 Public Counsel subsequently filed a reply to Staff's response on July 17, 2012, stating that CenturyLink, Staff, and Public Counsel attempted to move past the discord surrounding the 180-Day Plan by focusing on the merits of the Company's modifications to its 2011 Broadband Investment Report.²¹ However, despite the Company's modifications to its 2011 Broadband Investment Report, Public Counsel recommends that the Commission only allow recovery of broadband expenditures made to deploy or increase speed in areas with beginning broadband availability of 85 percent or less.²² According to Public Counsel, this approach would "preserve the intent of the unserved/underserved commitment" within the Staff/Public Counsel Settlement Agreement that requires that at least 33 percent of the total \$80 million be deployed in such areas.²³ Public Counsel specifically points to the Staff/Public Counsel Settlement Agreement language mandating that:

as part of its initial broadband evaluation [in the 180-Day Plan] CenturyLink will evaluate each of the unserved and underserved areas, with an emphasis on those Qwest and CenturyLink ILEC wire centers with 85% broadband availability or less, to determine if the combined networks overcome the existing challenges in provision of broadband services.²⁴

- 10 Public Counsel posits a rigid interpretation of the settlement language that would require the Company to spend all of the broadband investment monies dedicated to unserved/underserved areas only in wire centers with 85 percent or less broadband availability.²⁵ Pointing to the high cost exemption of the Staff/Public Counsel

²⁰ *Id.*

²¹ Staff's Response, ¶ 3 and Public Counsel's Supplemental Response, ¶ 15 (Highly Confidential).

²² Public Counsel's Supplemental Response, ¶¶ 8 and 11 (Highly Confidential).

²³ *Id.*, ¶ 11 (Highly Confidential).

²⁴ Appendix A to Staff/Public Counsel Settlement Agreement, Commitment 14.

²⁵ Public Counsel's Supplemental Response, ¶¶ 7 and 8 (Highly Confidential).

Settlement Agreement that CenturyLink could avail itself of if spending in unserved/underserved areas proves too costly,²⁶ Public Counsel claims that the “out” this provision allows would have been unnecessary if the broadband investment was not intended to be made in areas with lower beginning deployment.²⁷

- 11 Looking at the beginning broadband availability in wire centers where CenturyLink’s \$57 million broadband investment was deployed in 2011, Public Counsel contends that a significantly smaller amount went to wire centers where there was 85 percent or less availability.²⁸ According to Public Counsel, this leaves much of the 33 percent remaining that CenturyLink should be required to spend in these areas.²⁹ In addition, Public Counsel notes that CenturyLink deposited \$30 million into an escrow account, an amount that is slightly higher than the portion of the \$80 million broadband investment that is associated with its unserved/underserved broadband commitment in the Staff/Public Counsel Settlement Agreement.³⁰ The difference, Public Counsel maintains, could be refunded to CenturyLink as fulfillment of its non-specific deployment commitment (i.e., the amount which was not required to be spent in unserved/underserved areas).
- 12 In total, Public Counsel recommends that the Commission grant CenturyLink’s request for disbursement, limited to these two sums. Public Counsel suggests that the remainder of the \$30 million escrow deposit be held for future reimbursement. This

²⁶ “CenturyLink may invest less than thirty-three (33%) of the total amount in unserved or underserved areas with Commission approval, after a showing that such investments would not be appropriate based on deployment costs, availability of other broadband services in those areas or other pertinent factors, but any such Commission approval shall not impact the total amount of the commitment.” Appendix A to Staff/Public Counsel Settlement Agreement, Commitment 14.

²⁷ Public Counsel’s Supplemental Response, ¶ 9 (Highly Confidential).

²⁸ Attachment B to Public Counsel’s Supplemental Response, at 1 (Highly Confidential).

²⁹ *Id.*, at 2 (Highly Confidential).

³⁰ *Id.* (Highly Confidential). See also CenturyLink’s Surreply to Public Counsel Regarding Broadband Escrow Issues, ¶ 6 (Highly Confidential).

is approximately the same figure that Public Counsel argues still needs to be spent in wire centers with 85 percent availability or less.

