

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

THE CENTRUYLINK COMPANIES - QWEST CORPORATION; CENTURYTEL OF
WASHINGTON; CENTURYTEL OF INTERISLAND; CENTURYTEL OF
COWICHE; AND UNITED TELEPHONE COMPANY OF THE NORTHWEST

Respondent.

DOCKET UT-240029

**DAVID BREVITZ, C.F.A.
ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

EXHIBIT DB-13

*Quest Corp., Petition for Statewide Exemption for Carrier of Last Resort Obligation,
Docket No. 23-049-01, Order (Pub. Serv. Comm'n Utah, Mar. 15, 2024)*

July 12, 2024

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Qwest Corporation d/b/a CenturyLink
QC's Petition for Statewide Exemption
from Carrier of Last Resort Obligations

DOCKET NO. 23-049-01

ORDER

ISSUED: March 15, 2024

SYNOPSIS

The Public Service Commission (PSC) denies the petition of Qwest Corporation d/b/a CenturyLink ("CenturyLink") for an exemption, in whole or in part, from its Carrier of Last Resort (COLR) obligations.

1. Procedural Background

On June 21, 2023, CenturyLink filed a petition requesting the PSC to exempt it, in whole or in part, from its COLR obligations as defined in Utah Code Section 54-8b-15(1)(b) ("Petition"). The PSC held a virtual scheduling conference on July 6, 2023, and a Scheduling Order was issued on July 7, 2023. On August 1, 2023, CenturyLink filed direct testimony in support of its Petition. The Division of Public Utilities (DPU), the Office of Consumer Services (OCS), and intervenor the Utah Rural Telecom Association ("URTA") filed direct testimony on October 19, 2023. On November 16, 2023, CenturyLink and URTA filed rebuttal testimony.

On November 22, 2023, CenturyLink filed an Agreed Motion to Modify Scheduling Order seeking to alter the remaining deadlines and a 30-day extension of the statutory deadline to rule on the Petition pursuant to Utah Code Section 54-8b-3(7)(a). The PSC granted that motion on November 28, 2023. A Joint Motion to Amend

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the Scheduling Order to Allow for Limited Prehearing Briefs was subsequently filed on January 4, 2024, which the PSC granted on January 8, 2024.

The OCS, CenturyLink, and URTA filed surrebuttal testimony on January 24, 2024.

On January 26, 2024, URTA filed a Joint Motion for Continuance representing that the parties were trying to resolve the matter by stipulation. The PSC granted that motion on January 26, 2024.

An evidentiary hearing and a separate hearing to receive public statements were held on February 8, 2024.¹

2. Factual Background and Testimony of Parties

a. The Petition

CenturyLink requests an exemption, in whole or in part, pursuant to Utah Code Section 54-8b-3(1)(a), from its COLR obligations.² The Petition asserts CenturyLink does not seek relief from discontinuance regulations that restrict its ability to terminate service to existing customers, but instead seeks prospective relief from the “obligation to provide voice service to every new customer location regardless of the cost of service.”³ The Petition further states that CenturyLink has never received high-cost support from the state of Utah nor federal universal support since 2022;

¹ The PSC also received written public comments on July 20, 2023, and February 9, 2024.

² See Utah Code Ann. § 54-8b-15(1)(b).

³ Petition at 2.

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therefore, with no supportive funding for its COLR obligations, CenturyLink asserts it should not be obligated to be a COLR.⁴

The Petition asserts that effective competition exists throughout CenturyLink's service territory and competing telecommunications carriers are available to provide functionally equivalent services. CenturyLink cites its decline in market share, stating that "alone shows that competition is both effective and thriving, and alternatives are readily available in every wire center in [CenturyLink's] service territory."⁵ The Petition further asserts that granting the Petition will not harm the public interest because, among other things, CenturyLink intends to continue to serve existing customers, customers could opt for a competitor's service, and public funding trends indicate against further investment in traditional voice service.⁶

b. CenturyLink Testimony

In written direct testimony supporting the Petition, CenturyLink witness David Ziegler provides a more detailed narrative as to why CenturyLink believes the Petition should be granted. In support of CenturyLink's argument that effective competition for voice service exists, Mr. Ziegler represents that 72.8% of Utah consumers do not have

⁴ The Petition also requests that "CenturyLink ... be [allowed] to access [Utah's] Universal Service Fund[]" in order for "CenturyLink to maintain the COLR obligation for high-cost locations[]" if the PSC grants CenturyLink relief from its COLR obligations on a location-by-location basis. *Id.* at 3-4. However, regardless of whether this request is appropriate in this docket, the denial of the Petition makes it unnecessary to address this request.

