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November 16, 2012

**VIA ELECTRONIC FILING & ABC LMI**

David Danner  
Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: 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

Dear Mr. Danner:

Enclosed please find the original and twelve (12) copies of Public Counsel's Response to  
Petition for Waiver and/or Modification of Merger-Related Conditions Regarding AFOR Filing  
and Certificate of Service for filing in the above-entitled docket.

Sincerely,

LISA W. GAFKEN  
Assistant Attorney General  
Public Counsel Division  
(206) 464-6595

LWG:cjw  
Enclosure

cc: Service List (U.S. Mail & E-mail)  
Marguerite E. Friedlander, ALJ (E-mail)

**Docket UT-100820  
Qwest/CenturyTel  
CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **Public Counsel's Response to Petition for Waiver and/or Modification of Merger-Related Conditions Regarding AFOR Filings** was sent to each of the parties of record shown on the attached Service List in sealed envelopes, via:  
U.S. Mail and Electronic Mail.

**SERVICE LIST**

**\*\* = Receive Highly Confidential**

**\* = Receive Confidential**

**NC = Receive Non-Confidential**

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DATED: \_November 16, 2012.



Carol Williams  
Legal Assistant

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

PUBLIC COUNSEL'S RESPONSE  
TO PETITION FOR WAIVER  
AND/OR MODIFICATION OF  
MERGER-RELATED CONDITIONS  
REGARDING AFOR FILINGS

**I. INTRODUCTION**

1. Pursuant to the Commission's Notice of Opportunity to Respond, dated November 9, 2012, Public Counsel files this Response to CenturyLink, Inc.'s ("CenturyLink" or "Company") Petition for Waiver and/or Modification of Merger-Related Conditions Regarding AFOR Filings ("Petition"). Public Counsel does not oppose some acceleration to the filing date of CenturyLink's Alternative Form of Regulation plan (AFOR), but for the reasons discussed below, CenturyLink should be required to file the AFOR on April 1, 2013, concurrently with the pro-forma results of operations filing required by Order 14 on that date.

2. In its Petition, CenturyLink requests that merger-related conditions imposed by the Commission's Order 14 be modified to allow the Company to make the necessary filings to commence an AFOR proceeding "immediately" instead of requiring the Company to wait until 2014. Although CenturyLink mentions in its Petition that Order 14 requires it to file pro forma results of operations on April 1, 2013, it does not discuss how the AFOR petition and the pro

forma filing would be coordinated.<sup>1</sup> Although Public Counsel agrees that some acceleration of the AFOR filing date is reasonable, filing the AFOR before the April 2013 results of operations filing would interfere with the post-merger review envisioned by Commission and the parties.

## II. DISCUSSION

### A. CenturyLink's Request to Modify Condition 3 Affects the Timing of the Company's AFOR Filing.

3. Condition 3 to the merger approval, which the Commission adopted in Order 14, addresses the timing and content of an AFOR proceeding brought by CenturyLink after the Qwest/CenturyLink merger.<sup>2</sup> CenturyLink proposes to modify provisions of Condition 3 that address the timing of the AFOR filing.<sup>3</sup>
4. Condition 3 provides that the Qwest AFOR from 2006 would be extended until CenturyLink files its next AFOR.<sup>4</sup> It provides that CenturyLink would file an AFOR proceeding concurrently with its pro forma results of operations no earlier than three years and no later than four years after the merger transaction closed.<sup>5</sup> Condition 3 also anticipates that dockets containing the results of operations and the AFOR petition may be consolidated.<sup>6</sup> Lastly, Condition 3 details the issues that shall be addressed in CenturyLink's AFOR proceeding.<sup>7</sup>
5. In particular, the issues to be resolved in CenturyLink's AFOR are (1) analysis and

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<sup>1</sup> Petition at ¶ 4; *See*, Order 14 at ¶ 218, which required CenturyLink to file the results of operations no later than two years after the transaction closed.

<sup>2</sup> *See* Order 14 at ¶¶ 212-220.

<sup>3</sup> CenturyLink's motion is worded very generally, but is understood by Public Counsel to specifically request only the modification of the AFOR deadline.

<sup>4</sup> Staff/Public Counsel Settlement Agreement, Condition 3(a), p. 1. A copy of Condition 3 in its entirety is attached hereto as Attachment 1.

<sup>5</sup> *Id.*, Condition 3(b), page 1-2. The Commission modified this section of the Condition to accelerate the results of operations filing to two years after the transaction closed instead of three. *See* Order 14 at ¶ 218.

<sup>6</sup> *Id.*, Condition 3(c), p. 2.

