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 Competitively Classified Pursuant to RCW 80.36.320	**DOCKET UT-240029**

THE CENTURYLINK ILECS' POST-HEARING BRIEF

August 14, 2024

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I. INTRODUCTION

1. The question of exactly how, and to what extent, the Commission should regulate CenturyLink is complicated. Once a monopoly with market power over all consumers in its incumbent territories, CenturyLink is now but one small competitor among many. Incumbency does not provide CenturyLink competitive advantage, and in most cases is a significant disadvantage. As all parties (including Public Counsel) recognize, most consumers are no longer interested in traditional, copper-based voice service. Instead, Washington customers want and demand broadband internet services more compatible with all aspects of personal and commercial interconnection. Most customers have already migrated to alternative services offering different and greater functionality, including mobility and high-speed internet access. Traditional voice service offers neither.

2. The Commission does not regulate the providers of 96 percent of the voice connections in Washington. It is thus somewhat awkwardly left with the question of how much traditional regulatory authority it should continue to exercise over CenturyLink, a small minority provider in today's competitive marketplace. Public Counsel amplifies traditional regulatory themes, suggesting the Commission must continue to play its monopoly-era role by retaining full approval authority over all aspects of the settlement agreement. While earnest, Public Counsel's perspective is outdated and misplaced given the state of competition. Because the market is fully competitive and because most communications services are outside the Commission's jurisdiction, the Commission need not and should not micromanage every last aspect of CenturyLink's operations. It is no longer appropriate to do so, as the Legislature has made clear and the Commission has recognized multiple times. Yet CenturyLink understands and respects the Commission's well-intentioned goal of protecting those very few customers whom the competitive market may not fully protect.

3. With those competing goals in mind, Commission Staff and CenturyLink crafted a settlement agreement spawning a new Alternative Form of Regulation ("AFOR") that carefully balances

the needs to reduce unnecessary regulation and to ensure the protection of customers who lack access to alternative services. The proposed AFOR is extremely detailed; it largely carries forward the provisions of the expiring 2014 AFOR, but also includes additional areas of flexibility in recognition of the hyper-competitive market. In granular fashion, Staff and CenturyLink were very careful to address all contingencies, especially as to CenturyLink's ability to potentially seek discontinuance of service in select areas in the future.

4. Public Counsel, while not opposing most of the proposed AFOR, asks the Commission to disregard that it is a comprehensive settlement and to modify it in a way that preserves the restrictions, but guts the increased flexibility. That is not how the Commission evaluates settlement agreements. Settlements are not mere foundations, on which the Commission should pile additional blocks to suit the demands of Public Counsel. This agreement is a holistic package, one that comports with the statutory policy goals set out in RCW 80.36.300 and .135 and more generally with the public interest. It should be viewed as a whole, and should be approved without further condition. If it is not, the parties will find themselves back litigating whether CenturyLink should be granted competitive classification (pursuant to RCW 80.36.320) or should revert to monopoly-era rate of return regulation that no party believes is appropriate.

II. STANDARD OF REVIEW FOR SETTLEMENTS

5. The Commission's standard for reviewing proposed settlements is found in WAC 480-07-750(1): "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." In reviewing a settlement, the Commission evaluates:

(1) Whether any aspect of the proposal is contrary to law,

(2) Whether any aspect of the proposal offends public policy, and

(3) Whether the evidence supports the proposed elements of the settlement as reasonable resolution of the issues at hand.[1]

6. In determining whether to approve a proposed settlement, the Commission has consistently employed a standard of review that encourages settlements.[2] It is important to note that the Commission must rely on evidence, and it distinguishes legal argument from evidence. In *WUTC v. Avista Corp.*, the Commission rejected Public Counsel's opposition to certain settlement terms, finding its opposition was legal argument, rather than evidence:

> Public Counsel's opposition is legal argument rather than evidence. In its post-hearing brief, filed simultaneously with Public Counsel's, Avista characterizes its position on this issue as 'unopposed.' As a practical matter, Avista is correct. We must base our decisions on the weight of evidence in the record. As there is none in opposition to these power supply-related adjustments, we consider them unopposed.[3]

7. In considering a proposed settlement, the Commission may decide to:

(1) Approve the proposed settlement without condition,

(2) Approve the proposed settlement subject to condition(s), or

(3) Reject the proposed settlement.[4]

8. The Commission further acknowledges that if it approves a proposed settlement without condition, the settlement is adopted as the Commission's resolution of the proceeding. But,

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1 *See WUTC v. Avista Corp., d/b/a Avista Utils*., Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 17 (Dec. 29, 2008).

2 *See, e.g., id.* at ¶ 79 ("We favor the resolution of contested issues through settlement when a settlement's terms and conditions comply with the law and are consistent with the public interest."); see also RCW 34.05.060 (informal settlements in administrative proceedings are "strongly encouraged").

3 *Id*. at ¶ 54 (internal citation omitted).

4 *Id*. at ¶ 18.

if the Commission approves the proposed settlement subject to one or more conditions, then the settling parties have an opportunity to withdraw from the settlement.