⁵ Petition at 12-13.

⁶ *See id.* at 13-14.

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a landline and 1.9% of Utah households rely on landline service only.⁷ He also represents that CenturyLink has lost 87% of its fixed voice subscription service since 2005⁸ and is the sixth largest provider of residential telecommunications services in Utah.⁹ Mr. Ziegler asserts that effective competition exists in Utah because “[i]t is clear by reviewing technology preference, CenturyLink’s access line decline, the share of voice connections by technology type, and technology coverage in Utah that customers prefer to spend their money on mobile and internet voice solutions rather than antiquated landlines.”¹⁰ Mr. Ziegler also testifies that the public interest would be served by granting the Petition because “the public interest is advanced by expanding broadband infrastructure[]” and “relief from COLR allows CenturyLink to devote greater resources to expanding high-speed internet to connect all Americans and ensure that underserved populations gain access to the global digital community.”¹¹

In written rebuttal testimony, CenturyLink’s Alan Lubeck asserts that the competitive services it has previously identified as being available to Utah customers are functionally equivalent to CenturyLink’s current voice service. Mr. Lubeck states that “broadband internet access, including mobile broadband and fixed wireless, [are] types of voice services [that] are functionally equivalent to plain old telephone service

⁷ See David Ziegler written direct testimony at 6 (hereafter, “Ziegler Direct”), and Ziegler Direct Exhibit 1.

⁸ See Ziegler Direct at 6 and Exhibit 2.

⁹ See Ziegler Direct at 9 and Exhibit 6.

¹⁰ Ziegler Direct at 12-13.

¹¹ *Id.* at 14-15.

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(POTs) lines[,]”¹² which is the subject of CenturyLink’s Petition. Mr. Lubeck also urges the PSC to consider Utah’s participation in the federal Broadband Equity Access and Deployment (“BEAD”) program when evaluating the public interest consideration. According to Mr. Lubeck, Utah will receive \$317 million through BEAD to deploy high-speed Internet to unserved or underserved locations.¹³ Mr. Lubeck concludes that the BEAD funding will both continue to erode CenturyLink’s market share and allow for competing services that are functionally equivalent to provide Utah consumers more options and availability in telecommunications providers.¹⁴

In written surrebuttal, Mr. Lubeck asserts that Utah customers receive voice services from CenturyLink and multiple competitive providers through a “combination of cable, fixed wireless and mobile wireless” and notes that providers have reported to the FCC that satellite service is available to 100% of Utah households.¹⁵ In support, and addressing data quality criticisms voiced by other parties, Mr. Lubeck provides FCC broadband data for Utah showing telecommunications connections including from fiber, cable, fixed wireless, satellite, and mobile providers, at a more detailed level. Mr. Lubeck states the data is sufficiently granular to show that effective competition exists,¹⁶ and testifies that comparing the total number of locations that

¹² See Lubeck written rebuttal testimony (hereafter, “Lubeck Rebuttal”) at 2-4.

¹³ See *id.* at 5.

¹⁴ See *id.* at 6-7.

¹⁵ See Lubeck written surrebuttal testimony (hereafter, “Lubeck Surrebuttal”) at 2-3.

¹⁶ See *id.* at 5-6.

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exist in a wire center, against the number of locations actually served by competitors (excluding satellite providers) in that wire center shows 2,688 locations where CenturyLink exclusively serves.¹⁷ Mr. Lubeck notes that these 2,688 locations are out of a total of 884,186 locations, which is “[one-third] of a single percent ... of all existing locations[,]” but he also acknowledges these locations in Utah would not have an alternative voice provider.¹⁸

Mr. Lubeck’s testimony at hearing reiterated the Petition seeks an exemption from COLR obligations relating to voice service to any new customer within CenturyLink’s local exchange, and discussed CenturyLink’s declining market share, Utah customer preferences, competitor coverage areas, and functionally equivalent services.¹⁹ Mr. Lubeck further testified that CenturyLink believes effective competition exists in all areas of Utah and that granting the Petition is in the public interest. On this latter point, he testified “it would advance the policies of the state to encourage competition, allow flexible and reduced regulation, and ... facilitate the deployment of advanced services.”²⁰

On cross-examination, Mr. Lubeck acknowledged that even if the PSC grants the Petition, CenturyLink will still have its federal Eligible Telecommunications Carrier

¹⁷ See *id.* at 6 (citing Exhibit 1, CTL-0388-0397 attached to Lubeck Surrebuttal).