13 In contrast to Public Counsel’s position, CenturyLink notes that of the \$57 million it spent in 2011 on broadband, over \$18 million was expended on unserved/underserved areas with the remainder spent on improving infrastructure and speed in areas where it already provides broadband service.³¹ The Company contends this investment reflects significant progress towards completing all of its broadband commitments under the merger.³² CenturyLink argues that Public Counsel’s narrow interpretation of the Staff/Public Counsel Settlement Agreement as requiring that the unserved and underserved broadband spending be accomplished only in wire centers with 85 percent availability or less is not supported by the language of the Settlement Agreement or the record.³³ The Company contends that the Staff/Public Counsel Settlement Agreement only required that CenturyLink “evaluate its wire centers, with an emphasis on the less than 85 [percent].”³⁴ CenturyLink states that it did this at the time it prepared and filed its 180-Day Plan in 2011 and again earlier this year prior to filing its 2011 Broadband Investment Report.³⁵ The Company notes that Public Counsel does not claim that the \$18 million was not spent in areas satisfying unserved and underserved populations; rather that it wasn’t spent solely in wire center areas where initial broadband availability was less than 85 percent.³⁶

14 CenturyLink also questions Public Counsel’s reliance on the high cost exemption from the 33 percent requirement as proof that CenturyLink was supposed to spend all of the monies in areas of 85 percent or less broadband penetration.³⁷ CenturyLink

³¹ CenturyLink’s Surreply, ¶ 2 (Highly Confidential).

³² CenturyLink’s Escrow Petition, ¶ 9.

³³ CenturyLink’s Surreply, ¶ 7 & n 1 (Highly Confidential).

³⁴ *Id.*, ¶ 8 (Highly Confidential).

³⁵ *Id.*, ¶ and n 2 (Highly Confidential).

³⁶ *Id.*, n 1 (Highly Confidential).

³⁷ *Id.*, ¶ 9 (Highly Confidential).

notes that the high cost exemption was included in the Staff/Public Counsel Settlement Agreement, in part, because “there was no specific commitment to any geographic area other than the five named wire centers.”³⁸ Without knowing the exact locations where deployment would take place, the Company asserts the exemption was crucial since any of the unserved/underserved investment might be cost prohibitive.³⁹

15 Finally, CenturyLink disagrees with the level of importance Public Counsel places on wire centers with 85 percent or less broadband availability. According to the Company, unserved customers in a wire center with 90 or even 95 percent availability are still unserved customers.⁴⁰ CenturyLink argues that Public Counsel should not attempt to create a disincentive to serve unserved customers in more highly saturated areas since, under Public Counsel’s interpretation, any investment in such areas would not go towards fulfilling the 33 percent investment requirement in unserved and underserved areas.⁴¹

16 **COMMISSION DECISION.** We grant CenturyLink’s request for reimbursement of the \$30 million it placed in escrow in satisfaction of our requirement in Order 14. We adopted the escrow provision in Order 14 to assure that the Company’s broadband investment commitments in Washington would be achieved and to ensure that the combined company, CenturyLink and Qwest, would not be distracted by similar broadband investment commitments it was making in other states in order to secure approval of the merger.

17 CenturyLink has properly filed the broadband investment information required in the Staff/Public Counsel Settlement (the 180-Day Plan and the 2011 Broadband Investment Report) including broadband deployment projections for 2012 that incorporate substantial investment in many locations that are encompassed by the

³⁸ *Id.*, ¶ 10 (Highly Confidential).

³⁹ *Id.* (Highly Confidential).

⁴⁰ *Id.*, ¶ 13 (Highly Confidential).