> If we approve the proposed settlement subject to one or more conditions, settling parties have an opportunity to give notice, within seven days, that they find the condition(s) unacceptable and withdraw from the Settlement. If that occurs, or if we reject a proposed settlement, our rules provide that the proceeding will return to its posture as of the day before the settlement was filed … [and] we will conduct such further process as is required to allow fully adjudicated results considering the parties' respective litigation positions and due process rights.
>
> In reaching a decision, we emphasize that our purpose is to determine whether the Settlement terms are lawful and in the public interest. We do not consider the Settlement's terms and conditions to be a "baseline" subject to further litigation.[5]

9. In considering this particular settlement, the Commission must consider the statutory principles set out in RCW 80.36.300 and .135. RCW 80.36.300 provides:

> The legislature declares it is the policy of the state to:
>
> (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.

10. RCW 80.36.135(2) provides in relevant part:

> In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

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[5] *Id*. at ¶¶ 19-20.

(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.

11. Consistent with these principles and standards,[6] as well as with the Commission's encouragement of settlement over litigation, the settlement agreement between Staff and CenturyLink should be approved without further conditions. The settlement balances all of these principles, from preserving affordable service to permitting flexible regulation in a competitive market. While Public Counsel would have the Commission preserve the sections that focus primarily on the protection of customers it characterizes as vulnerable, while trimming the sections that provide CenturyLink regulatory flexibility, the settlement must be viewed as a whole and as a reasonable compromise that attends to all interests. Public Counsel asks the Commission to treat the well-considered and intricate settlement as a floor, and to pile other restrictions on top of it. There is no reasonable justification for doing so. Public Counsel has not presented data or analysis supporting its demanded modifications, and those changes would tilt the settlement out of balance.

[6] Each of these factors is discussed in Section IV.C. below.

III. THE SETTLEMENT AGREEMENT (SEC IV OF OUTLINE)

12. The settlement agreement between Commission Staff and CenturyLink proposes a new AFOR that contains nine provisions, as summarized below:[7]

AFOR Section	Provision	2024 AFOR (Settlement)	2014 AFOR (Expiring)
2	**Treated as Competitively Classified Company**	Yes	Yes
3	**Duration**	No expiration (any party can seek adjustments/replacement after 5 years); no mandatory litigation in future	6 years (originally); mandatory litigation at end of term
4	**Wholesale regulation**	Unaffected by AFOR	Unaffected by AFOR
5	**Price Regulation/Tariffing & Rate Change Notifications**	None, except for emergency number, Lifeline/Linkup, interconnection and interexchange access services No requirement to notify Staff of rate changes	None after the first year of AFOR, except for emergency number, Lifeline/Linkup, interconnection and interexchange access services Requirement to notify Staff of rate changes
6	**Approval over Transactions**	Waived except for exchange sales and sale of access lines	Waived except for exchange and sales and merger transactions
7	**Geographic De-Averaging**	CTL will not geographically de-average rates and will harmonize 1FR and 1FB rates across its 5 ILECs	Same as 2024
8	**Retail Service Quality**	CTL will provide pro-rata MRC credits for OOS conditions > 24 hours and for noise-on-line conditions. If fail to	Specified SQ reporting required

[7] Gose, Ex. PJG-30T, at 4:8-5:1. Note that witness Peter Gose (hereinafter, "Gose") corrected the Section references in the table at hearing. Gose, Tr. 80:24-82:2. The full proposed AFOR was filed by Commission Staff on July 1, 2024 in this docket.

AFOR Section	Provision	2024 AFOR (Settlement)	2014 AFOR (Expiring)
		provide required credits, remedy is doubling of credits, and not Commission penalties	
9	**Discontinuance of 1FR/1FB**	Approval required if discontinuance area includes customer(s) without access to competitive services (all technologies qualify except satellite) under $61.13 and (for fixed internet services) at least 25/3 speed. Otherwise, enhanced notice required For discontinuances not requiring approval, within 5 days after CTL files FCC application, CTL will submit data to WUTC demonstrating CTL completed verification/challenge process regarding available alternatives	Approval required for any discontinuance of standalone residential or business service
N/A	**Accounting Method**	No specific requirement	Obligation to keep records consistent with WAC 480-120-355 and as required by FCC rather than GAAP
N/A	**Incorporation of EAS Charges into Rates**	No specific requirement	Required restructuring of ILEC rates and EAS charges
N/A	**Rate Protection Commitments**	No specific requirement	5 year rate protection agreement with DOD/Federal Executive Agencies (MFN provision)

13. Of these provisions, Public Counsel raises no objection regarding Sections 1, 2, 3, 4 and 7.[8] Witness Brevitz (hereinafter, ("Brevitz") likewise raises no objection to Section 8, regarding customer credits, but points out that neither Staff nor CenturyLink quantified the likely impact of the credits.[9] Gose did so, however, on cross examination.[10] Public Counsel, both through pre-filed testimony on the settlement and cross examination at hearing, focused most of its scrutiny on Section 9 (regarding discontinuance of service), with a small amount of attention to Sections 6 and 8. As a result, CenturyLink will focus its brief and arguments on Sections 6, 8 and 9.

IV. DISCUSSION

A. CENTURYLINK FACES EXTREME CHALLENGES AND IS IN NEED OF APPROPRIATE REGULATORY RELIEF.

14. It is the undeniable reality that CenturyLink faces extreme challenges in today's hyper competitive market. All parties, even including Public Counsel's witness, acknowledge that CenturyLink is no longer a monopoly and should not be rate of return regulated.[11] The Commission itself recognized this reality over a decade ago when it, in approving Frontier's petition for competitive classification and CenturyLink's AFOR, found that the telecommunications network had been disrupted by wireless and VoIP services.[12]

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[8] Brevitz, Ex. DB-9T, at 3:22 (Section 1), 3:22-4:4 (Section 2), 4:17-18 (Section 3), 5:3-6 (Section 4), 7:7-9 (Section 7).