<sup>7</sup> *Id.*, Condition 3(d), pp. 2-3.

disposition of merger synergies, (2) whether and to what extent rate rebalancing is appropriate, (3) whether and to what extent rate design for residential or business services and intrastate access charges should be modified to achieve consistent rate structures among CenturyLink's operating companies, (4) whether any rate changes associated with achieving rate structure consistency should be accomplished over time, and (5) whether any rate changes would result in a single statewide rate for residential or business services or intrastate access charges.<sup>8</sup> Once CenturyLink files its AFOR petition, other issues may arise as well.

6. Public Counsel's agreement to an earlier date for the filing of CenturyLink's AFOR does not constitute an agreement to alter or eliminate issues to be discussed in that proceeding, or to any other modification of Order 14.

**B. The Timelines in Condition 3 Were Structured to Allow Sufficient Time for Merger Synergies to Mature And Be Monetized.**

7. To justify the proposed merger, the merging companies pointed to the possibility of achieving significant synergies as a result of a merger.<sup>9</sup> The merging companies projected \$625 million in anticipated synergies nationwide.<sup>10</sup> Evaluating whether the anticipated synergies materialized, and if so how to monetize those synergies, were identified by the Commission as important questions to answer during review of CenturyLink's post-merger AFOR related filings.<sup>11</sup>

8. Condition 3 also requires that the Company undergo a thorough earnings review that will allow the Commission to examine the combined company's performance. This level of review is

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<sup>8</sup> *Id.*

<sup>9</sup> Order 14 at ¶ 212.

<sup>10</sup> Joint Testimony in Support of Settlement Agreement, December 29, 2010, Exhibit No. JT, at 33:1-2.

<sup>11</sup> Order 14 at ¶¶ 215-218.

necessary in considering a post-merger AFOR for CenturyLink because the public interest requires a vigilant review of CenturyLink's finances before the Company is relieved of rate oversight.<sup>12</sup> The full review contemplated by Condition 3 will provide the Commission with the tools by which to evaluate the Company's post-merger financial health, reasonableness of rates, and appropriate type of regulation going forward, while also providing for consideration of merger synergies.<sup>13</sup>

9. The Qwest/CenturyLink merger took place less than one year after the CenturyLink/Embarq merger. There had been insufficient time to realize and evaluate the anticipated synergies from the earlier merger at the time of the Qwest/CenturyLink merger.<sup>14</sup> The Commission recognized that merger synergies do not manifest on the first day following a merger, but rather that they mature over time as operational changes, consolidation, and other adjustments occur.<sup>15</sup> Accelerating the AFOR filing may diminish the information available to evaluate and monetize synergies. Whether the data CenturyLink ultimately relies upon to support its AFOR plan is sufficient will be evaluated and resolved in the AFOR proceeding.

10. Public Counsel agrees, however, that the Federal Communication Commission's Intercarrier Compensation/Universal Service Order changes the regulatory conditions CenturyLink operates under and provides a reasonable basis to for the request to advance the AFOR filing date. Public Counsel's recommendation accommodates this concern while avoiding undue disruption of the Commission's framework for AFOR review under Order 14.

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<sup>12</sup> *Id.*, at 32:1-7 (quoting *CenturyTel/Embarq Merger*, Docket UT-082119, Order 05 at ¶ 48).

<sup>13</sup> *Id.*, at 32:8-16.

<sup>14</sup> Order 14 at ¶ 212.

<sup>15</sup> Order 14 at ¶ 217.

**C. The Accelerated Filing of the AFOR Should Be Synchronized with the Required Pro-Forma Filing on April 1, 2013.**

11. The Commission adopted Condition 3, with certain modifications, with the intent to “monetize merger synergies and share these synergies with the customers of the combined company.”<sup>16</sup> The Commission left unchanged the requirement that the AFOR proceeding be filed no earlier than three years and no later than four. The modification to Condition 3 did not remove any of the original requirements contained therein, but rather accelerated the results of operations filing to two years after the transaction closing (April 1, 2011) instead of three.
12. The Commission believed that waiting to capture and quantify the merger synergies under the timeframe proposed by Staff and Public Counsel would allow the Company to retain all derived synergies between 2009 and 2012, without apparent benefit to customers. The Commission ruled that this retention of synergies without customer benefit was not a reasonable result.<sup>17</sup> The Commission stated, “It is through our added condition that we expect to capture the synergies realized as of June 30, 2013, and to share these benefits with customers sooner than the timeline proffered by Staff and Public Counsel.”<sup>18</sup>
13. The Commission also noted that the results of operations filing in 2013 is *in addition to* the earnings and AFOR filings expected between 2014 and 2015 under the merger conditions.<sup>19</sup> Advancing the AFOR filing date does not remove the requirement that the Company file earnings data concurrently with its AFOR petition. Granting CenturyLink’s Petition to

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<sup>16</sup> Order 14 at ¶ 215.