¹⁸ See *id.*

¹⁹ See generally, February 8, 2024, Hearing (hereafter, “Evidentiary Hr’g”) at pp. 14-17.

²⁰ *Id.* at 20:16-21.

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(ETC) obligations²¹ to provide service, so the purpose of the Petition is “to eliminate the Utah obligation so [CenturyLink does not] have duplicate obligations” – Utah and federal – “in every state.”²² Mr. Lubeck further acknowledged that CenturyLink’s claimed financial burden associated with its Utah COLR obligations would not be relieved if the Petition is granted because it will still have its federal ETC obligation to serve.²³

Addressing functional equivalence, Mr. Lubeck testified that satellite service is functionally equivalent to landline voice service.²⁴ However, on cross-examination, Mr. Lubeck acknowledged voice service typically is not included in satellite service and must be added-on by the customer at an additional cost.²⁵ Similarly, with respect to broadband service, Mr. Lubeck admitted that if a Utah customer wanted only voice service, but not broadband service, that customer will only be able to get voice service if it subscribes to broadband and pays for voice service on top of the broadband rates.²⁶

²¹ Under the Telecommunications Act of 1996 Section 214(e), the Federal Communications Commission (the “FCC”) may designate certain carriers as Eligible Telecommunications Carriers, or ETCs, which makes them eligible to receive universal service support for their designated areas. Like COLR obligations under Utah law, an ETC designation obligates carriers to offer universal services and advertise the availability of such services. CenturyLink is an ETC.

²² Evidentiary Hr’g at 29:2-5; *see also*, 26:24-27:6.

²³ *See id.* at 50:24-51:3.

²⁴ *See id.* at 30:6-14.

²⁵ *See id.* at 48:11-49:10.

²⁶ *See id.* at 79:2-9.

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Addressing his earlier written testimony on BEAD funding as the solution to the issues raised by the parties opposing the Petition, Mr. Lubeck acknowledged that the BEAD program will not be completely operational until 2029.²⁷ Mr. Lubeck also acknowledged that voice service is not required under the BEAD program and thus would have to be added onto any broadband plan.²⁸

c. URTA Testimony

In written direct testimony, URTA witness Douglas Meredith refutes many of CenturyLink's assertions in its Petition and Mr. Ziegler's testimony, and testifies that CenturyLink should retain its COLR obligations for much of its service area.²⁹ He recommends the PSC grant the Petition in limited areas, but only if the PSC designates another carrier as a COLR to assume COLR responsibilities in those limited areas.³⁰ Mr. Meredith explains that even if the PSC were to grant the Petition, CenturyLink would still have federal ETC obligations.

As to effective competition, Mr. Meredith's direct testimony asserts that none of CenturyLink's local exchanges have 100 percent coverage and the coverage in rural local exchange areas in Juab, Morgan, and Kane County is only 65.27 percent.³¹ According to Mr. Meredith, the "essence of COLR duties is to ensure that all locations

²⁷ See *id.* at 46:16-24.

²⁸ See *id.* at 48:3-16.

²⁹ See Douglas Meredith written direct testimony (hereafter, "Meredith Direct"), at lines 74-75.

³⁰ Mr. Meredith addresses this "replacement COLR" notion throughout his various testimony. However, the denial of the Petition makes it unnecessary to address it.

³¹ See Meredith Direct at lines 176-188 (referencing Ziegler Direct Exhibit 5).