[9] Brevitz, Ex. DB-9T, at 7:14-23.

[10] Gose, Tr. 131:18-132:16 (estimating that CenturyLink will likely pay out customer credits in the amount $150,000 or more).

[11] Brevitz, Tr. 248: 17-25 ("**Q. Does public counsel believe that the CenturyLink ILEC should be rate of return regulated in the state of Washington?** A. No. **Q. Why is that?** A. It's unnecessary. Rate of return regulation is a historical method of public utility regulation. I can't remember the last rate case for a telephone company I've seen. That's been decades. That's not an issue in this case and shouldn't be.").

[12] Gose, Ex. PJG-1T, at 9:9-12:3 ("'In the provision of voice-based local telephone service, a variety of intra- and inter-modal alternatives have arisen, including remarkable technological advances and investment in mobile and broadband technologies that include voice-based service alternatives. It is widely recognized that wireless companies play an increasingly significant role in the voice and broadband competitive market, while cable

15. As Gose details,[13] the CenturyLink ILECs have suffered massive declines in terms of customers and revenues, and today provide less than four percent of the voice connections in Washington.[14] Brevitz blames CenturyLink, claiming that its line losses are due to CenturyLink transferring local POTS customers to internet services,[15] but Brevitz offers no evidence to support such a notion.[16] It is folly to ignore the reality that mobile wireless services have overtaken all other competitive services – most dramatically including wireline service – across Washington and across the nation. While Brevitz provided no evidence for such claim, CenturyLink's witness provided unbiased evidence supporting the contrary: the Centers for Disease Control recently published wireless substitution data revealing that 94.5 percent of Washington adults exclusively, primarily or dually use wireless services, while 90.9 percent of American adults in non-metro areas do the same.[17] The same data shows that only 1.9 percent of Washington adults use landline only, while only 3.2percent of non-metro customers nationwide do the same.[18]

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companies and others utilize state-of-the-art voice over Internet protocol (VoIP) technology, either nomadic or fixed, to serve a major segment of the telephone market.'").

[13] Gose prepared a detailed competition study that catalogs, by technology type and CenturyLink wire center, the number of locations or households served by competitive providers across the CenturyLink ILEC service territories. See Gose, Ex. PJG-2C. The data comprising the competition study comes directly from the FCC's Broadband Data Collection data. Gose explains his methodology in his pre-filed direct testimony. See. Ex. PJG-1T, at 15:1-15.

[14] Gose, Ex. PJG-1T, at 14 (Graphic 1); see also Gose, Ex. PJG-2C (WA Pop Data(C) tab). In addition to extreme competitive pressures and the burden of legacy regulation, CenturyLink's operations are likewise afflicted by rampant vandalism and theft in Washington.

[15] Brevitz, Ex. DB-9T, at 23:7-10 ("CenturyLink's purported low market share for voice services has been caused in part by Lumen's own actions, transferring customers from CenturyLink voice offerings to unregulated fiber internet offerings from Lumen affiliates").

[16] Brevitz, Tr. 271:11-20. While a very small percentage of Washington customers use Lumen broadband for their voice connections (see Gose, PJG-1T, at 14 (Graphic 1)), it defies credulity to focus entirely on this small percentage of customers while simultaneously denying the relevance of the 79% of wireless connections.

[17] Gose, Ex. PJG-31, at 1; Ex. PJG-32, at 5.

[18] *Id.*

16. Public Counsel's misapplied speculation aside, it does not really matter *why* CenturyLink finds itself in such a difficult competitive position for local service. Even Public Counsel cannot with a straight face argue that CenturyLink holds monopoly power.

17. CenturyLink finds itself trying to continue to compete for local customers, while at the same time focusing resources on expanding the modern fiber-based internet services customers actually desire, in an environment where CenturyLink is subject to a host of restrictions and limitations the dominant competitors (principally CMRS) are not subject to. Public Counsel asks the Commission to continue exercising monopoly-era micromanagement over aspects of CenturyLink's operations, fully knowing that the Commission lacks any authority over mobile wireless, cable, fixed wireless, commercial satellite, and other providers. Maintaining asymmetrical requirements on CenturyLink alone is neither rational, nor in the public interest, as it will only cripple CenturyLink's ability to compete and expand broadband.

18. Public Counsel's perspective in this case is premised on the false notion that there are large numbers of customers in Washington who rely exclusively (by necessity, and not choice) on landline service for their communications needs. This is palpably false. The CDC notes that only 1.9 percent of Washington adults use landline service only, and there is no indication that any (let alone significant numbers) of those customers do so because they lack alternatives. Brevitz admitted as much on cross examination.[19] Instead, as Public Counsel knows, Washington customers prefer broadband services. Public Counsel refers to broadband as the new universal service, and the service consumers prefer.[20] The

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[19] Brevitz, Tr. 252:11-20 ("**Q. And if a customer chooses to use mostly landline service or only landline service, that may be as a result of their choice and preference; correct?** A. It may be a result of availability too. **Q. Okay.** A. Again, that's why we're here today. **Q. Okay. But also, it may be a result of them choosing to stick with landline service or subscribe to landline service, not because they lack alternatives?** A. Sure.").

