BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to consider amending rules in WAC 480-120, Telephone Companies, WAC 480-121, Registration and Competitive Classification of Telecommunications Companies, WAC 480-122, Washington Telephone Assistance Program, WAC 480-123, Universal Service, WAC 480-140, Commission General – Budgets, and WAC 480-143, Commission General – Transfers of Property, due to competitive changes within the telecommunications to meet consumer, commission and industry requirements no longer applicable under the existing WAC rules;	DOCKET UT-140680

INITIAL COMMENTS OF PUBLIC COUNSEL

June 9, 2014

I. INTRODUCTION

1. Public Counsel files these initial comments in response to the Commission's CR 101 of May 7, 2014, and its Notice of Opportunity To File Written Comments of May 9, 2014 (Notice). The rulemaking is very broad in scope, covering many areas of telecommunications regulation, some involving relatively minor administrative matters, and others involving important policy considerations.

2. These comments focusing on two topics listed in the Notice, carrier of last resort (COLR) obligations and service quality rules, both of which are particularly important for customers. Public Counsel may address other topics at a later time, at the July 28 workshop or in subsequent comments permitted by the Commission.

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3. As general matter, Public Counsel urges the Commission to proceed carefully with respect to any changes in the rules which would have the effect of weakening customer protections. The benefits of competition are not uniformly distributed in Washington and the Commission continues to have an important role in ensuring public policy goals are met.

4. A fundamental concern raised in these comments is the relationship between potential rule revisions in this docket, and the alternative regulatory frameworks adopted recently by Commission order for the two largest incumbent local exchange companies (ILECs) in Washington. As discussed further below, both of these orders are linked to and premised upon the existing statutory and rule requirements, including COLR and service quality obligations.

II. COMMENTS

A. Current Market Forces Are Not Sufficient To Eliminate the Need For Regulatory Oversight.

5. It is certainly the case that "the telecommunications industry has undergone substantial technological and competitive changes in just the last few years," and that many customers have new competitive choices.[1] Washington's telecommunications marketplace, however, is not characterized by ubiquitous and vigorous competition for all customers, in all geographic regions, for all services. Competition is uneven and imperfect. In that respect, Washington reflects the national telecommunications marketplace. In a 2013 paper, *The IP/Broadband Transition – Public Policy Still Matters*,[2] Dr. Trevor Roycroft reviewed the national market and responded to the argument that the transition to broadband and the availability of competitive choices eliminates the need for regulatory oversight. While the paper was responding to the

[1] Notice, p. 2.

[2] Attached as Appendix A (hereafter "Public Policy Matters"). The paper was prepared for the National Association of State Utility Consumer Advocates (NASUCA) and published November 15, 2013.

specific point that regulation impeded broadband investment, it is relevant to the issues in this rulemaking.

6. The paper observes that: "There is no question that the transition to all IP-broadband networks is underway. However, the transition does not eliminate the underlying public policy objective that regulators have promoted --- affordable rates, high quality services, 911 access, or broadband deployment. It is reasonable to anticipate the ongoing need for policy oversight of the IP-broadband transition, and the need for a reasoned determination of when regulation may be needed to correct market failures, or enable rapid resolution of conflicts."[3] Dr. Roycroft concludes that the following areas continue to require the attention of policy makers: affordability; limited competition; reliability and service quality; access to emergency services; carrier of last resort and universal service; informed consumers and consumer education.[4]

B. The Relationship Between Rulemaking Revisions and The Current Regulatory Framework for CenturyLink and Frontier.

7. The general purpose of this rulemaking, as stated in the Notice, is to ensure that the Commission's rules "reflect the reality of the current telecommunications markets" and to determine whether they should be modified to accomplish this goal.[5] The Commission recently undertook a comparable exercise in the CenturyLink Alternative Form of Regulation (AFOR)[6] and the Frontier Competitive Classification[7] dockets.

8. The Frontier order traces the history of Washington's Regulatory Flexibility Act, adopted to provide for "flexible regulation of competitive companies and services," in response to

[3] Public Policy Matters, p. 2.
[4] Public Policy Matters, pp. 19-20
[5] Notice, p. 2.
[6] *In the Matter of the Petition of the CenturyLink Companies To Be Regulated Under An Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-130477, Order 04 (CenturyLink Order 04).

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changes in the telecommunications market. The Commission described the "very different" market place which had evolved in Washington since the Regulatory Flexibility Act, but noted that "the legislation…continues to provide the Commission with the tools it needs to ensure that regulation enhances, rather than hinders, Washington consumers' access to telecommunications services at rates, terms, and conditions that are fair, just, and reasonable."[8] Using the tool of the competitive classification statutes, the Commission approved an ongoing framework of minimal regulation for Frontier that included extensive rule and statutory waivers,[9] while maintaining service quality protections and carrier of last resort obligations (discussed below). Frontier's regulatory framework, as Washington's second largest regulated telecommunications company, is thus delineated in its Competitive Classification order, and continues indefinitely until modified by the Commission.

