

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

THE CENTURYLINK  
COMPANIES – QWEST  
CORPORATION; CENTURYTEL  
OF WASHINGTON;  
CENTURYTEL OF INTERISLAND;  
CENTURYTEL OF COWICHE;  
AND UNITED TELEPHONE  
COMPANY OF THE NORTHWEST

To be Regulated Under an  
Alternative Form of Regulation  
Pursuant to RCW 80.36.135.

Docket No. UT-

CENTURYLINK’S PETITION FOR  
APPROVAL OF AN ALTERNATIVE FORM  
OF REGULATION IN ACCORDANCE WITH  
RCW 80.36.135

**I. INTRODUCTION**

*I* The CenturyLink operating companies<sup>1</sup> (“CenturyLink”) hereby petition the Washington Utilities and Transportation Commission (“Commission”) for relief from traditional rate of return rate base regulation pursuant to RCW 80.36.135. CenturyLink’s proposed plan for an alternative form of regulation (“AFOR”) is attached hereto as Exhibit A. In this petition, CenturyLink will briefly describe the nature of the proposed AFOR, and how it complies with the statutory requirements. In addition, CenturyLink’s AFOR plan is supported by the

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<sup>1</sup> Unless specifically stated otherwise, the terms of the AFOR will apply equally to all five ILEC operating companies, Qwest Corporation d/b/a CenturyLink QC, CenturyTel of Washington, Inc. d/b/a CenturyLink, CenturyTel of Inter Island, Inc. d/b/a CenturyLink, CenturyTel of Cowiche, Inc. d/b/a CenturyLink, and United Telephone Company of the Northwest d/b/a CenturyLink.

testimony of Mark S. Reynolds and John M. Felz, also filed with this Petition.

2 CenturyLink asks the Commission to schedule a prehearing conference as soon as possible in  
order to establish a schedule for the consideration and approval of CenturyLink's AFOR plan.

## II. SUMMARY OF THE AFOR PLAN

3 CenturyLink will be subject to the same regulation as those companies who are competitively  
classified pursuant to RCW 80.36.320, subject to certain exceptions and certain transition  
period requirements.

4 WAC 480-120-439(1) service quality reporting requirements are waived for CenturyLink,  
although it will be subject to WAC 480-120-439(2) service quality requirements. Also, the  
Customer Service Guarantee reporting requirements in the Seventeenth Supplemental Order in  
Docket UT-991358, and Order 14 in Docket UT-100820 are waived for CenturyLink.

5 The terms of the AFOR will be effective upon approval by the Commission and will remain in  
effect for at least five (5) years. Six months prior to the five-year anniversary of the AFOR,  
CenturyLink and the Commission will conduct a review of the provisions of this AFOR to  
determine if changing market conditions warrant modifications to the plan and at that time  
either the Commission or CenturyLink may reopen the AFOR proceeding to propose  
modifications to the plan. The transition period requirements, as well as the exceptions, are  
described in the attached Exhibit A.

## III. DISCUSSION

6 Alternative regulation of telecommunications companies is authorized and endorsed by the  
legislature as set forth in RCW 80.36.135(1):

The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW [80.04.330](#), this section, and RCW [80.36.145](#). The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

7 Thus, the Commission is authorized by the legislature to regulate different telecommunications companies in different ways, depending upon the circumstances of the company and how the AFOR meets the public policy goals of the state.

**A. Requirements for the Petition Contained in RCW 80.36.135(3)**

8 Under RCW 80.36.135(3) “A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation.” This Petition is a petition under that subsection of the statute, and CenturyLink has submitted a plan for an AFOR in accordance with the statutory requirements. Subsection (3) goes on to require that “[t]he plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan.”

9 CenturyLink’s plan proposes that it be permitted to implement certain aspects of the AFOR immediately upon approval of the plan, but also contains a transition period of three (3) years as set forth in Exhibit A and Mr. Reynolds’ testimony. The proposed initial duration of the plan is five (5) years, also as described in those documents.

