

**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

PETITION FOR WAIVER AND/OR  
MODIFICATION OF MERGER-  
RELATED CONDITIONS REGARDING  
AFOR FILINGS

**I. INTRODUCTION/SUMMARY OF RELIEF REQUESTED**

- 1 CenturyLink hereby petitions for a waiver and/or modification, as necessary, of Condition 3 of the Merger Settlement Agreement between CenturyLink, Commission Staff, and Public Counsel, to allow CenturyLink to make the filings necessary to commence AFOR proceedings for all five operating companies immediately, as opposed to waiting until 2014.
- 2 The basis for this petition is that market and regulatory circumstances have accelerated dramatically in the 18 months since the merger closed, and CenturyLink believes that it is necessary to accelerate the AFOR proceedings. The Commission noted this possibility in footnote 59 of its recent Order 19 in this docket, as follows:

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* (emphasis added).<sup>1</sup>

## II. DISCUSSION

3 Order 14, Condition 3, requires the CenturyLink companies to wait until 2014 before  
petitioning for an AFOR. As noted above, CenturyLink is simply asking the Commission to  
authorize the opening of an AFOR docket immediately – this petition does not now attempt to  
define the parameters of an acceptable AFOR, or to suggest a final outcome. However,  
without this waiver, all of the CenturyLink companies will be barred from seeking an AFOR  
until 2014, which would not be consistent with the public interest.

4 Even at the time of the Merger Settlement, the Commission did not want to wait until 2014 or  
2015 to review the companies' results of operations. As such, the Commission accelerated  
the requirement for filing pro forma results of operations to *no later than* two years following  
the merger closing, or no later than April 1, 2013.<sup>2</sup>

5 The basis for this accelerated review is the increasingly fierce competition in the  
telecommunications marketplace, which requires greater regulatory flexibility for all of the  
CenturyLink operating companies, and the changed circumstances affecting local and access  
rates in the wake of the FCC's ICC order. CenturyLink believes that both circumstances  
support an immediate opening of an AFOR proceeding to consider the regulatory flexibility  
that all five companies will need to continue to provide quality service at reasonable rates.  
To that end, merger synergies, to the extent that they exist and/or can be quantified, should

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<sup>1</sup> Order 19, footnote 59.

<sup>2</sup> Order 14, ¶ 218.

presumptively be returned to ratepayers by enabling CenturyLink to capture these savings, maintain prices at reasonable levels, continue investment in broadband, and otherwise compete effectively on a playing field that is now heavily skewed in favor of the competition.

#### **A. Competitive Pressures Have Increased Dramatically Since 2009**

6 As the Commission discussed in Order 14, one potentially complicating factor in reviewing the Qwest/CenturyLink transaction post-closing was the CenturyLink/Embarq merger that closed in 2009. As such, any analysis of company operating results would necessarily be complicated by the merger synergies realized in that earlier merger, and the potential for synergies still to accrue in the Qwest/CenturyLink transaction. However, postponing financial review does not necessarily mean that AFOR review should also be postponed, especially since competitive pressures continue to mount, and the companies' financial situations can only worsen if they lack the flexibility to respond to those pressures.

7 At the time of the Embarq merger, Qwest was in the second year of a four-year AFOR. However, Qwest did not intend to wait until AFOR negotiations in 2011 to seek additional regulatory flexibility. In fact, nearly contemporaneously with the merger announcement in April 2010, Qwest was planning a petition for competitive classification of the stand-alone residential line (having already been granted flexibility for residential packages in the AFOR). This was necessitated by the increasing competition for residential customers, and Qwest's relative lack of flexibility relative to wireless and cable companies – the main competitors for those customers.

8 The first AFOR was a bold step in the right direction in terms of regulatory flexibility, and has helped the Qwest company react to the competitive market. However, in terms of competitive imbalance, things have only gotten worse since 2009. Based on the success of the past AFOR CenturyLink believes that rather than seek a piecemeal approach to more regulatory freedom, the Commission should consider competition and regulatory flexibility

for all five CenturyLink operating companies in Washington.