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have access to public telecommunications services[,]” yet CenturyLink’s own evidence shows that not to be completely accurate.³² Moreover, Mr. Meredith criticizes the quality of CenturyLink’s data and argues CenturyLink has not provided adequate evidence to show effective competition by alternative services, such as celestial wireless (satellite), as being “offered at comparable prices, terms, quality, and conditions as [CenturyLink’s] voice services.”³³ Regarding the public interest consideration, Mr. Meredith asserts that exempting CenturyLink from its COLR obligations, unless those obligations are assumed by another carrier, would result in certain Utah locations “not hav[ing] access to essential services, including emergency services.”³⁴

As to CenturyLink’s claimed financial burdens of its COLR obligations, Mr. Meredith argues that CenturyLink is eligible to receive one-time distributions from the Utah Universal Public Telecommunications Service Support Fund (“UUSF”) to extend its network to portions of its service territory where service is requested but not available.³⁵ He states that to date CenturyLink has not availed itself of this funding source. Mr. Meredith also notes that “CenturyLink voluntarily elected to abandon a more imposing regulatory regime in favor of more flexible incentive regulation under

³² See *id.* at lines 192-196.

³³ *Id.* at lines 305-308.

³⁴ *Id.* at lines 325-326.

³⁵ See *id.* at lines 201-204.

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Utah Code 54-8b-2.3³⁶ and states that such an election “requires CenturyLink to continue to offer basic residential service throughout its service area.”³⁷

At hearing, Mr. Meredith reiterated URTA’s concerns with the quality of the data CenturyLink has provided in attempting to substantiate its claim of effective competition, stating that “the level of the granularity of the data” is not focused enough and is therefore incomplete.³⁸ Mr. Meredith disputed CenturyLink’s claim about the difficulty in obtaining data at a more granular level, testifying that the broadband data CenturyLink provided is at an appropriately granular level, but it is not stand-alone voice user data, which is at issue in the Petition, yet that stand-alone voice data, according to Mr. Meredith, is provided by CenturyLink to the FCC.³⁹ Mr. Meredith also reiterated URTA’s concerns with how CenturyLink is defining the service at issue for purposes of its Petition compared to the data it has provided; that is, the Petition is about stand-alone voice service, but CenturyLink’s data is based on broadband users, which means you must have a broadband connection before you can add on the voice service.⁴⁰ Mr. Meredith further testified about URTA’s view that the public interest requires customers to have available stand-alone voice service

³⁶ *Id.* at lines 205-207.

³⁷ *Id.* at lines 213-214.

³⁸ See Evidentiary Hr’g at 126:20-127:13.

³⁹ See *id.* at 132:15-133:20; see also 157:7-24.

⁴⁰ See *id.* at 127:14-128:13.

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guaranteed to them, subject to certain exceptions, as is required with COLR obligations.⁴¹

On cross-examination, Mr. Meredith acknowledged that there are satellite service providers that cost less than the example he provided in his earlier written testimony, but still noted that the price for that cheaper satellite service was more than CenturyLink's voice service prices and therefore asserts it is not a reasonably comparable service on price.⁴² Mr. Meredith also testified that effective competition means "every household in [Utah must have] the ability to have a competitor provid[e] ... standalone voice service."⁴³ Mr. Meredith testified he believes that the COLR obligation achieves such a goal.⁴⁴

d. DPU Testimony

DPU witness Ronald Slusher's written direct testimony states CenturyLink has presented evidence that it faces significant competition in much of its service territory, but the evidence is not clear enough to determine the specific locations to justify CenturyLink's requested exemption.⁴⁵ Mr. Slusher also states it is not clear which services qualify as functionally equivalent services, and DPU needs more evidence to understand and identify areas where an exemption may be warranted and

⁴¹ See *id.* at 130:14-25.

⁴² See *id.* at 138:14-139:9.

⁴³ *Id.* at 143:2-16.

⁴⁴ See *id.* at 146:23-147:8.

⁴⁵ See Ronald Slusher written direct testimony (hereafter, "Slusher Direct"), at lines 41-43.

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where the public interest may require the COLR obligation.⁴⁶ Mr. Slusher questions the quality of CenturyLink's data, stating the market share data on effective competition offered by CenturyLink "has some limitations because it is done at the wire center level."⁴⁷ As a result, according to Mr. Slusher, "mere wire center market share data is not detailed enough to determine where effective competition exists in CenturyLink's service areas."⁴⁸ As to the public interest consideration, Mr. Slusher acknowledges that based on the information DPU had access to that it is likely in the public interest to exempt CenturyLink in some areas from its COLR obligations, but states that "more information is needed to determine where effective competition exists in CenturyLink's service territory."⁴⁹

Gary Smith adopted Mr. Slusher's testimony and provided testimony at hearing on behalf of the DPU. Mr. Smith acknowledged "there are likely some areas where effective competition exists and where it would be likely in the public interest to" grant the Petition, but testified that "more information is still needed to evaluate and clearly identify these areas."⁵⁰ Specifically, Mr. Smith testified that "CenturyLink has not provided substantial evidence detailing the extent of statewide competition or the functional equivalence of alternative services for a sufficient or representative share

⁴⁶ See *id.* at lines 44-47.

