

**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-130477

REFILED PETITION FOR A FOURTH EXTENSION OF THE AFOR AND TO MODIFY THE SETTLEMENT AND ORDER APPROVING THE SETTLEMENT IN ACCORDANCE WITH THE EXTENSION

- 1 This refiled petition, filed by and on behalf of the five CenturyLink companies listed above (“CenturyLink”), seeks a fourth extension of the current plan of AFOR in this docket, and to modify the settlement and order approving the settlement in accordance with the extension.
- 2 On June 27, 2023, CenturyLink filed an unopposed petition for a fourth extension. On June 30, 2023, the Commission issued a Notice Suspending Filing Requirement, Rejecting Petition, and Requiring Filing, and Notice of Hearing (“Commission Notice”). The Commission Notice, among other things, indicated: “(3) [i]f CenturyLink continues to request an extension of the AFOR, the Company must file a petition to amend Order 04 in compliance with WAC 480-07-485 by Friday, July 7, 2023...” The Commission Notice also affords other parties the opportunity to respond and establishes a hearing “on any renewed request to amend Order 04...”
- 3 The current plan, as amended by Order 09, contains provisions regarding what happens at the end of the AFOR in terms of timing and process. The relevant language from the plan of AFOR that was approved by the Commission on January 9, 2014, as amended June 13, 2022, is as follows:

- 2) The terms of this plan for AFOR will be effective upon approval by the Commission and will remain in effect until January 9, 2024 unless extended or modified by Commission order.
  - a) CenturyLink shall file a petition to open a new AFOR docket on July 3, 2023 CenturyLink will also provide the parties a new proposed plan of AFOR, without filing it in the docket, and the Commission's Staff will conduct a review of the provisions of this proposed AFOR to determine if changing conditions warrant new provisions. All parties to this AFOR proceeding will have access to the same material made available to Commission Staff by CenturyLink.
  - b) During the course of that review any of the parties to this AFOR proceeding may propose or oppose modifications for consideration by Commission Staff. Upon conclusion of the review but not later than January 9, 2024, CenturyLink will file the new plan, as either an agreed plan or a proposed plan, along with the plan it proposed to the parties on July 3, 2023, and the Commission will provide notice to the parties and hold a proceeding in which parties may advocate for or against the new plan.
  - c) While the Commission deliberates, the terms of this AFOR shall continue in force.

4 As written, this provision would have required CenturyLink to file a new plan of AFOR by July 3, 2022; that filing requirement was suspended pending further notice by the Commission Notice.

5 In lieu of replacing the current AFOR with a new AFOR, CenturyLink intends to file a petition for competitive classification pursuant to RCW 80.36.320, which states in part: "The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition." If granted competitive classification, a decision that will ultimately fall within the reasonable discretion of the Commission, the need for a new AFOR will be obviated. When CenturyLink petitioned the Commission in 2022 to extend the AFOR for the third time, it had no intention to file a petition for competitive classification. It has since concluded that doing so is the most reasonable and efficient approach to level

setting the regulatory environment in Washington. This new approach represents a changed condition since the Commission entered Order 09, and warrants a further extension for the reasons discussed herein. Additionally, this new approach represents good and sufficient cause that the Commission did not consider or determine in the order to grant (and extend) CenturyLink's AFOR, pursuant to WAC 480-07-870(1)(d).

6 To bridge the gap between the currently-scheduled expiration of the current AFOR and the Commission's determination on CenturyLink's impending petition for competitive classification, a fourth extension of the AFOR is necessary. If not granted, CenturyLink could find itself returning to full rate of return regulation for some period of time. CenturyLink believes that no party supports that outcome given market realities (the same recognized by the Commission in Order 04 in 2014) and given the inevitable drain on resources for both the company and the Commission. As such, CenturyLink respectfully requests a further extension of the AFOR to allow the competitive classification petition to work its way through the Commission's processes.

7 With regard to the competitive classification petition, CenturyLink has engaged both Staff and Public Counsel in the hopes of working together to craft a petition that would not be opposed or require substantial litigation. Those discussions are ongoing and being conducted in good faith. CenturyLink has made an initial proposal, the parties have met, and CenturyLink is gathering responses to questions posed by Staff and Public Counsel. Given those efforts, CenturyLink does not know a date certain by which it intends to file a petition for competitive classification. If additional negotiations offer the potential for minimizing or eliminating issues in dispute, CenturyLink believes the parties' limited resources should be directed to those efforts.