[20] Brevitz, Ex. DB-1T, at 16:12-14 ("This all changed over time such that 'universal service' now is broadband internet access capable of transmitting voice, video and data in digital form."), 28:9-10 ("Broadband internet access service connections are the telecommunications connections chosen by consumers across the country.");

Commission, which does not regulate broadband and internet services, cannot reasonably deny that there are likely but a small handful of customers across CenturyLink's ILEC footprint that lack suitable and affordable alternative service options.[21]

19. Given the extremely competitive nature of the market, the company's steep decline in traditional voice customers and revenues, and customer preferences, CenturyLink reasonably seeks to focus its resources as much as possible on building out the fiber and broadband services Washington customers desire. CenturyLink's financial wherewithal to do so is in the public interest. The legislature declared it as such in RCW 80.36.135(2)(a), when it stated that "[i]n addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will: (a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes..."

20. Yet Public Counsel seems intent on driving adjustments to the proposed AFOR that would force CenturyLink to invest more in its outdated copper network than is prudent. Every dollar spent on rehabbing or moving outdated copper facilities that serve increasingly few customers is a dollar not available to spend on broadband expansion. Brevitz acknowledged

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Brevitz, Tr. 249:10-18. To this end, FCC and other federal programs now focus on the universal deployment of *broadband* services. Programs such as Lifeline, which were initially designed to support traditional copper-based voice service, have transitioned within the FCC to support broadband services. Voice-only Lifeline continues to exist only through a series of continued waivers issued by the FCC.

[21] At first look, there appear to be only 1,216 CenturyLink ILEC customer currently lacking the availability of CMRS or fixed internet services meeting the benchmarks set out in the settlement agreement. See Brevitz, Ex. DB-10, at 3. While that number may increase as greater, customer-specific scrutiny is given in the event CenturyLink seeks to discontinue service to an area and walks through the CCL validation process described in Section 9.b.ii., it is plainly true that almost all Washington residents have access to suitable alternative services. In fact, most Washington customers have already availed themselves of those alternative services. And if they do not have access to such services, the proposed AFOR would require CenturyLink to obtain affirmative Commission approval before discontinuing standalone voice service to their location.

exactly this point at hearing,[22] yet Public Counsel seemingly asks the Commission to compel CenturyLink to maintain every last bit of its outdated copper network.

21. It is with this backdrop of challenges that CenturyLink comes before the Commission in search of a fair and sensible regulatory structure. The company has operated under AFORs since 2006. While CenturyLink is undeniably subject to effective competition throughout its entire ILEC footprint, and is thus entitled to competitive classification under RCW 80.36.320, the company reached agreement with Staff on the terms of a new AFOR. The new proposed AFOR preserves many of the provisions of the expiring AFOR approved a decade ago, but also (consistent with the public interest, as well as the statutory principles embodied in RCW 80.36.135 and .300) offers some areas of increased flexibility. Viewed as a whole, as it must be given that its terms represent a delicate balance between the positions and interests advanced by Commission Staff and the company, the settlement is in the public interest.

B. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED WITHOUT CONDITIONS.

22. The settlement agreement and proposed AFOR represent a reasonable, well-considered and balance among the litigation positions and demands of all parties. The proposed AFOR recognizes that the communications market is incredibly competitive, and that CenturyLink should be treated as competitively classified throughout the state. It also respects the possibility that there are a small band of customers dispersed throughout the state who may require additional protection to ensure that they are not left behind as the market transitions, especially to other technologies. The settlement agreement largely carries forward the existing AFOR, but also offers appropriate steps forward (consistent with legislative standards) to eliminate unnecessary layers of regulation. While CenturyLink believes it is entitled to competitive classification pursuant to RCW 80.36.320, which entails a broader

[22] Brevitz, Tr. 249:19-250:12.

swath of statutory and regulatory waivers, the company compromised by agreeing to a new AFOR that extends many of the unique-to-CenturyLink requirements, and even adds a new one regarding automatic credits for out of service and noisy line conditions. The company urges the Commission to consider the settlement as a whole, one that will be disturbed and will likely fall out of balance if additional considerations are imposed.

1. The Discontinuance Provisions are Balanced and in the Public Interest.

23. Section 9 of the proposed AFOR sets out a very detailed process for consideration of potential discontinuance of standalone residential or business services to an area by CenturyLink. It potentially grants additional flexibility (as compared to the expiring AFOR), but includes exhaustive safeguards aimed to ensure that no existing CenturyLink POTS customer is left without adequate replacement services.

a) Section 9 Reduces Asymmetrical Regulation.