⁴⁷ *Id.* at lines 64-67 (referencing the Petition's confidential exhibit 4).

⁴⁸ *Id.* at lines 108-109.

⁴⁹ *Id.* at lines 150-152.

⁵⁰ Evidentiary Hr'g at 93:20-24.

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of its territory to allow a statewide exemption. The evidence submitted likewise does not provide enough location-specific evidence to grant the request for exemption for only a portion of its service territory.”⁵¹ On cross-examination, Mr. Smith testified that DPU had no data to contradict or confirm earlier CenturyLink testimony concerning evidence of the percentage of competitor marketplace service in Utah.⁵²

e. OCS Testimony

Ms. Alyson Anderson’s written direct testimony for OCS states she agrees with CenturyLink “that many customers have chosen competing services that are comparable in terms and price. However, I am concerned there may be pockets of customers or even individual customers within a ‘competitive’ wire center that do not have access to the competitive options available to the wire center as a whole.”⁵³ Addressing the public interest consideration, Ms. Anderson disagrees with CenturyLink’s definition of captive customer as relating to only current and not potential customers stating, “a customer is captive if that customer does not have a reliable option for telecommunication service other than the COLR, who is obligated to serve all customers within an exchange.”⁵⁴ Ms. Anderson also asserts that ongoing

⁵¹ *Id.* at 94:6-14.

⁵² *See id.* at 96:17-97:7.

⁵³ Alyson Anderson written direct testimony (hereafter, “Anderson Direct”) at lines 60-64. For example, Ms. Anderson notes that OCS was recently contacted by a CenturyLink customer who was unable to access a competitive, functionally equivalent service even though the customer is in a competitive area. *See id.* at lines 81-86. This customer provided declarations as part of OCS’s written direct and surrebuttal testimony, which was received into evidence in this docket.

⁵⁴ *Id.* at lines 101-109 and 125-127.

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maintenance of existing infrastructure and service quality are important parts of the public interest consideration,⁵⁵ and she expresses concern whether CenturyLink will maintain appropriate levels if it does not have its COLR obligations. Finally, Ms. Anderson recommends the PSC not approve the Petition at this time as not being in the public interest.⁵⁶

At hearing, Ms. Anderson acknowledged that she is not aware of anything in Utah law that requires a showing of 100% market saturation by competitors to prove effective competition,⁵⁷ but asserted there is also nothing requiring any threshold of market saturation to prove effective competition.⁵⁸ Ms. Anderson also acknowledged that CenturyLink's data shows "only 1.9 percent of Utah residents rely on landline as their only voice service[,]"⁵⁹ and further acknowledged CenturyLink's claim that, excluding satellite providers, "only one-third of a single percent of customers in CenturyLink's wire centers do not have an alternate provider[,]” which constitutes a very small portion of the overall population.⁶⁰ However, Ms. Anderson reiterated OCS's concern about the effect on "individual or pockets of captive customers that cannot access competitive services within a CenturyLink wire center[]" if the Petition

⁵⁵ See *id.* at 155-161.

⁵⁶ See *id.* at lines 188-195.

⁵⁷ See Evidentiary Hr'g at 108:6-11.

⁵⁸ See *id.* at 112:24-113:6.

⁵⁹ *Id.* at 109:13-21.

⁶⁰ *Id.* at 111:19-112:3.

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is granted.⁶¹ In addition to the previously admitted declarations,⁶² Ms. Anderson provided an illustration of this concern, noting that if the Petition is granted and a current CenturyLink customer sells her house, the new owner of the house would be considered a new customer and CenturyLink would not have the obligation to serve that customer, which “is especially concerning for ... locations without ... competitive options available within a wire center.”⁶³

Ms. Anderson also expressed OCS’s concern that “not all competitive providers identified by CenturyLink in Utah provide service that is reasonably available at comparable prices, terms, quality, and conditions,” and concludes such “cannot be considered effective competition.”⁶⁴ Ms. Anderson further testified that OCS believes it is in the public interest that any person should have adequate telecommunications services available to them and that “CenturyLink hasn’t provided enough information to help [OCS] feel secure that the public interest will be served because of that.”⁶⁵ Ms. Anderson does not believe CenturyLink has adequately addressed these concerns and thus has not met its burden in this docket which, “until there is some protection for customers without competitive choice, the OCS recommends” the Petition be denied.⁶⁶

3. Legal Standard

⁶¹ *Id.* at 104:9-13; *see also* 113:23-25 and 114:1-6.

