

CenturyLink
1600 7th Avenue, Room 1506
Seattle, Washington 98191
Phone: (206) 733-5178
Facsimile (206) 343-4040

Maura E. Peterson
Paralegal
Regulatory Law Department



February 29, 2012

*Via E-mail and
Overnight Delivery*

Mr. David Danner, Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-(new) – CenturyLink’s Petition for Waiver

Dear Mr. Danner:

Enclosed are the original and 12 copies of CenturyLink’s Petition for Waiver of the MR-8 PID due to Force Majeure Event.

The electronic copy is being provided by email.

Sincerely,

A handwritten signature in black ink, appearing to read "Maura E. Peterson".

Maura E. Peterson

mep

Enclosures

cc: Jennifer Cameron-Rulkowski
Simon ffitc

STATE OF WASHINGTON
UTILITY AND TRANSPORTATION COMMISSION
2012 MAR -1 AM 11:33
Maura E. Peterson
1600 7th Avenue, Room 1506
Seattle, WA 98191
Phone: (206) 733-5178
Facsimile: (206) 343-4040

CERTIFICATE OF SERVICE

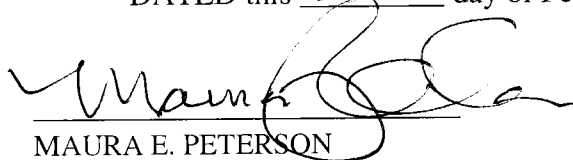
Docket No. UT-(new)

CenturyLink's Petition for Waiver

I certify that I have caused to be served copies of CenturyLink's Petition for Waiver by email and mail on the following parties:

Jennifer Cameron-Rulkowski Assistant Attorney General 1400 S Evergreen Park Dr SW P.O. Box 40128 Olympia, WA 98504-0128 Tel: (360) 664-1186 Email: jcameron@utc.wa.gov	Simon ffitch Public Counsel Section Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 Tel: (206) 464-7744 Email: simonf@atg.wa.gov
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DATED this 29th day of February, 2012.


MAURA E. PETERSON

2012 MAR -1 AM 11:3
STATE OF WASHINGTON
PUBLIC UTILITIES
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition by QWEST CORPORATION d/b/a CENTURYLINK QC for Waiver of the MR-8 PID due to Force Majeure Event

Docket No. UT-(NEW)
PETITION FOR WAIVER

- 1 Qwest Corporation d/b/a CenturyLink QC (hereinafter “Qwest”) petitions the Washington Utilities and Transportation Commission (“Commission”) for waiver of its obligations under Performance Indicator Definition (“PID”) MR-8 – Trouble Rate, due to a Force Majeure Event in January 2012.
- 2 MR-8 evaluates the overall rate of trouble reports as a percentage of the total installed base of a particular service or element. The PID measures trouble reports by product and compares them to the number of lines in service. The PID is a monthly, statewide measurement, and generally requires “parity.” Parity is measured by comparing the number of CLEC circuits with trouble reports to the number of trouble reports for a corollary retail product, each expressed as a percentage of total circuits. The PIDs are contained in Exhibit B to most interconnection agreements (“ICAs”) in the state.
- 3 The waiver is sought because the major winter storm event in January 2012 caused a disproportionate number of trouble reports in the metro areas in the western part of the state, where the greatest number of CLEC circuits exist. This resulted in a higher number of CLEC trouble reports compared to the statewide average for retail products, because the statewide average includes a number of retail customers and circuits

unaffected by the storm, with correspondingly lower trouble reports, but very few CLECs who were unaffected.

4 Qwest notified its CLEC customers of the Force Majeure impact of the storm on January 20, 2012¹, but considers the event to have started on January 17, 2012,² consistent with the Governor's proclamation. Weather related trouble abated by the 25th of January and Qwest notified its CLEC customers of the end of the Force Majeure Event on that date.³

5 There is no specific provision in the PID to exclude trouble tickets related to weather (if there were, this petition would not be necessary), but all of the interconnection agreements in the state include a force majeure provision such as that contained in Qwest's negotiations template,

Section 5.7.1:

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the

¹ Attachment A – Force Majeure Notice

² Attachment B http://www.governor.wa.gov/proclamations/pr_12-01.pdf

³ Attachment C – Termination of Force Majeure

extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

6 That provision requires the party affected by the Force Majeure Event to give prompt notice to the other party, and is specifically excused from performance of its obligations under the ICA. The provision also states that neither party shall be liable for any delay or failure in performance of the ICA due to a Force Majeure Event.

7 The only way to give meaningful effect to Section 5.7.1 in this case is to exclude all of the trouble reports in the central offices that were impacted by the storm when calculating the trouble report rate for the month.⁴ This would implement the Force Majeure Event provisions by excusing Qwest from its performance obligation under MR-8, and would give effect to the provision that states that Qwest is not liable for delays or failures due to Force Majeure Events.

8 In this particular instance, the Force Majeure impact is seen almost solely in one product category, “Enhanced Extended Loops – DS1” or “EEL-DS1” and in the MR-8 Trouble Report Rate PID. Accordingly, Qwest is seeking Force Majeure waiver relief only for that product category in the impacted central offices.

9 Qwest has attached a spreadsheet showing the results of excluding the trouble reports for EEL-DS1s in period of January 17 – 25, 2012, as well as the unadjusted data which includes the trouble reports for the entire month.⁵ In this calculation, all trouble reports for all EEL-DS1s in the affected central offices for that 8-day period are excluded. In

⁴ Attachment D is the list of impacted wire centers.

⁵ Attachment E – Spreadsheet

some cases, for some CLECs, Qwest does not meet the parity standard even after these exclusions, and Qwest will pay Tier 1 and Tier 2 PAP payments as a result. The failure to meet this standard is due in large part to some systemic failures of the MR-8 PID, but Qwest is not seeking to discuss or correct those failures in this filing. Rather, Qwest simply seeks to perform the PID calculation giving effect to the Force Majeure Event provision, thereby making that provision meaningful.

10 Without accounting for the Force Majeure Event, the unadjusted trouble rate results would yield MR-8 EEL-DS1 payments for January 2012 of \$51,294. Adjusting the calculations to recognize the Force Majeure Event would yield MR-8 EEL-DS1 payments for January of \$4,689, representing a difference of \$46,605. In comparison, the range of monthly MR-8 payments for EEL-DS1s in 2011 ranged from \$0 to \$21K.

11 For the reasons stated herein, Qwest respectfully asks the Commission to implement the Force Majeure Event provisions by modifying the inputs to the MR-8 calculations for January 2012.

DATED this 29th day of February, 2012.

QWEST CORPORATION D/B/A CENTURYLINK QC



Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 1506
Seattle, WA 98191
Phone: (206) 398-2500

CenturyLink
1600 7th Ave., Suite 1506
Seattle, WA 98191
Telephone: (206) 398-2500
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