⁴¹ *Id.* (Highly Confidential).

broadband investment targets set forth in other portions of the agreement. The Company has also submitted documentation showing that its broadband investment in Washington since consummation of the merger, inclusive of investment intended to meet its broadband deployment commitments, is nearly double the total level of the first round of escrow funding we required in Order 14. In fact, CenturyLink's broadband spending to date is a substantial portion of the entire \$80 million it pledged to invest over the five year period following the merger. Staff has reviewed all of the relevant broadband investment information provided by the Company in support of the Escrow Petition and is satisfied that the Company's outlays reflect substantial progress towards meeting all of the broadband investment targets of the Settlement. We are confident in Staff's review and are willing to release the entire escrow provision, \$30 million, as satisfaction, in part, of the progress it has made in Washington towards meeting its post-merger broadband investment commitments.

18 Public Counsel suggests that the pivotal aspects of the broadband provisions of the Staff/Public Counsel Settlement Agreement are the commitments that mandate that:

No less than thirty-three percent (33%) of this amount shall be invested in unserved and underserved areas...

For purposes of this Settlement Agreement, "unserved" means either an area that has no wireline broadband service from any carrier, or no wireline service available from the CenturyLink ILECs or Qwest; "underserved" means an area with wireline broadband service but only at download speeds of 4 Mbps and upload speeds of 1 Mbps or less; and "area" means one or more living units.

19 Apparently, Public Counsel links this provision with the provision below regarding a post-merger filing that documents the areas the Company intends to invest in to meet its broadband deployment targets:

Within 180 days of the Transaction's close, CenturyLink will file with the Commission, with copies to Commission Staff and Public Counsel, a separate confidential filing identifying the initial wire centers targeted under the commitment, including those areas that qualify as unserved or underserved, as well as the estimated living units that will be enabled or upgraded as to

speed.... The Parties agree that as part of its initial broadband evaluation CenturyLink will evaluate each of the unserved and underserved areas, *with an emphasis on those Qwest and CenturyLink ILEC wire centers with 85% broadband availability or less*, to determine if the combined networks overcome the existing challenges in provision of broadband services.⁴²

20 Contrary to Public Counsel's suggested interpretation, we are not persuaded that these settlement terms require that the monies subject to the escrow provision of Order 14 must only be spent in wire centers with beginning broadband availability of 85 percent or less. It appears to us that Public Counsel came up with that suggested requirement by simply bootstrapping a provision in the Settlement detailing CenturyLink's 180-Day Plan.

21 We agree with the Company that placing an emphasis on such wire centers is a far cry from mandating their inclusion in the 33 percent unserved/underserved broadband investment commitment. At no point in the proceeding, until now, did a party suggest that the 33 percent commitment required broadband investment for unserved and underserved areas pertained solely to areas where broadband availability was 85 percent or less at the time of the merger. To the extent an ambiguity exists, we note that the issue was not clearly addressed in the Staff/Public Counsel Settlement Agreement or the testimony that accompanied the settlement. Indeed, during the hearing on the merits of the merger and the various settlements brought to us for approval, none of the witnesses that testified in support of the Staff/Public Counsel Settlement Agreement, including Public Counsel's own witness, asserted the linkage that Public Counsel now suggests exists between the broadband provisions at issue here. Had the parties intended the provisions to operate as Public Counsel contends they now should, we would have expected it to have been discussed, even emphasized, as part of the advocacy in support of the settlement.⁴³ That did not occur and we are unwilling to adopt a rigid interpretation of the provisions that would effectively force the Company to invest all of the amount dedicated to unserved and

⁴² Staff/Public Counsel Settlement Agreement, Commitment 14, at 6. (Emphasis Added).

⁴³It is a bit curious that Public Counsel is haggling about escrow reimbursements when the Staff/Public Counsel Settlement Agreement to which it was a signatory did not even have an escrow provision and, until now, Public Counsel never advocated for one.

underserved areas in, potentially, the least economic areas of its existing Washington footprint.⁴⁴

22 We accept CenturyLink’s contention that it did emphasize evaluation of wire centers in its updated 2011 Broadband Investment Report where broadband availability was at or below 85 percent. The Company included highly confidential Attachment A to its Surreply detailing no less than two dozen wire centers at which it invested in new broadband facilities during 2011 where beginning broadband availability percentages were below 85 percent. We have no reason to doubt that Staff’s review of CenturyLink’s broadband deployment documentation was thorough and that the Company has invested in projects that comply with Order 14. Public Counsel acknowledges but fails to rebut CenturyLink’s affirmative showing that it “emphasized” wire centers with a lower broadband availability and that a notable portion of its initial broadband investments in Washington have properly gone towards the overall broadband investment objectives set forth in the settlement and Order 14.

