

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	ORDER 20
INTERNATIONAL INC. AND)	
CENTURYTEL, INC.)	FINAL ORDER GRANTING
)	CENTURYLINK’S PETITION FOR
For Approval of Indirect Transfer of)	WAIVER AND/OR MODIFICATION
Control of Qwest Corporation, Qwest)	OF MERGER-RELATED
Communications Company LLC, and)	CONDITIONS REGARDING AFOR
Qwest LD Corp.)	FILINGS
)	
.....)	

1 **PROCEEDING.** On November 7, 2012, CenturyLink, Inc. (CenturyLink or the Company) filed a Petition for Waiver and/or Modification of Merger-Related Conditions Regarding AFOR Filings (AFOR Waiver Petition).¹ CenturyLink requests authority to file its AFOR petition earlier than agreed to in the settlement agreement it reached with the Commission’s regulatory staff (Staff or Commission Staff)² and the Public Counsel Section of the Washington State Attorney General’s Office (Public Counsel). Specifically, the settlement agreement obligates CenturyLink to file its AFOR no sooner than three years³ and no later than four years after the transaction closing date. CenturyLink is concerned that “increasingly fierce competition in the telecommunications marketplace” as well as the “changed circumstances affecting local and access rates” brought on by the Federal

¹ The acronym “AFOR” stands for Alternative Form of Regulation and is more broadly referenced in RCW 80.36.135.

² 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.

³ The merger closing date was April 1, 2011, so the settlement requires CenturyLink to file its AFOR plan between April 1, 2014, and April 1, 2015. Appendix C to Order 14, Condition 3(b)(ii).

Communications Commission's Intercarrier Compensation and Universal Service Fund Reform Order,⁴ necessitate an immediate AFOR filing.⁵

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 was Condition 3 in the settlement agreement CenturyLink reached with Staff and Public Counsel.⁶ Condition 3(b)(ii) requires CenturyLink to file an AFOR petition between April 1, 2014, and April 1, 2015.⁷

4 CenturyLink filed its AFOR Waiver Petition on November 7, 2012, requesting authority to file its AFOR petition immediately. Public Counsel, Staff, and Sprint Nextel Corporation (Sprint) filed responses to CenturyLink's petition on November 16, 2012. On November 26, 2012, CenturyLink replied to these responses.

5 **PETITION FOR AFOR WAIVER.** CenturyLink's AFOR Waiver Petition seeks to immediately open a docket for the Company's AFOR petition.⁸ As noted above, CenturyLink seeks a waiver of Condition 3 of the settlement agreement it reached with Commission Staff, and Public Counsel, to allow the Company to begin AFOR proceedings immediately, pursuant to RCW 80.36.135, for its five operating companies in Washington instead of waiting until at least 2014. The Company notes

⁴ *In the Matter of Connect America Fund, et al*, FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking (adopted October 27, 2011; released Nov. 18, 2011) (hereafter referred to as ICC and USF Reform Order).

⁵ AFOR Waiver Petition, ¶ 5.

⁶ Order 14 – Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (Order 14), Appendix C, Condition 3.

⁷ *Id.*

⁸ AFOR Waiver Petition, ¶ 3.

that its petition does not attempt to define or prejudge the parameters of an acceptable AFOR, or to suggest a final outcome.