⁶² *See* n.53, *supra*.

⁶³ *Id.* at 104:14-20.

⁶⁴ *Id.* at 104:21-25; *see also* 116:24-117:5.

⁶⁵ *See id.* at 117:15-118:9.

⁶⁶ *Id.* at 104:25-105:4.

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The PSC must have a sufficient evidentiary basis upon which to grant the Petition, and it is CenturyLink's burden to provide such evidence.⁶⁷ The Petition seeks an exemption from Utah's COLR obligations,⁶⁸ and the determination of whether an exemption is appropriate is governed by Utah Code Section 54-8b-3, which provides: "The commission may issue an order for an exemption only if it finds that: (a) the telecommunications corporation or service is subject to effective competition; and (b) the exemption is in the public interest."⁶⁹

In determining whether effective competition exists, the PSC "shall consider all relevant factors, which may include: (a) the extent to which competing telecommunications services are available from alternative telecommunications providers; (b) the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions; (c) the market share of the telecommunications corporation for which an exemption is proposed; (d) the extent of economic or regulatory barriers to entry; (e) the impact of potential competition; and (f) the type and degree of exemptions to this title that are proposed."⁷⁰ In determining whether the exemption is in the public interest, the PSC "shall consider, in addition to other relevant factors, the impact the

⁶⁷ See *e.g.*, *In re Mountain States Telephone and Telegraph Co.*, 1988 Utah PUC Lexis 5.

⁶⁸ See Utah Code Ann. § 54-8b-15.

⁶⁹ Utah Code Ann. § 54-8b-3(4).

⁷⁰ See Utah Code Ann. § 54-8b-3(5)(a)-(f).

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proposed exemption would have on captive customers of the telecommunications corporation.”⁷¹

4. Discussion, Findings, and Conclusions

We find the record supports that (1) CenturyLink has lost market share within a shrinking market for landline telephone services; (2) many Utah residents have dropped their landline telephone services; and (3) voice and data services from a variety of different types of providers including mobile, satellite, cable, and broadband exist in much of the State of Utah. We also find, however, the evidence as applied to other relevant factors does not support granting the Petition.

The extent (or geographic scope) of available competing telecommunications services offered in Utah by alternative telecommunications providers is not supported by the evidence. While CenturyLink has provided evidence of this factor, we find it is incomplete to support a conclusion that effective competition for telecommunications service exists. For example, URTA testified that none of CenturyLink’s local exchanges have 100 percent coverage and the coverage in rural local exchange areas in Juab, Morgan, and Kane County is only 65.27 percent.⁷² According to URTA, the “essence of COLR duties is to ensure that all locations have access to public telecommunications

⁷¹ See Utah Code Ann. § 54-8b-3(6).

⁷² See Meredith Direct at lines 176-188 (referencing Ziegler Direct Exhibit 5).

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services[.]” yet CenturyLink’s own evidence shows that standard is not met.⁷³ Similarly, the OCS testified, and provided supporting evidence, that “there may be pockets of customers or even individual customers within a ‘competitive’ wire center that do not have access to the competitive options available to the wire center as a whole.”⁷⁴

The quality of CenturyLink’s evidence in this docket also creates doubt on this factor. For example, URTA claims the data CenturyLink has provided to attempt to show effective competition is not granular enough and is therefore incomplete.⁷⁵ URTA testified that the data CenturyLink provided is of broadband subscribers, not stand-alone voice user data – which is what is at issue in the Petition – yet that stand-alone voice data is provided by CenturyLink to the FCC but has not been provided in this docket.⁷⁶ The OCS also testified that “CenturyLink hasn’t provided enough information to help [OCS] feel secure that the public interest will be served[.]”⁷⁷ Similarly, DPU testified “CenturyLink has not provided substantial evidence detailing the extent of statewide competition or the functional equivalence of alternative services for a sufficient or representative share of its territory to allow a statewide exemption. The evidence submitted likewise does not provide enough location-specific

⁷³ *Id.* at lines 192-196. For the reasons explained below regarding functional equivalents, URTA’s assertion on this point is still compelling, notwithstanding other evidence submitted by CenturyLink purporting to show 100% coverage if satellite service is included.