23 Accordingly, we grant CenturyLink’s request for disbursement of the \$30 million currently held in escrow.

II. Elimination/Suspension of Escrow Account Requirement

24 CenturyLink also seeks Commission approval to discontinue further payments into the broadband escrow account in light of the substantial progress it has made in achieving its post-merger broadband deployment commitments in Washington.⁴⁵ The Company asserts that its broadband expenditures already exceed the \$55 million that

⁴⁴Recent actions by the Federal Communications Commission are shifting federal universal service support funding from traditional or legacy voice services to broadband services, including substantial support for extension of wireline and wireless broadband services into previously unserved and hard to serve rural areas. *See* Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund et al., 26 FCC Rcd 17663, 17673, 17713, 17720 ¶¶ 21-22, 128 n.201, 145 (2011) (“ICC and USF Reform Order”). We see no need here to effectively force more broadband investment into such areas when there are unserved and underserved areas of the Company’s existing service area where availability exceeds 85 percent that would benefit from new broadband investment and where federal universal service support may not be available.

⁴⁵ CenturyLink’s Surreply, ¶ 3 (Highly Confidential).

Order 14 requires CenturyLink deposit in the escrow account within the first two years following the merger.⁴⁶ CenturyLink explains that its broadband investment to date has been “across 187 of the 227 wire centers and included remote terminal expansion and upgrades, as well as feeder infrastructure, supporting transport and switching.”⁴⁷ The Company also points out that over \$18 million of its investment was directed to unserved and underserved living units.⁴⁸

25 CenturyLink notes that the Commission established the escrow requirement to “ensure that the entire Washington broadband commitment will be met and met wisely.”⁴⁹ The Company argues that its substantial progress during 2011 in meeting its broadband requirement should provide reassurance to the Commission that the escrow fund is unnecessary.⁵⁰

26 Following its review of CenturyLink’s 2011 Broadband Investment Report, Staff states that it supports suspension of CenturyLink’s two remaining escrow account deposits.⁵¹ Staff contends that CenturyLink invested nearly two-thirds of its \$80 million broadband commitment in 2011 alone and more than half of the Company’s unserved and underserved commitment has also been met.⁵² Based on CenturyLink’s existing broadband investment, including more than \$18 million in unserved and underserved communities, and its recent investment commitment toward selected

⁴⁶ CenturyLink’s Escrow Petition, ¶ 10. CenturyLink states that it has expended more than \$57 million on expansion of fiber-based high speed Internet services in 2011 in Washington state. *Id.*

⁴⁷ *Id.*, ¶ 8.

⁴⁸ *Id.*

⁴⁹ *Id.*, ¶ 10.

⁵⁰ *Id.*

⁵¹ Staff’s Response, ¶ 2.

⁵² *Id.*, ¶ 3. Pursuant to Commitment 14 in the Staff/Public Counsel Settlement Agreement, CenturyLink agreed to invest no less than 33 percent of the \$80 million in unserved and underserved areas.

low-density wire centers in 2012, Staff sees little risk that CenturyLink will renege on its broadband commitments in Washington.⁵³

27 Nevertheless, Staff recommends that the Commission suspend, not eliminate as CenturyLink originally requested, the escrow requirement.⁵⁴ As a safety measure, Staff notes that if CenturyLink fails to follow through on the remainder of its broadband obligation, the escrow requirement could be reinstated.⁵⁵

28 Public Counsel recommends that, if the Commission chooses to release the amount specified in Attachment B of its Supplemental Response, the Commission should suspend the remaining escrow deposit requirements.⁵⁶ According to Public Counsel, the suspension should be conditioned on future compliance with the remaining broadband commitment, including its unserved and underserved obligations.⁵⁷