- 10 Subsection (3) requires that “[t]he plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures.” As described in CenturyLink’s plan and testimony, this particular AFOR would make no changes at all to CenturyLink’s current carrier-to-carrier obligations under either state or federal law, including the service quality plan that was required in the Qwest AFOR in 2007. Nor would it change any of CenturyLink’s interconnection agreements with other carriers under Section 252 of the Telecommunications Act of 1996.
- 11 Most, if not all, of these agreements contain a set of Performance Indicators, coupled with the Commission-approved CenturyLink Performance Assurance Plan (“QPAP”), that together operate as service quality standards and performance measures, and provide appropriate enforcement and remedial provisions within their terms. Because CenturyLink is proposing no change to the status quo in this area, and because the status quo provides adequate protection for carrier-to-carrier service quality, no new or additional provisions are proposed in CenturyLink’s AFOR.
- 12 Although the Commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion, that is not the case with this Petition. Subsection (3) of RCW 80.36.135 goes on to require that the Commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the Commission for good cause. This Petition is filed on April 1, 2013. Nine months from the filing date is January 1, 2014. However, CenturyLink respectfully requests that the Commission establish a schedule that would allow issuance of an order earlier than that deadline.

13 In terms of the standards for consideration of the AFOR, RCW 80.36.135(3) directs the Commission to “order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.” Thus, CenturyLink will next explain how its proposed AFOR meets the considerations stated in RCW 80.36.135(2).

**B. Considerations Stated in RCW 80.36.135(2)**

14 RCW 80.36.135(2) provides that, subject to certain conditions, “the commission may regulate telecommunications companies subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate.” Thus, the Commission has broad discretion to consider the extent and manner of an appropriate AFOR, so long as the Commission addresses the state’s general policy considerations, as well as the specific considerations set forth in this statute. RCW 80.36.135(2) specifically directs the Commission to consider both the public policy goals declared in RCW 80.36.300, as well as the six specific factors in subsection (2).

**1. The Goals of RCW 80.36.300**

15 The stated public policy goals of the State of Washington, as set forth in RCW 80.36.300, are as follows: (1) Preserve affordable universal telecommunications service; (2) Maintain and advance the efficiency and availability of telecommunications service; (3) Ensure that customers pay only reasonable charges for telecommunications service; (4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies; (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state;

and (6) Permit flexible regulation of competitive telecommunications companies and services.

16 CenturyLink believes that its AFOR plan is consistent with each of these goals. CenturyLink's plan includes a provision that caps the recurring charges for basic stand-alone residential flat-rated local exchange service (1FR) at \$15.50 for the transition period (except for those customers who are already paying a higher rate), and continues to retain the measured local exchange service option (1MR) in the tariffs. WTAP and Lifeline programs will also continue in the tariff. CenturyLink believes that this proposal preserves affordable universal telecommunications service, consistent with policy goal (1).

17 Policy goal (2) is to maintain and advance the efficiency and availability of telecommunications service, and policy goal (3) is to ensure that customers pay only reasonable charges for telecommunications service. These goals parallel goals set forth in RCW 80.36.135(2) and are discussed below.

18 Policy goal (4) is to ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies. CenturyLink's rates for its noncompetitively classified (i.e., tariffed) services were set by the Commission in the most recent rate case, or are offered under tariffs that have been submitted to and reviewed by the Commission. The Commission has either affirmatively approved those rates, or has determined that it will take no action on them, thereby allowing them to become effective. This stated policy goal has been in place since 1985 and CenturyLink believes that the Commission is mindful of these goals as it goes about its daily business. No allegations of cross-subsidization are currently pending with regard to CenturyLink's competitive and tariffed services, and CenturyLink believes that it is reasonable to conclude that its rates to date have been set with this goal in mind. There is nothing in the AFOR plan that would allow CenturyLink to begin extracting profits from its tariffed services to support its competitive

service offerings. Further, one only need look at the underlying costs of service (generally reflected by CenturyLink's wholesale TELRIC costs) to conclude that CenturyLink's non-competitively classified services do not carry sufficient margin to support any allegation that a cross-subsidy exists. Finally, CenturyLink has committed to comply with RCW 80.36.330(3) regarding below cost pricing. It follows that if services are not below cost, they are also not being subsidized by other services.

19 Policy goal (5) is to promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state. CenturyLink's AFOR is not inconsistent with this goal – it gives CenturyLink additional regulatory flexibility that will enable it to compete more effectively in the markets in Washington. It is competition that promotes diversity in supply of services, by spurring carriers to develop and deploy new products and services to capture or retain market share. To the extent that this AFOR will allow CenturyLink to be more competitive (albeit without all of the flexibility enjoyed by a competitively classified company), CenturyLink believes that this goal will be furthered.

20 Policy goal (6) is to permit the flexible regulation of competitive telecommunications companies and services. CenturyLink's AFOR is not inconsistent with that goal, as it does not change the way the Commission regulates competitive companies and services.