9. Similarly, in January of this year, the Commission approved an Alternative Form of Regulation (AFOR) for CenturyLink, Washington's largest regulated telecommunications carrier in order to address Washington's "changing telecommunications landscape." The Commission described the legal framework which, in recognition of marketplace changes, allowed companies to petition the Commission for an AFOR to reduce its level of regulation under Commission statues and rules, while further the policy goals listed in the AFOR statute.[10] As the Commission stated: "This proceeding affords the Commission and the Company the opportunity to acknowledge the realities of the 21st Century marketplace by reducing unnecessary regulation and bolstering the ability of CenturyLink and its competitors to provide effective

[7] *In the Matter of the Petition of Frontier Communications Northwest Inc. To Be Regulated as a Competitive Company Pursuant to RCW 80.36.320*, Docket UT-121994, Order 06 (Frontier Order 06)

[8] Frontier Order 06, ¶ 2.

[9] *Id.*, ¶ 38.

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telecommunications services to the ultimate benefit of this state's consumers."[11] (¶ 43) In the CenturyLink docket, the Commission approved an AFOR for the company for a period of seven years, based on settlements presented by Commission Staff and Public Counsel, by the Department of Defense, and by Sprint.

10. Accordingly, the Commission has addressed the concerns of the two largest incumbent providers with respect to their regulatory burden under Washington rules and statutes, through orders tailored to their specific circumstances. This path to minimal regulation is provided for by statute, and contains a number of important public policy goals and criteria to be considered when regulation is to be modified. Given this available path, the procedural history, and the regulatory frameworks put in place, there would seem to limited scope for further rulemaking on these issues. Moreover, as discussed below, the CenturyLink and Frontier orders are expressly premised on the continuation of existing regulatory protections in certain key respects.

C. Applicability of COLR Responsibilities In a Competitive Environment.

11. Carrier of last resort obligations are closely intertwined with the fundamental policy goal of universal service. Universal service remains a key policy objective of telecommunications regulation and can be put a risk by elimination of COLR obligations. Elimination of COLR obligations raises at least the following issues for consumers:

- Lack of assurance that after COLR elimination there is sufficient competition to ensure customers have access to service that is reasonably comparable to existing ILEC service.
- Lack of protection against price increases resulting from market power.
- Potential for redlining.

[10] CenturyLink Order 04, ¶¶ 36-37.
[11] *Id.*, ¶ 43.

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- Loss of regulatory authority to investigate and address service quality problems.
- Loss of service for low and fixed-income customers.

12. In the Frontier Competitive Classification Order, Frontier reached a settlement with Staff and Public Counsel that maintained "Frontier's obligations as a carrier of last resort and eligible telecommunications carrier, thereby providing assurance that these services would remain available to customers throughout Frontier's service area."[12] The Commission approved this settlement provision, stating: "We also conclude…that both the record and the public interest support … Frontier's agreement …to retain its carrier of last resort obligations for all local exchange services moved to the catalog."[13] The CenturyLink AFOR does not exempt CenturyLink from COLR obligations.

13. Because company obligations have already been clearly established in the Frontier and CenturyLink dockets, Public Counsel believes it is not appropriate to modify the COLR obligations in the current rulemaking proceeding. Any modification of COLR obligations in Washington represents a significant policy change with major ramifications for customers, for universal service, and for the underlying telecommunications network infrastructure. Public Counsel recommends that if the Commission wishes to investigate policy options in this area, that a separate docket be established for that purpose. One important consideration with respect to COLR review is that most fundamental COLR obligations are statutory and not susceptible to modification by rule.[14]

[12] Order 06, ¶¶ 26, 33.
[13] *Id.*, ¶ 64.
[14] *See, e.g.*, RCW 80.36.080, 80.36.090.

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D. Service Quality Rules, Including Reporting, Should Not Be Modified.

14. Service quality issues were addressed in both the CenturyLink and Frontier alternative regulatory proceedings. In the CenturyLink AFOR docket, the AFOR retained all existing retail service quality requirements. The Commission emphasized that "we find these provisions also to be indispensable to our approval of the stipulated AFOR. The recent CenturyLink service outage in the San Juan Islands is a reminder that even in a competitive marketplace, the Commission plays a vital role in protecting consumers including ensuring public safety."[15]

15. In the Frontier docket, the Commission noted that while it would not be regulating the price of Frontier's services, "nothing we do here disturbs our regulation of Frontier's retail and wholesale service quality or its responsibility to comply with our state law and our rules governing consumer protection. We intend to closely monitor the company's performance and compliance with all relevant statutes and rules [.]"[16]

16. Both these orders, therefore, place reliance on the existing protections of the Commission service quality rules as part of the regulatory structure that made the competitive classification and AFOR approvals reasonable. In the CenturyLink docket the Commission was particularly emphatic that retaining existing requirements was essential to its adoption of the AFOR. Public Counsel supports the balance struck by the Commission in these dockets. While significant regulatory flexibility was afforded to the companies across a broad range of issues, the importance of continued oversight of service quality was recognized. Public Counsel does not support modifications to the service quality rules, including the reporting requirements, that

[15] Frontier Order 04, ¶ 55.
[16] *Id.,* n.21.

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would disturb that balance. It is important to preserve he integrity of the CenturyLink and Frontier orders and the protection they provide to the majority of Washington ILEC customers.

III. CONCLUSION

17. Public Counsel respectfully submits these comments for consideration and further discussion. Public Counsel does not believe it is in the best interests of customers to eliminate or weaken service quality or COLR obligations. In particular, any rule modification should not change or undermine the modified regulatory frameworks already put in place after careful deliberation by the Commission for the largest incumbent companies.

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