24. Before delving into all the fine details set out in Section 9, it is important to remember that CenturyLink is the *only communications providers* in its ILEC service territory that is subject to state commission review of a potential discontinuance of service. Despite holding fewer than four percent of the voice connections in Washington, CenturyLink today would have to embark on full Commission litigation of a proposed discontinuance, while the providers of the other 96 percent of the voice connections do not. Asymmetrical regulation is not in the public interest, and serves little purpose other than an unintended one, which is to further weaken CenturyLink's ability to compete with CLECs, fiber providers, cable providers, CMRS providers, fixed wireless providers, and commercial satellite providers who need not obtain Commission approval. And, again, this scenario assumes the FCC has already permitted a proposed discontinuance to move forward under Section 214, something it has

done very infrequently as to ILEC services.[23]

25. A decade ago, the Commission recognized the need to shed traditional, now-asymmetrical oversight of CenturyLink:

> 43. 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 competitive telecommunications services to the ultimate benefit of this state's consumers. We recognize the need to re-examine the traditional role of ILECs such as CenturyLink, and the regulatory construct that is applied to them, and where appropriate, reduce regulation in favor of the discipline of the competitive marketplace. The AFOR statute and this docket afford us the means to establish a regulatory framework that retains necessary aspects of the Commission's oversight while allowing CenturyLink the freedom to compete more aggressively with other telecommunications providers.[24]

26. The proposed AFOR presents the Commission the opportunity to reduce asymmetrical regulation, while maintaining layers of safeguards to ensure that the very few CenturyLink customers without adequate alternatives are still left protected.

b) Section 9 Does Not "Eliminate COLR Obligations" in Washington.

27. Brevitz dedicated significant attention to arguing that the settlement and proposed AFOR represent an attempt to eliminate carrier of last resort ("COLR") obligations.[25] He points to AT&T's regulatory efforts in California, but never connects them to the proposed AFOR in this proceeding. While Public Counsel may wish to argue by analogy to efforts in other

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[23] Brevitz inadvertently makes exactly this point. He attaches to his settlement testimony many pages of FCC indices for Section 214 filings since 2022. See Brevitz, Ex. DB-14. He admitted both in pre-filed testimony and at hearing that almost all of them are CLEC filings, and almost none (if any) involve standalone ILEC voice services. Brevitz, Ex. DB-9T, at 31:8-14 ("The FCC's website contains an index of domestic Section 214 discontinuances….The filings appear to me to be mostly from Competitive Local Exchange Carriers with relatively few from Incumbent Local Exchange Carriers such as CenturyLink. Of the ILE[C] filings many appear to be grandfathering services rather than discontinuing, including some services such as ISDN."); Brevitz, Tr. 265:7-18.

[24] See Gose, Ex. PJG-1T, at 9:9-12:3 for excerpts from CenturyLink and Frontier dockets.

[25] Brevitz, Exs. DB-9T, at 27:3-30:5, DB-11, DB-12, DB-13.

states, those efforts are not relevant to the Commission's review of the settlement before it. As discussed in Section II, the sole question before the Commission is whether the settlement agreement is in the public interest. In so doing, it evaluates: (1) whether any aspect of the proposal is contrary to law; (2) whether any aspect of the proposal offends public policy; and (3) whether the evidence supports the proposed elements of the settlement as reasonable resolution of the issues at hand.

28. Public Counsel injects the elimination of COLR obligations into the proceeding, but that is not on the table. First, the proposed AFOR cannot and does not alter RCW 80.36.090, which requires CenturyLink to furnish regulated service to customers reasonably entitled thereto. Brevitz omits reference to that statute in his pre-filed testimony (despite his awareness of it),[26] and admitted at hearing that the settlement and proposed AFOR will not disturb it.[27]

29. Second, Section 9 of the proposed AFOR does not eliminate any statutory or rule-based "COLR" obligation concerning discontinuance. It merely moves CenturyLink closer to the standard applicable to every other competitively classified telephone company in Washington. WAC 480-120-083 requires 30 days' notice for any discontinuance and does not include an approval requirement regardless of circumstances. The proposed settlement moves CenturyLink in the direction of being regulated on par with other competitively classified companies, but still retains approval requirements in the event that even one Challenging Customer Location ("CCL") sits in the hypothetical area of discontinuances. It also imposes enhanced notice and disclosure obligations on CenturyLink even in cases where it is confirmed that there are no CCLs in the area. The characterization of the settlement as eliminating COLR obligations in Washington is a red herring.

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[26] Brevitz, Tr. 275:20-23.

[27] Brevitz, Tr. 275:20-276:13.

c) Section 9 Offers Special Protections for Individuals Most Likely to Lack Suitable Alternatives

30. Through painstaking negotiations, the depth and nuance of which are reflected in the six and a half pages dedicated to the details of Section 9, Commission Staff and CenturyLink designed a discontinuance process that provides overlapping layers of protection for Washington consumers. Public Counsel would have the Commission scrap the entire section based on the remote possibility that even one customer could theoretically fall through the cracks and lose access to standalone voice service from CenturyLink without a suitable alternative. Public Counsel refers to this as "allocating the risk of being wrong."[28] While eloquently phrased, this critique should not defeat the well-balanced settlement sitting before the Commission. The mere existence of an extremely remote possibility of failure is not, and cannot be, the standard by which the Commission evaluates this or any other settlement. No process (including Commission approval) is failproof; human nature does not allow perfection. However, the settlement before the Commission contains strong checks and balances such that the Commission should find that it is in the public interest.

31. Very Few Washington Customers are Implicated. Beyond the layers of checks and balances (discussed in greater detail below), it is imperative to remember that there are very few Washington customers who only utilize landline service, and only a tiny of subset of those (if any) do so because they lack suitable alternatives. Thus, even if the agreement contained no safeguards (which is obviously not the case), there are likely only a small number of customers who could *even potentially* lose their only existing service should CenturyLink

[28] In an exchange with Gose, counsel repeatedly pointed to a 79-year old resident of Klickitat County as someone who could be left behind because she (according to her statement at the public comment hearing) lacks alternative services at her residence. Gose pointed out that, in reality, the customer has four options for wireless service at her residence. He likewise explained to counsel the process the company would follow if the customer disagreed with that assertion. Gose, Tr. 128:5-130:3. In the end (if hypothetically CenturyLink was seeking to discontinue service to her area), if she does not actually have the alternatives the FCC's current information shows to exist at her residence, she will be treated as a CCL under the proposed AFOR and affirmative Commission approval would be required.

seek to discontinue service and receive FCC permission to do so in the first instance.