- 6 CenturyLink points to significant and increasing competition in the telecommunications marketplace, which requires greater regulatory flexibility for all of the CenturyLink operating companies.⁹ It also cites changing regulatory circumstances that it argues have or will soon greatly affect its operations in Washington since the merger closed in early 2011. CenturyLink points specifically to dramatic changes that are likely to affect its local and interstate and intrastate access rates, changes that are taking place as a consequence of FCC's ICC and USF Reform Order.¹⁰ CenturyLink believes that both circumstances warrant opening of an AFOR proceeding now, as opposed to 2014, to implement new regulatory flexibility that all of its Washington operating companies need to continue to provide quality service at reasonable rates.
- 7 Public Counsel does not oppose acceleration of the timing of an AFOR petition but believes that such a filing should be submitted concurrently with the pro-forma results of operations filing that is due by April 1, 2013, as required by Order 14.¹¹ Although Public Counsel agrees that some acceleration of the AFOR filing date is reasonable, it contends that filing of an AFOR petition prior to the April 1, 2013, results of operations filing would interfere with the post-merger review envisioned by Commission and the parties.¹²
- 8 Staff supports the Company's proposal to proceed with an AFOR filing and proceeding with an earlier starting date than that provided for in the settlement agreement. Additionally, Staff does not object to eliminating the requirement that a new AFOR request be filed concurrently with the results of operations submission given the apparent decline in revenues that is confronting the Company due to

⁹ *Id.*, ¶ 8.

¹⁰ *Id.*, ¶ 15.

¹¹ Public Counsel's Response, ¶ 14.

¹² *Id.*, ¶ 2. In a letter filed on November 19, 2012, Public Counsel conceded that as a result of Paragraph 266 of Order 14 in this proceeding, the Commission intended that CenturyLink file the results of operations by June 30, 2013, rather than by April 1, 2013. Regardless, if the AFOR filing is accelerated ahead of the June 30, 2013, due date, Public Counsel maintains its position that an AFOR petition must be accompanied by a results of operations filing.

mandated access charge reductions and a highly competitive environment.¹³ Staff suggests the effect of these conditions on potential merger-related synergies that should enhance CenturyLink's intrastate results of operations may moderate the value of an earnings review and no longer prove as important an element in evaluating CenturyLink's forthcoming AFOR proposal.¹⁴ Despite this view, Staff does not support relieving CenturyLink of the obligation to make the results of operations filing no later than June 30, 2013.¹⁵

9 Sprint agrees with CenturyLink that the Company should be authorized to file its AFOR petition as soon as possible.¹⁶ Sprint acknowledges that a great deal of regulatory and competitive challenges have arisen since Order 14 was entered.¹⁷ Further, Sprint contends that the public interest is served by granting CenturyLink's AFOR Waiver Petition "to examine necessary access charge reform in a comprehensive proceeding...."¹⁸

10 **COMMISSION DECISION.** We grant CenturyLink's petition to waive Condition 3 of the settlement agreement in order to commence an AFOR proceeding earlier than provided for in the settlement terms. We decline to adopt Public Counsel's recommendation that we condition the timing of a new AFOR petition to be concurrent with the results of operations filing.

11 In Order 14 approving the merger between CenturyLink and Qwest, we accepted the settlement agreement conditions relating to the timing of a new AFOR, presentation of results of operations, and review of merger-related synergies. At the time, the parties to the merger and the Commission saw the benefit in having several years of post-merger experience with the combined company in order to identify potential

¹³ Staff's Response, ¶ 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Sprint's Response, ¶ 2.

¹⁷ *Id.*

¹⁸ *Id.*

synergy savings and produce sufficient post-merger information to assess the potential effect, if any, on rates during the course of a new AFOR proceeding. As Public Counsel notes, we modified Condition 3(b) of the settlement agreement to require the results of operations filing no less than two years following consummation of the merger rather than the three year deadline agreed to by the parties. We did so recognizing that increasing forms of inter-modal and intra-modal competition and other factors could implicate some or all of the merger synergies attributable to Washington operations of the combined companies. More importantly, we also specifically provided that a party or the Commission could initiate action even sooner anticipating additional factors that may warrant expedited consideration:

Although we establish this filing deadline as the expected point in time in which a comprehensive examination of the combined company's Washington operations, nothing prevents any party or the Commission from initiating, sooner or later, any proceeding involving its intrastate rates at any time.¹⁹

12 As CenturyLink points out and both Staff and Public Counsel concede, on November 18, 2011, less than one year after completion of the merger, the FCC adopted its landmark ICC and USF Reform Order which imposes sweeping changes to the nation's intercarrier compensation and universal service funding regimens. We recognize that these federally-mandated changes have broad implications for carriers such as CenturyLink to maintain service quality for traditional wireline telephone service at current rates. Given the FCC's recent action, we accept the Company's position that it should be afforded the opportunity to avail itself of existing provisions of state law that enable removal or reduced economic regulation where appropriate; and do so without being tied to the arbitrary timeframe previously set forth in the settlement agreement.