- 9 Competition is pervasive in all of Washington state. Cable and wireless providers have nearly ubiquitous networks, and provide effective competition in all wire centers. There are now a number of alternative providers offering voice services that serve as a substitute for local exchange service. These services are provided by well-capitalized cable, wireless and VoIP providers and are available throughout the state at comparable rates, terms and conditions. ILEC market power has been significantly eroded, and pricing is constrained, due to the level of competitive alternatives available to customers. In addition, barriers to entry have been eliminated, as evidenced by the fact that alternative services are available from multiple providers.
- 10 There is no reason to conclude that this explosion of competitive alternatives will subside as new technologies are developed and customer preferences evolve. CenturyLink's "market power" is constrained by competition today, and will continue to be constrained by increasing competition in the future.
- 11 As competition for voice communications services has increased, CenturyLink has experienced a *significant decline in access line volumes*. Between December 2001 and December 2011, CenturyLink<sup>3</sup> retail access lines in Washington declined 56%.<sup>4</sup> At the same time, U.S. Census data shows that Washington households increased 16% and the population of Washington increased 14% over the past decade.<sup>5</sup> It may be conservatively assumed that the demand for voice communications services in Washington has at least increased apace. The consistent trend of dramatic access line decreases in the face of large population increases

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<sup>3</sup> Includes information for Qwest Corporation, CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., CenturyTel of Cowiche, Inc. and United Telephone Company of the Northwest.

<sup>4</sup> Residential retail access lines have dropped 60% and business retail access lines have dropped 44% over this time frame.

<sup>5</sup> 2001 and 2011 U.S. Census data See: [<http://www.census.gov/popest/data>]

shows that consumers are increasingly taking advantage of the expanding array of competitive alternatives to CenturyLink's wireline telephones services. More and more consumers are meeting their telecommunications needs by moving to services offered by cable telephony providers, wireless providers, VoIP providers and CLECs rather than CenturyLink.

12 CenturyLink's share of the voice market in Washington has declined significantly over the past decade as customers have moved to cable, wireless, CLEC and VoIP options. Because CenturyLink does not have access to the confidential access line and other data from its competitors, it is not able to determine the exact market share of each of its competitors. However, FCC data can be used to calculate the voice telecommunications market share for all ILECs and non-ILECs in Washington. This data demonstrates that for June 2011, the ILEC share of Washington voice telecommunications connections was only 19%, as compared to 13% for wireline non-ILECs (including *reporting* VoIP providers) and 68% for wireless providers.<sup>6</sup> In addition, the National Center for Health Statistics (NCHS) found that 33.8% of adult Washington wireless households were "wireless only."<sup>7</sup> Based on this data, it is apparent that Washington consumers commonly substitute cable telephony, wireless or VoIP-based services for CenturyLink services. This data demonstrates that competitors have the ability to make functionally equivalent or substitute services readily available at competitive rates, term, and conditions, and it can no longer be concluded that CenturyLink retains market power.

13 The market-opening laws and regulations at the federal and the state level have worked, providing a legal and economic environment in which other competitive wireline providers have flourished. Other communications modes, most notably wireless and VoIP, have thrived

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<sup>6</sup> *Local Telephone Competition: Status as of June 30, 2011*; Industry Analysis and Technology Division, Wireline Competition Bureau, June 2012, tables 9 & 18.

<sup>7</sup> *Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2010-2011*, released October 12, 2012, Table 1.

as well and these providers can enter markets with lower investment outlays than are required to build and maintain ubiquitous wireline networks. Most important for purposes of this petition, while CLEC rates are lightly regulated, wireless and VoIP providers are not subject to economic regulation at all. These conditions have produced a significant number of capable, well-capitalized competitors. In this environment, it makes no sense to apply traditional regulatory price constraints on only one of the players in the market – CenturyLink – whose share of the voice market in Washington is less than 19%.

14 CenturyLink will offer detailed evidence of competition in an AFOR review, and believes that the information will be compellingly in support of regulatory flexibility.

**B. The FCC’s ICC and USF Order is a Significant Change in Circumstances**

15 After the Qwest/CenturyLink merger closed, the FCC entered a landmark order, reforming the Intercarrier Compensation (“ICC”) regime in place for both switched access and reciprocal compensation payments, and allowing ILECs partial recovery of those reductions through an ARC charge. This is a sweeping and unprecedented change. The change also advances the occurrence of events, such as taking steps toward access charge reductions, and rate rebalancing, that were originally anticipated to be issues in the AFOR proceedings.<sup>8</sup> As such, CenturyLink believes that there is no public benefit to postponing the full review of issues that will be raised in an AFOR review. Based on past experience, the review may take time, so CenturyLink urges the Commission to open a docket immediately, so that the process can get underway.

16 CenturyLink submits that the delay of the AFOR proceeding until 2014 is another example of a condition that in retrospect is no longer necessary to protect the public interest. The timing on this condition should be accelerated given changing marketplace conditions and as a

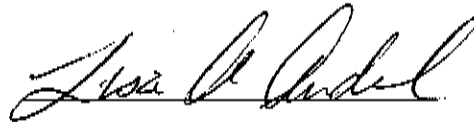
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<sup>8</sup> Order 14, ¶¶ 219-220.

consequence of the FCC's landmark ICC and USF Reform Order.

17 Respectfully submitted this 7<sup>th</sup> day of November, 2012.

CENTURYLINK



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