## **2. The Specific Factors under Subsection (2) of RCW 80.36.135**

21 Under RCW 80.36.135(2), the Commission is further directed to consider whether the AFOR will: (a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes; (b) Improve the efficiency of the regulatory process; (c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;

(d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services; (e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and (f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

- 22 It is important to note that the statute does not require that the Commission make an affirmative finding that the AFOR will meet or enhance each of these considerations. Rather, the Commission is merely directed to consider whether the AFOR will further the considerations. This suggests that the Commission may still approve an AFOR that is neutral with regard to one or more of the considerations. Notwithstanding that, CenturyLink believes that its AFOR plan is consistent with each of these considerations and that there is no impediment to the Commission approving the plan under RCW 80.36.135(3).
- 23 The first consideration is whether the plan will “facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes. . . .” Nothing in the AFOR affects CenturyLink’s ongoing commitment to deploy quality and technologically current products to its customers throughout its operating territory. In fact, CenturyLink’s AFOR includes a provision that it will not geographically de-average its rates for the services that will be treated as competitively classified services if the AFOR is approved. Further, CenturyLink has invested and will continue to invest in Broadband deployment, in order to meet the demands of the competitive market.
- 24 The second consideration is whether the AFOR will improve the efficiency of the regulatory process. CenturyLink believes that it will. The AFOR streamlines many reporting processes for CenturyLink, while continuing to provide the Commission information it needs to discharge its regulatory duties. Mr. Reynolds’ testimony further explains this.



25 The third consideration is whether the AFOR will preserve or enhance the development of effective competition and protect against the exercise of market power during its development. CenturyLink respectfully suggests that competition is so effective at this point, that there is certainly no need to seek to “enhance” it with an AFOR. However, this provision is obviously a very general one, and was written at a time when the state of effective competition and its rate of development was uncertain. Thus, this is certainly a legitimate consideration for the legislature to have mandated. CenturyLink’s position on this consideration is that it is the competitive market itself that has driven CenturyLink’s need to seek an AFOR, to enable it to more effectively compete against a host of strong competitors, regulated and unregulated. CenturyLink submits that it is not currently able to exercise market power for the services that would be affected by the AFOR, and that the AFOR therefore does not harm, and at least preserves, the development of competition. Mr. Felz’s testimony discusses competition in detail.

26 The fourth consideration is whether the AFOR will preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services. CenturyLink believes that the AFOR does no harm to service quality. The AFOR plan continues to hold CenturyLink to the service quality requirements that are in place by rule for all companies. Mr. Reynolds’ testimony details this aspect of the plan. CenturyLink’s incentives to preserve service quality exist independent of any AFOR plan, and indeed independent of any Commission requirements – the competitive market in Washington as described by Mr. Felz allows carriers little to no latitude with regard to service quality, as customers who are dissatisfied with a provider have a number of competitive options.

27 The fifth consideration is whether the AFOR will provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential. CenturyLink

submits that its commitment with regard to pricing the 1FR and the 1MR, as well as its deaveraging commitment, coupled with the price-constraining competitive market described in Mr. Felz’s testimony, will assure that prices remain fair, just and reasonable.

28 The final consideration is whether the AFOR will not unduly or unreasonably prejudice or disadvantage any particular customer class. Under the AFOR, all of CenturyLink’s residential customers are treated similarly with regard to pricing of the stand-alone residential services. Thus, there is no prejudice or disadvantage to that customer class. In addition, all of CenturyLink’s business services will be treated as competitively classified, as the Qwest business services have been in the Qwest AFOR. There is no indication that any of these customers have been prejudiced or disadvantaged in the past, or that the AFOR would have any negative effect in that regard.

**C. Waiver of Requirements Pursuant to RCW 80.36.135(5)**

29 CenturyLink has asked the Commission to waive certain regulatory requirements under the AFOR. The Commission has authority to do so under RCW 80.36.135(5), which provides that the “commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.”

30 The regulatory requirements that CenturyLink has requested be waived are generally the same as those that are waived for competitively classified companies, with some very specific exceptions, as described by Mr. Reynolds.

#### IV. CONCLUSION

31 For the reasons set forth herein, CenturyLink asks the Commission to commence a proceeding under RCW 80.36.135(3) and approve CenturyLink's AFOR plan, attached hereto as Exhibit A.

DATED this 1<sup>st</sup> day of April, 2013.

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