13 We decline to adopt Public Counsel's concerns regarding the timing of the commencement of an AFOR filing and the submission of the results of operations filing. We understand the concern but do not believe it is necessary to hold commencement of the AFOR for the results of operations filing requirement of Order 14. Under RCW 80.36.135, an AFOR plan contains a variety of elements that are to be addressed as part of the negotiated bargain between the petitioning company and the Commission. We see no need to hold in abeyance commencement of an AFOR proceeding and discussion of the non-financial aspects of the potential bargain in order to await the results of operations filing.

¹⁹ Order 14, n. 461.

14 By virtue of the instant petition, it is clear that CenturyLink is eager to initiate a proceeding as soon as possible in order to remove or revise the vestigial elements of economic regulation for its telecommunications services. We expect the Company recognizes the importance of the results of operations filing as a material input to discussions surrounding the financial aspects of a new AFOR plan and anticipate the Company will provide the information as soon as possible recognizing its importance to the ensuing discussions between the parties to the forthcoming proceeding. Accordingly, we decline to adopt Public Counsel's proposal to require concurrent filing of an AFOR petition with the results of operations filing. CenturyLink's AFOR Waiver Petition to modify Condition 3 of the settlement agreement is granted.

FINDINGS OF FACT

15 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:

- 16 (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.
- 17 (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.
- 18 (3) One of the multiparty agreements was a settlement stipulation between CenturyLink/Qwest, Staff, and Public Counsel.
- 19 (4) By this agreement, CenturyLink pledged to file its Alternative Form of Regulation (AFOR) Petition no sooner than three years and no later than four years after the transaction closing date between CenturyLink and Qwest.

- 20 (5) The merger closing date between CenturyLink and Qwest occurred on April 1, 2011.
- 21 (6) On November 18, 2011, the Federal Communications Commission issued its Intercarrier Compensation and Universal Service Fund Reform Order (ICC and USF Reform Order).
- 22 (7) The ICC and USF Reform Order requires carriers to reduce access charges in steps, including bringing intrastate terminating access rates into parity with interstate access rates by July 1, 2013.
- 23 (8) On November 7, 2012, CenturyLink filed a Petition for Waiver and/or Modification of Merger-Related Conditions Regarding AFOR Filings (AFOR Waiver Petition).
- 24 (9) CenturyLink's AFOR Waiver Petition requests authority to file its AFOR Petition prior to the settlement agreement terms and conditions allowed, between April 1, 2014, and April 1, 2015, so as to open an AFOR proceeding with the Commission as soon as possible.

CONCLUSIONS OF LAW

- 25 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:
- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 27 (2) The FCC's ICC and USF Reform Order, issued on November 18, 2011, imposed sweeping changes on intercarrier compensation and universal service fund programs.
- 28 (3) Given the broad impact of the ICC and USF Reform Order provisions and changing marketplace conditions, the Commission should approve CenturyLink's request for an immediate opportunity to demonstrate its need for regulatory flexibility by filing an AFOR Petition sooner than April 1, 2014.

ORDER

THE COMMISSION ORDERS That:

- 29 (1) CenturyLink's Petition for Waiver and/or Modification of Merger-Related
Conditions Regarding AFOR Filings is granted.
- 30 (2) Condition 3 of the settlement agreement reached by CenturyLink, Staff, and
Public Counsel is modified to allow CenturyLink to file its AFOR Petition
immediately.

Dated at Olympia, Washington, and effective January 8, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

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.