8 If the Commission declines to extend the AFOR, CenturyLink will have no choice but to file both a new AFOR petition and a petition for competitive classification, with both dockets pending at the same time.<sup>1</sup> Given the likelihood of discovery, testimony, motion practice and hearing, this would be an unnecessary waste of resources for the company, Staff, other parties and the Commission and could double the administrative burden on all involved. These parallel dockets would largely be examining the same question: whether sufficient competition for CenturyLink’s services exists to permit competitive classification, whether for a set term of years (AFOR) or permanently (competitive classification), with both being subject to claw back by the Commission. The Commission’s order approving the current AFOR recognized the overlap. Order 04 states in relevant part (*italics added*):

2. That marketplace has changed significantly in the last 30 years. Consumers now have a variety of telecommunications service options, most of which are available from companies using technologies that did not exist in 1984. The CenturyLink companies – Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest (collectively referred to as CenturyLink or Company) – seek to take advantage of the Commission’s broad authority to adjust regulation to a much more competitive environment. *CenturyLink has petitioned the Commission for an alternative form of regulation (AFOR) that effectively would treat the Company as if it were classified as a competitive telecommunications company for the provision of most of the services it offers.*

3. *All parties to this proceeding agree that CenturyLink faces strong competition for the majority of its services throughout most of the geographic area it serves. We agree and find that this docket affords the Commission the opportunity to continue to acknowledge the realities of the 21st Century marketplace by reducing unnecessary regulation and enhancing the ability of CenturyLink to compete more effectively to the ultimate benefit of this state’s consumers.*

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<sup>1</sup> This would be necessary because, should the company not become competitively classified through the Commission process, it will return to full, monopoly-era regulation if no AFOR is in place as a safety net.

38. *The Stipulated AFOR would treat the Company as if it were classified as a competitive telecommunications company under RCW 80.36.330. Such companies must be subject to effective competition, which “means that the company’s customers have reasonably available alternatives and that the company does not have a significant captive customer base.”* Competitively classified companies are subject to minimal regulation, including waiver of statutes or rules when the Commission “determines that competition serves the same purposes as public interest regulation. [footnotes omitted]”<sup>2</sup>

9 CenturyLink is unaware of any pressing issue or concern necessitating the commencement of a new AFOR negotiation and proceeding at this time. Because resources within the company and likely for all parties are still stretched thin (they have continued to step down over time), negotiations and resulting litigation can reasonably be postponed. Through this petition, CenturyLink is seeking to extend the current AFOR until the earlier of one additional year or CenturyLink becoming competitively classified.

10 If CenturyLink does not become competitively classified and is required to file for a new AFOR, CenturyLink will ask for additional regulatory freedoms in the next AFOR, but on balance can operate under the terms of the current plan for another year (absent becoming competitively classified), given the circumstances. The language in paragraph 2 of the existing plan, as amended by Order 09, would be modified as follows (shown in legislative format):

2) The terms of this plan for AFOR will be effective upon approval by the Commission and will remain in effect until January 9, ~~2024~~2025, unless extended or modified by Commission order, or unless CenturyLink shall become competitively classified before such date.

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<sup>2</sup> See also Order 04, paragraphs 40-43, in which the Commission recognizes the large shifts in the competitive environment and recognizes the appropriateness of reducing regulation on CenturyLink. In paragraph 50, the Commission concludes: “We find compelling the evidence of consumers’ reasonably available alternatives to CenturyLink’s services, and we accept that the communications market in Washington is sufficiently competitive to constrain CenturyLink’s behavior in place of traditional economic regulation. The waivers of statutes and rules included in the Stipulated AFOR are consistent with these marketplace realities and are the same waivers we have granted to other competitively classified companies.”

- a) If the AFOR is still in effect, CenturyLink shall file a petition to open a new AFOR docket on ~~July 3, 2023~~ July 1, 2024. CenturyLink will also provide the parties a new proposed plan of AFOR, without filing it in the docket, and the Commission's Staff will conduct a review of the provisions of this proposed AFOR to determine if changing conditions warrant new provisions. All parties to this AFOR proceeding will have access to the same material made available to Commission Staff by CenturyLink.
- b) During the course of that review any of the parties to this AFOR proceeding may propose or oppose modifications for consideration by Commission Staff. Upon conclusion of the review but not later than January 9, ~~2024~~ 2025, CenturyLink will file the new plan, as either an agreed plan or a proposed plan, along with the plan it proposed to the parties on ~~July 3, 2023~~ July 1, 2024, and the Commission will provide notice to the parties and hold a proceeding in which parties may advocate for or against the new plan.
- c) While the Commission deliberates, the terms of this AFOR shall continue in force.

*11* CenturyLink respectfully requests the Commission to grant this petition. Conditions have changed since the Commission entered Order 09, principally due CenturyLink's pursuit of competitive classification, and it would be administratively burdensome on the parties and the Commission for two parallel dockets (one for AFOR and the other for competitive classification) to be pending at the same time.

Submitted this 7th day of July 2023.

CENTURYLINK



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