29 In response, the Company states that it would accept suspension of the escrow requirement, as opposed to outright elimination, conditioned on its continued compliance with Order 14 and the various settlement agreements approved therein.⁵⁸

30 **COMMISSION DECISION.** We agree with Staff and Public Counsel that the escrow requirement should be suspended, not eliminated. We established the escrow requirement as an overlay to the broadband commitments set forth in the Staff/Public Counsel Settlement Agreement. We are pleased that substantial progress has been achieved towards the broadband investment goals of the Staff/Public Counsel Settlement Agreement and the Company has reasonably demonstrated that it intends to meet all of the broadband-related deployment commitments it made in this

⁵³ *Id.*, ¶ 5.

⁵⁴ *Id.*, ¶ 6.

⁵⁵ *Id.*

⁵⁶ Public Counsel's Supplemental Response, ¶ 12 (Highly Confidential).

⁵⁷ *Id.* (Highly Confidential). Both Staff and Public Counsel recommend suspension over elimination of the escrow requirement, and both would have the suspension revoked upon non-compliance.

⁵⁸ CenturyLink's Surreply, ¶ 16 (Highly Confidential).

proceeding within the timeframes set forth in the settlement. Our initial concerns regarding the effects of all of the merger commitments the Company was making to secure federal and state approvals have subsided as we observe the progress CenturyLink has made in Washington towards all of the commitments made in this proceeding. As we approach the eighteen month mark following consummation of the merger, we are willing to revisit our previous decision to layer the escrow requirement atop the broadband provisions of the Staff/Public Counsel Settlement Agreement.⁵⁹ We are persuaded the escrow is no longer necessary as a potentially punitive measure to enforce compliance with the broadband commitments of the settlement agreement.⁶⁰

31 Accordingly, we suspend our requirement in Order 14 to post the second and third broadband escrow amount of \$25 million for the remainder of the five year period following the merger during which the broadband deployment targets must be accomplished. We retain the prospect of re-imposing any portion of the remaining escrow provision should we find, after hearing, that the Company is failing to meet any of its broadband deployment commitments. We find that, following satisfaction of the \$30 million reimbursement CenturyLink requests in the Escrow Petition, it may close the existing escrow account with the caveat that the Company may be ordered to re-establish this escrow account if it should fail to follow through on any of its remaining broadband investment commitments in Washington.

⁵⁹ Conditions may be imposed in proceedings involving a transfer of assets or merger of the regulated utility operations of public service companies subject to our jurisdiction. Here, a number of conditions were proposed in a series of settlements brought to us for approval in support of the merger between CenturyLink and Qwest. We adopted additional conditions on our own motion in order to find the proposed transaction in the public interest. We recognize that circumstances subsequent to consummation of a transaction may serve to mitigate the underlying basis for some of the merger conditions that were adopted or imposed while the transaction was under review.

The broadband escrow requirement of Order 14 is an example of a condition that in retrospect is no longer necessary to protect the public interest. There may be other conditions such as the timing of a new or modified Alternative Form of Regulation that could be accelerated given changing marketplace conditions and as a consequence of the FCC's landmark ICC and USF Reform Order.

⁶⁰ However, as with any order of the Commission concerning approval of a change of ownership, with or without conditions, applicants may be subject to enforcement including penalty under RCW 80.04.380 for violation of any aspect of an order involving a proposed transaction.

FINDINGS OF FACT

32 Having discussed above in detail the evidence received in this proceeding concerning
all material matters, and having stated findings and conclusions upon issues in dispute
among the parties and the reasons therefore, the Commission now makes and enters
the following summary of those facts, incorporating by reference pertinent portions of
the preceding detailed findings:

33 (1) The Washington Utilities and Transportation Commission is an agency of the
State of Washington vested by statute with authority to regulate rates, rules,
regulations, practices, and account of public service companies, including
telecommunications companies.

34 (2) On March 14, 2011, the Commission entered Order 14, authorizing
CenturyLink to acquire indirect control of Qwest in Docket UT-100820,
subject to several multiparty settlement agreements and additional
Commission-imposed conditions.