32. The CCL Definition is Conservative and Protects Customers from Being Stranded. Because protecting potentially-stranded customers is of paramount importance to the settling parties, Section 9 focuses on whether or not a potential area of discontinuance includes any CCLs. The CCL definition (see Section 9.a of the proposed AFOR) reflects a fair and conservative view of substitutability. It is conservative because, to avoid being classified as a CCL, a customer must have access to alternative services – primarily mobile wireless or fixed internet services – that are much more robust than the flat POTS line CenturyLink would be looking to discontinue providing.

33. The Commission long ago acknowledged the hyper competition CenturyLink faces, calling out in particular the significant role played by CMRS and VoIP providers.[29] And that was back in 2014. Since that time, CMRS and VoIP services have expanded tremendously, while CenturyLink's copper-based customer and revenue bases have shrunk dramatically.

34. Ignoring CMRS as a Substitute Service Denies Reality. Public Counsel argues that the "Commission should be cautious about the use of mobile service as an 'alternative service' particularly in rural areas."[30] For Public Counsel to take the position that the Commission should not consider mobile wireless to be a suitable alternative to CenturyLink POTS[31] is,

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[29] See footnote 23 above.

[30] Brevitz, Ex. DB-9T, at 17:10-18:5, 20:13-21:10.

[31] Without proof of any kind, Public Counsel attempts to walk the line of characterizing mobile wireless as being an adequate substitute service, just not in rural portions of the state. Brevitz retreats to generalities about wireless being a poor substitute where signals are low, but does not rebut that the FCC shows mobile wireless service available at nearly all locations (urban and rural) in the state. Brevitz, Tr., 260:9-261:4 ("**Q. You urged the commission to be skeptical about the reach of mobile wireless in rural areas of Washington?** A. Yes. **Q. Before we get to your concerns about rural areas, let me ask you a couple threshold questions. Do you believe mobile wireless is an adequate substitute for CenturyLink landline service.** A. It can be in certain places. And again, that kind of falls along the rural/urban split. Mobile wireless signal is much more robust and reliable in the urban areas, even though there's spots in urban areas where you can't get a decent signal. But as a general rule, more so in urban areas, mobile wireless is used as broadband substitute. **Q. Is it your testimony that wireless service is not an adequate substitute for CenturyLink landline voice service in any rural**

with all due respect, an exercise in denying reality. As Gose establishes in his pre-filed direct testimony[32] and the CDC confirms with its recently updated analysis,[33] mobile wireless is the dominant communications service in Washington, in rural America and among all age groups. It is not credible to claim wireless is not an adequate substitute when almost all customers, be they young or old, urban or rural, *have already substituted CMRS service for traditional ILEC voice service.*[34]

35. Public Counsel offers no data or studies demonstrating that wireless service is an unsuitable substitute.[35] Instead, Public Counsel makes the argument merely by speculation and

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portion of the state? A. No. It's very location specific. It's where the customer is, and do they have a decent wireless signal to carry data at high speed.").

Brevitz's answer is instructive. It both seems to reject data (that the FCC publishes and regularly updates) in favor of generalized speculation, and tries to move the goal line to consideration of whether CMRS signal strength is strong enough for *high speed data use*. The question before the Commission is whether alternative services are sufficient substitutes for CenturyLink's *standalone voice service*, which offers no data capabilities whatsoever.

[32] Form 477 data showed 78.7% of voice connections were mobile wireless in June 2022, up from 38.9% in December 2001. Gose, Ex. PJG-1T, at 14 (Graphic 1).

[33] As of 2022, the CDC found that 74.2% of Washington adults used only wireless, 14.0% used mostly wireless and 6.3% used wireless and landline equally. Only 1.9% used landline only. Gose, Ex. PJG-31, at 1. Contrary to Brevitz's generalizations about CMRS not reliably serving rural Washington, the CDC recently reported that (between July and December 2023) 90.9% of adults nationwide in non-metropolitan areas exclusively, mostly or dually use wireless service. That includes 73.9% of adults in non-metro areas who *exclusively* use wireless service. Gose, Ex. PJG-32, at 5. While Public Counsel implies that older customers do not access mobile services, the CDC refutes this implication as well. The CDC found that (as of July-December 2023), 83.7% of adults 65 or over exclusively, mostly or dually use wireless service. *Id.* It is simply an act of denial to claim that Washington customers do not already rely on wireless services for their communications needs. Most do so primarily or exclusively.

[34] At hearing, Brevitz was asked if he has any data to support his concern that mobile wireless service is unsuitable in rural areas of Washington. He has none. Brevitz, Tr. 263:16-264:2 ("**Q. Have you conducted or provided any studies as to how many rural Washington customers appear to have access to mobile wireless service based on FCC data but in reality lack functional service?** A. I have not. **Q. Do you have any data indicating that mobile wireless service isn't suitable in rural areas of Washington?** A. No. But that's a location-by-location question. That's a very customer specific question. Some premises will have decent wireless access, others will not.").