⁷⁴ Anderson Direct at lines 60-64.

⁷⁵ See Evidentiary Hr’g at 126:20-127:13.

⁷⁶ See *id.* at 132:15-133:20; see also 157:7-24.

⁷⁷ See *id.* at 117:15-118:9.

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evidence to grant the request for exemption for only a portion of its service territory.”⁷⁸ We find the positions of URTA, OCS, and DPU on this issue credible.

The evidence also does not adequately support the availability of competing telecommunications services in Utah at comparable prices, terms, quality, and conditions. While CenturyLink has provided evidence of this factor, we also find it is incomplete to support a conclusion that effective competition for telecommunications services exists. For example, CenturyLink claims that satellite and broadband service are equivalent to stand-alone voice service. However, the evidence shows that voice service is typically not included in satellite service and must be added-on by the customer at an additional cost.⁷⁹ Similarly with respect to broadband service, if a Utah customer wants only voice service, that customer will only be able to get voice service if it subscribes to broadband and pays for voice service on top of the broadband rates.⁸⁰ Based on this evidence, and as indicated in the factual background section of this Order, the opposing parties uniformly urge that such services are not functionally equivalent to stand-alone voice service. For purposes of this docket, we agree with the opposing parties. Moreover, CenturyLink’s own data also shows that many Utah customers currently still rely solely on basic landline telephone service. As the COLR, CenturyLink has a high burden to show that these customers have

⁷⁸ *Id.* at 94:6-14.

⁷⁹ *See id.* at 48:11-49:10.

⁸⁰ *See id.* at 79:2-8.

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access to functionally equivalent telephone service. Despite all the data submitted by CenturyLink, there is insufficient evidence showing that functionally equivalent basic telephone service exists.

We also find that the record does not support that granting the Petition is in the public interest. While CenturyLink has articulated various claimed public interest benefits, it has not provided adequate evidence to support those claims. For example, CenturyLink has stated, in essence, that its continuing COLR obligations inhibit its ability to “modernize if it is required to fund antiquated modes of service that the majority of Utah citizens no longer want or use.”⁸¹ However, there is no evidence supporting that if the Petition was granted CenturyLink would modernize. CenturyLink’s reliance on the BEAD program is also unavailing because it is premature since the evidence shows it will not be fully deployed until 2029 and that voice service offerings are not currently required.

Moreover, CenturyLink admitted that even if the Petition is granted, CenturyLink will still have its federal ETC obligations to provide service and thus CenturyLink’s claimed financial burden associated with its Utah COLR obligations would not be relieved.⁸² In fact, CenturyLink further admitted the purpose of the Petition is “to eliminate the Utah obligation so [it does not] have duplicate obligations”

⁸¹ Ziegler Direct at 14.

⁸² See Evidentiary Hr’g at 50:24-51:3.

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- Utah and federal - "in every state."⁸³ We find there appears to be no real benefit to exempting CenturyLink from its COLR obligations when its federal ETC obligations will remain unchanged regardless of its COLR status in Utah. Further, public testimony established that members of the public believe they will be negatively impacted regardless of whether the customer is classified as captive. Two members of the public provided comments stating their concern that if the PSC grants the Petition, they will lose their access to voice service, including 911⁸⁴ services and access during power outages.⁸⁵

Based on our discussion above, the PSC finds and concludes there is not substantial evidence showing that effective competition at comparable terms and conditions is adequately available to Utah customers. The PSC also finds and concludes, based on the record in this docket, that granting the Petition is not in the public interest.

ORDER

Having considered the evidence in this docket and all relevant factors under Utah law, the PSC denies the Petition.

DATED at Salt Lake City, Utah, March 15, 2024.

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

⁸³ *Id.* at 29:2-5; *see also* 26:24-27:6.

⁸⁴ *See* David Eskelsen written comment at 2.

⁸⁵ *See* February 8, 2024, Public Witness Hearing at 7:19-23.

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Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#332886

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I CERTIFY that on March 15, 2024, a true and correct copy of the foregoing was served upon the following as indicated below:

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