35 (3) One of the multiparty agreements was a settlement stipulation between
CenturyLink/Qwest, Staff, and Public Counsel (Staff/Public Counsel
Settlement Agreement).

36 (4) By this agreement, CenturyLink pledged to invest no less than \$80 million in
retail broadband infrastructure in Washington over a five year period, with no
less than 33 percent of that amount invested in unserved and underserved
areas.

37 (5) “Unserved” is defined as an area that has no wireline broadband service from
any carrier, or no wireline service available from the CenturyLink ILECs or
Qwest.

38 (6) “Underserved” is defined as an area with wireline broadband service but only
at download speeds of 4 Mbps and upload speeds of 1 Mbps or less.

39 (7) “Area” is defined as one or more living units.

- 40 (8) The only reference to wire centers with 85 percent broadband availability or less in the Staff/Public Counsel Settlement Agreement provides that CenturyLink will evaluate unserved and underserved areas when forming its broadband investment targets, with an emphasis on wire centers with 85% broadband availability or less.
- 41 (9) Pursuant to Order 14, the Commission directed CenturyLink to deposit the \$80 million investment in an escrow account over a three year period: \$30 million within 30 days of the transaction's close, \$25 million on the first anniversary of the transaction's close, and the final \$25 million installment on the second anniversary of the transaction's close.
- 42 (10) CenturyLink deposited the first installment, in the amount of \$30 million, into an escrow account on June 16, 2011.
- 43 (11) Order 14 also provided a mechanism by which CenturyLink could petition the Commission on a quarterly basis for reimbursement of expenses relating to the Company's broadband investment in Washington.
- 44 (12) On March 30, 2012, CenturyLink filed a Petition for Release of Funds from Broadband Escrow Account and Elimination of Requirements for Future Escrow Payments (Escrow Petition), specifically requesting reimbursement of \$30 million in broadband investment and elimination of the escrow requirement.
- 45 (13) CenturyLink invested over \$57 million in broadband deployment in Washington since 2011.
- 46 (14) The Commission's regulatory staff reviewed CenturyLink's investment documentation and concluded that the broadband investment complies with Order 14.
- 47 (15) This investment included no less than two dozen wire centers where beginning broadband availability percentages were below 85 percent.

- 48 (16) The Staff/Public Counsel Settlement Agreement and Order 14 still require that CenturyLink spend approximately \$23 million on broadband deployment in Washington by January 1, 2016.

CONCLUSIONS OF LAW

49 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 50 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 51 (2) The Staff/Public Counsel Settlement Agreement does not mandate that CenturyLink spend 33 percent of the \$80 million total investment on wire centers with 85 percent broadband availability or less; only that CenturyLink emphasize such wire centers when evaluating each unserved and underserved area.
- 52 (3) CenturyLink's investment complies with Order 14 and the Staff/Public Counsel Settlement Agreement, and the \$30 million held in the escrow account should be released to CenturyLink. CenturyLink's escrow account, thus, should be close after the above reimbursement has taken place.
- 53 (4) While CenturyLink's broadband investment has been significant, the Company still has approximately one-third of its commitment to meet. The Commission should conditionally suspend, not eliminate, the escrow account requirement pending fulfillment of CenturyLink's broadband commitment. If the Company were to fail to fulfill its commitment, the Commission should reinstate the escrow account requirement.

ORDER

THE COMMISSION ORDERS That:

- 54 (1) CenturyLink's Petition for Release of Funds from Broadband Escrow Account
and Elimination of Requirements for Future Escrow Payments is granted in
part and denied in part.
- 55 (2) The escrow agent shall release \$30 million to CenturyLink in reimbursement
for broadband expenditures the company made in Washington.
- 56 (3) The escrow account should be closed and the escrow requirement in Order 14
conditionally suspended.
- 57 (4) The Commission shall reinstate the escrow requirement should CenturyLink
fail to fulfill its ongoing broadband commitments in as described in Order 14.

Dated at Olympia, Washington, and effective September 12, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.