[35] At hearing, concerns were raised about whether mobile wireless service is sufficiently resilient in bad weather or in the event of power outages. It is noteworthy that the FCC, the agency that regulates CMRS, has not found in necessary to impose backup power requirements on mobile providers. See CenturyLink's response to Bench Request 7. This may be explained by the fact that CMRS providers already provide that backup power on their own. See Staff's response to Bench Request 7. Bennett agreed with Commissioner Doumit at hearing that

anecdote, pointing to a small number of public comments from consumers, some of whom stated that they lack alternative services. Relying on a small selection of anecdotes as a basis to reject the settlement would be flawed for a variety of reasons. First and foremost, if any customer lacks access to alternative services, their residence would (in a hypothetical discontinuance) be treated as a CCL, thus requiring full Commission approval. Second, Public Counsel failed to validate that the commenters' statements were accurate. At hearing, counsel repeatedly drew the Commission's attention to a 79 year old commenter from rural Klickitat County.[36] In her recorded comments, the commenter states "I don't have cell service at my residence."[37] CenturyLink is of course very sympathetic towards the commenter, and in the extremely unlikely event that CenturyLink were to pursue discontinuance of service in her area, the company would be happy to work with her to ensure a smooth transition. But Public Counsel, prior to replaying her comments at hearing (ostensibly) in order to make the point that the commenter might be stranded due to lack of mobile service, made no attempt to verify whether the commenter meant that she *cannot* utilize wireless service at her residence or whether she did not choose to use it. On cross,

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CMRS providers ensure battery backup, even absent regulatory fiat, because the competitive market commands it. Bennett, Tr. 240:17-241:12 ("**Q. So back to wireless battery backup, which you -- would you agree the wireless industry, unlike what we're talking here is a highly competitive enterprise?** A. Generally, yes. **Q. Okay. So whether there's a regulation on battery backup or not, would you believe it's a distinct competitive disadvantage to not maintain backup power in that industry?** A. It would be, yeah. **Q. So I think we can -- sometimes we get hung up when there's not a regulation, we think this is not happening. But I think if we asked you, for example, procure for us and we took notice of that fact that wireless companies are, in fact, providing backup power, you could procure that information if we asked for that because just it's out there. I mean, it's -- it's – to my knowledge, that's going on right now, so --** A. We can definitely if we got a bench request for that, we could definitely research it further and get response back to you."). Staff's response to the bench request shows that each major CMRS provider in Washington maintains battery backup, as Commissioner Doumit anticipated.

[36] Counsel, Tr. 125:2-9 ("**Q. Do you know or can you quantify how much losing her [customer Margrav] ability to talk to family and friends would mean? Like what's the burden if we were to try to translate into a number so that we can compare it to CenturyLink's administrative burden?**... **Q. Can you value her connection to her family and friends?**").

[37] Customer, Tr. 124:8; see also Ex. PJG-38X (recording excerpt).

Gose revealed that four separate wireless providers are available to the commenter.[38] Even if it turns out that all four providers are being misreported to and by the FCC, this fact would come to the surface when CenturyLink mails, emails and calls this engaged and capable customer. If indeed the FCC's database is incorrect due to topography or other reasons, the location would be treated as a CCL and Commission approval would be required prior to CenturyLink discontinuing voice service at her residence.

36. The Commission's Focus Should be on Availability, Not Preference. This commenter's experience and concerns are important, and it is critical that she be respectfully attended to. They are also indicative of a significant flaw in Public Counsel's perspective. Public Counsel appears to be equating a customer's *preference* to stay with existing landline services with a lack of options.[39] By analogy, the Commission's competitive classification statute (RCW 80.36.320) is instructive. In a competitive classification proceeding, the Commission must explore the existence of "effective competition," which is defined as the *availability* of adequate, affordable substitutes.[40] The Commission does not grant or deny competitive classification based on whether a particular customer *prefers* one technology over another. In fact, the legislature directed the Commission to be technology neutral by making it the policy of the state to "[p]romote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state."[41] There is no reasonable justification for diverting from the Legislature's guidance in the context of an AFOR. Put another way, it would be unreasonable to deny regulatory freedom to

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[38] Gose, Tr. 124:16-125:1.

[39] On cross examination, Brevitz did not deny that 90% of non-urban customers exclusively, primarily or dually use mobile service, to which he retorted that the Commission should be focused on the other 10%. He then admitted, however, that the other 10% of rural customers may not heavily use wireless service by choice, and not because they lack other options. Brevitz, Tr. 252:3-20.

[40] RCW 80.36.320(1) ("Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base.).

[41] RCW 80.36.300(5).

CenturyLink, especially when that freedom contains layers of safeguards and protections for Washington consumers, merely because some individuals simply prefer their older POTS lines.

37. The CCL Price Benchmark is a Fair Compromise. The proposed AFOR relies on a price benchmark of $61.13 for the alternative service to be treated as an affordable alternative. As Gose explains, this benchmark represents a fair compromise of the parties' litigation positions (Staff $55.13 vs. CenturyLink $87.83), and one that lands far closer to Staff's original position.[42] Staff witness Bennett (hereinafter, "Bennett") agrees, also noting that the "Staff's affordability survey included the highest identifiable price for every mass market service within the CenturyLink service area and calculated the average price for 25/3 Mpbs (or faster) service is $66.64. The $61.13 benchmark (which may adjust annually) is below the average consumer price within the CenturyLink service area and is ultimately more affordable than CenturyLink had initially proposed."[43] Notably, Public Counsel's testimony responding to the settlement does not quibble with the $61.13 benchmark.