<sup>17</sup> Order 14 at ¶ 216.

<sup>18</sup> Order 14 at ¶ 218. The Commission used the date of June 30 as a presumptive date by which the transaction would close. The transaction actually closed on April 1, 2011, making April 1, 2013, the date by which the two-year pro forma results of operations would be due.

<sup>19</sup> Order 14 at ¶ 218.



accelerate the AFOR filing does not resolve the issue of quantifying merger synergies, monetizing the anticipated synergies, or determining how those synergies will be shared with customers.

14. As the structure and schedule in Order 14 shows, the Commission's intention was to have the results of operations information available to the Commission and parties both prior to, and later concurrent with, the AFOR filing. Public Counsel, therefore, recommends that the Commission require CenturyLink to file its AFOR petition simultaneously with its April 1, 2013 results of operations filing.<sup>20</sup>

**D. The Factual Assertions Made in The Company's Petition are Premature.**

15. CenturyLink's Petition contains numerous broad factual representations by its counsel regarding the telecommunications market.<sup>21</sup> These are premature and do not provide a credible basis for any findings of fact at this stage of the proceeding. Indeed, the Petition explicitly states that the purpose is not to define the parameters of an acceptable AFOR or to suggest a final outcome.<sup>22</sup> Accordingly, predetermination of facts is also not appropriate. Public Counsel's agreement to an earlier AFOR filing does not constitute an agreement to the factual statements contained in the petition, except as noted in this Response.

**III. CONCLUSION**

16. Public Counsel recognizes that the issuance of FCC Intercarrier Compensation/Universal Service Order is a changed circumstance that warrants consideration of accelerating

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<sup>20</sup> This does not preclude CenturyLink, Staff, Public Counsel and other interested parties from engaging in preliminary discussions regarding the AFOR.

<sup>21</sup> Petition at ¶ 11. For example, CenturyLink cites line loss since 2001. Since the merger with Qwest only closed in April 2011, the relevance of this time frame is questionable. This an issue for the AFOR proceeding.

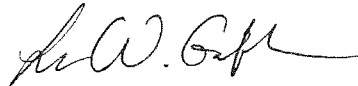
<sup>22</sup> Petition at ¶ 3.

CenturyLink's AFOR filing date. However, by agreeing to an earlier filing, Public Counsel has not prejudged the ultimate outcome of CenturyLink's AFOR petition. Factual determinations regarding CenturyLink's circumstances are for the AFOR proceeding.

17. The other requirements of Order 14 remain in effect. Evaluation of a new AFOR, of merger synergies, and other related issues is of no less importance today than when Order 14 was adopted. For these reasons, Public Counsel recommends that the advanced AFOR filing date be set no earlier than April 1, 2013, to be concurrent with the results of operations filing.

18. DATED this 16<sup>th</sup> day of November, 2012.

ROBERT M. McKENNA  
Attorney General



LISA W. GAFKEN  
Assistant Attorney General  
Public Counsel Division

# ATTACHMENT 1

Docket No. UT-100820

Appendix A to Settlement Agreement

## APPENDIX A TO SETTLEMENT AGREEMENT - CONDITIONS Reflecting Joint Applicants' agreement with Commission Staff and Public Counsel 12/23/2010

As part of a comprehensive settlement with Commission Staff and Public Counsel, CenturyLink agrees to the following conditions:

### **1. Financial Reporting**

After the Transaction closes, until such time as an AFOR proceeding for the CenturyLink ILECs and Qwest has concluded, CenturyLink will file with the Commission a semi-annual report containing the following:

- a. CenturyLink Inc.'s balance sheet.
- b. Intercompany receivables and payables for the CenturyLink ILECs and Qwest showing the beginning balance, the change for the period and the ending balance of those accounts.
- c. Dividend payments declared by CenturyLink Inc. to its shareholders (in total and per share) for each quarter during the year.

The first report shall be filed with the Commission within 30 days after CenturyLink's first post-Transaction filing of quarterly financial reports (10Q) with the SEC. Subsequent reports will be filed semi-annually thereafter within 30 days after CenturyLink's filing of financial reports (10K or 10Q as appropriate) with the SEC.

### **2. Cost of Capital**

The CenturyLink ILECs and Qwest will not advocate in any general rate case or AFOR proceeding, or other earnings review, for a cost of capital that is higher than what it would have been absent the Transaction.

### **3. AFOR Filing**

- a. Prior to the expiration of the existing Qwest AFOR, CenturyLink will petition the Commission for the following:
  - i. deferral of the Qwest AFOR review until the filings required in the next section of this condition are made;
  - ii. extension of the Qwest AFOR period until the Commission issues an order on the filings required in the next section of this condition; and
  - iii. elimination of the CenturyTel/Embarq merger conditions requiring a results of operation filing within three years and an AFOR filing within five years of the close of the CenturyTel/Embarq merger.
- b. No sooner than three years and no later than four years after the Transaction closes, CenturyLink must file concurrently with the Commission:

- i. Pro forma results of operations.

CenturyLink must file, at the company's option, either (1) a normalized pro forma consolidated results of operations that combines the results of operations for the CenturyLink ILECs and Qwest into a single consolidated results of operations filing or (2) separate results of operations for each CenturyLink ILEC and for Qwest. For the CenturyLink ILECs, results of operations shall be consistent with WAC 480-07-510(3) and reflect the Commission format using a historical test period with restating and pro forma adjustments to the test period. Restating adjustments will remove non-recurring transactions and other costs that are not appropriate for rate making purposes, such as integration costs. Pro forma adjustments will use the "known and measurable" standard. The filing shall provide the Commission the information necessary to conduct a full earnings review consistent with that required in a general rate case, and which captures merger synergies realized throughout the test year and pro forma period, as specified in the CenturyTel/Embarg Merger Order, Docket No. UT-082119, Order 05, ¶¶ 48-50. For Qwest, results of operations shall be consistent with the reporting required in the AFOR and set forth in attachments to Order 06, Docket UT-061625, at pp. 49 and 50, Qwest's Modified Proposal for an AFOR, Transition Period Requirement #3 and #5, and at p. 55, Appendix B to the proposal. Also included in the filing will be a cost of capital determination. The Parties understand that the Commission may request additional information to enable it to conduct an earnings review or may request the filing of consolidated results of operations.
- ii. AFOR plan(s).

CenturyLink must file, at the company's option, either a single consolidated proposed AFOR plan or separate proposed AFOR plans for each CenturyLink ILEC and Qwest, in compliance with RCW 80.36.135 and utilizing the principles established by the Commission in the Qwest AFOR, Docket UT-061625.
- c. The Parties agree in reference to b. above that, if and after separate filings are made, the Parties are not precluded from requesting the Commission to order a consolidated filing. The Parties understand that the Commission may request filing of a consolidated AFOR plan on its own motion.
- d. The Parties agree that the issues in the AFOR proceedings shall include the analysis and disposition of merger synergies, the question of whether and to what extent rate rebalancing is appropriate, and whether and to what extent the rate design for residential or business services, and intrastate access charges should be modified to achieve consistency of rate structures among the companies. Issues also include whether any rate changes associated with achieving consistency of rate structures among the CenturyLink ILECs and Qwest should be accomplished over time and whether or not they would result in a single statewide rate for

residential or business services, or intrastate access charges. The Parties further agree that in the AFOR proceeding(s), any party may advocate for the modification, termination, or continuation of any merger conditions (i.e, those stated to be effective through the end of the AFOR proceeding), except where otherwise provided (e.g., conditions 2, 5, and 6).

#### **4. Synergy Report**

For a period of five years after the Transaction closes, CenturyLink will track and file annually a confidential report reflecting merger costs and synergy savings on a company-wide and Washington basis. The first report shall be filed with the Commission within 150 days after the first anniversary of the close of the Transaction, and subsequent reports will be filed annually with the Commission on the anniversary date of the first report. The report shall reflect the following information:

- a. Synergy Savings – The report will provide estimated achieved synergy savings by the functional areas being tracked by CenturyLink. Estimated achieved synergy savings by the functional areas will be shown for CenturyLink company-wide and for each CenturyLink ILEC and Qwest (total company and intrastate jurisdiction amounts).
- b. Merger Costs – The report will provide total merger costs incurred for the reporting period for CenturyLink company-wide and for each CenturyLink ILEC and Qwest (total company and intrastate jurisdictional amounts).

CenturyLink acknowledges that the reporting required under this condition has no effect on the reporting obligations related to merger costs and synergy savings previously established in paragraph 50 of the Commission's order in the CenturyTel/Embarq merger in Docket UT-082119.

#### **5. Management Costs**

The CenturyLink ILECs and Qwest agree not to seek recovery from their retail or wholesale customers any increases in overall management costs related to the Transaction.

#### **6. Merger Costs**

CenturyLink will not seek recovery through retail or wholesale service rates transition, integration, branding or transaction costs in Washington. These costs will be borne by the CenturyLink stockholders.

#### **7. Encumbrance of ILEC Assets**

CenturyLink will not pledge the assets of the CenturyLink ILECs and Qwest to secure borrowing undertaken by CenturyLink without approval of the Commission.