38. The 25/3 Mbps Speed Requirement for Fixed Internet is a Reasonable Benchmark. There can be no dispute that 25/3 Mbps is a fair, if conservative, benchmark when evaluating whether a service offers reasonable equivalence to CenturyLink's POTS. In their original response testimonies, both Staff and Public Counsel aligned on 25/3 as the appropriate benchmark.[44] While CenturyLink would argue in litigation on its competitive classification petition that 25/3 is too high a bar, given that a CenturyLink 1FR offers internet speeds of

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[42] Gose, Ex. PJG-30T, at 10:14-12:7.

[43] Bennett, Ex. SB-28T, at 19:9-20:3 (also explaining that "[t]his is a true compromise between Staff and the Company.").

[44] Webber, Ex. JDW-1CT, at 33:13-17 ("As to the broadband services that may assist in giving rise to intermodal competition to CenturyLink's voice service, I have suggested using the standard definition for broadband as indicated by the FCC as early as 2015, and which must be included in certain federally funded broadband programs, of 25Mbps down / 3Mbps up."); Brevitz, Ex. DB-1T, at 32:12 (referring to "the FCC standard of 25 Mbps download/3 Mpbs upload").

0/0, this is a reasonable element of compromise that CenturyLink is amenable to as one component of a comprehensive settlement.[45]

39. Subsidies Will be Available to Protect Low Income Customers. Leaving no stone unturned, the settling parties included multiple subsidies to assist customers to transition away from traditional voice customers in the event CenturyLink seeks to discontinue service. Low-income customers will be provided a subsidy for setup charges, as well as for handsets, in the event they are asked to transition to mobile wireless services they don't already subscribe to. See Section 9.b.ii.3. Low-income customers will also potentially be provided low cost service via HughesNet if fixed internet options are not affordable. See Section 9.b.ii.5. More generally, the agreement also protects any impacted customer in the event fixed internet services are the only available alternatives and setup costs are high. See Section 9.b.ii.4. This is yet another way the settlement seeks to ensure that no customers are left behind.

d) Section 9 Establishes Layers of Checks and Balances to Prevent POTS Customers from Being Left Without Adequate Replacement Services.

40. The proposed AFOR includes a system of safeguards to ensure that, in the event that CenturyLink seeks to discontinue standalone voice service to an area of Washington, there will not be any customers left without alternative services. The proposed AFOR's system of overlapping protections are thoughtful and robust.

41. FCC Approval is a First Step. Assuming CenturyLink identifies an area in Washington[46]

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[45] See Gose, Ex. PJG-30T, at 12:8-21 (demonstrating that VoIP applications function with fixed internet speeds far below 25/3 Mbps).

[46] Public Counsel argues that, if the Commission approves the settlement, it should limit the size any area of discontinuance in terms of geography or number of impacted customers. Brevitz, Ex. DB-9T, at 17:4-9. This should be rejected out of hand. As Brevitz admits, the FCC does not impose any such limitations (Brevitz, Tr. 265:1-6), the prior AFOR settlement (of which Public Counsel was a party) did not impose any such limitations (Brevitz, Tr. 253:5-14), and Public Counsel offers no rational basis for imposing these artificial restrictions. Further, as Brevitz also admits (Brevitz, Tr. 256:3-6), the larger the area (in terms of geography or customers), the more likely at least one CCL will be present, thus requiring approval. The settlement agreement is designed

where it wishes to consider discontinuance of traditional voice service, the company must first pass through the FCC's Section 214 process. As Brevitz admits, this process is largely used by CLECs as they discontinue services; Brevitz attached the FCC's index showing all Section 214 applications from 2022 through present, and did not identify any involving ILEC discontinuance of standalone voice service.[47] Should CenturyLink file a Section 214 petition regarding voice service in a Washington area, the Washington Commission will have an opportunity to comment and air any concerns to the FCC.[48] The enhanced notice required under the proposed AFOR will require CenturyLink to timely disclose extensive information regarding each potentially-affected customer location. That information will afford Staff and Public Counsel the ability to double check CenturyLink's CCL analysis and ensure that the Commission has all relevant information before commenting to the FCC, if it chooses to do so. Staff described its mandate as follows: "**Q. And what does staff view its role in kind of reviewing CenturyLink's -- the data it collects through the customer challenging validation processes?** A. We're validating it, we're verifying it. We are ensuring that CenturyLink through that discontinuance process is doing exactly what they said they were going to do and that they are not discontinuing service to anyone that doesn't have either fixed wireless -- or sorry, mobile wireless or fixed internet availability."[49]

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to care for every potentially impacted customer, and there is no logic to applying arbitrary constraints on the company's ability to make rational business decisions when those decisions will have to pass through a gauntlet of safeguards, first at the FCC and later pursuant to the AFOR.

47 Brevitz, Exs. DB-9T, at 31:9-14 ("The [Section 214] filings appear to me to be mostly from Competitive Local Exchange Carriers with relatively few from Incumbent Local Exchange Carriers such as CenturyLink. Of the ILE[C] filings many appear to be grandfathering services rather than discontinuing, including some services such as ISDN."), DB-14. Brevitz, Tr. 265:7-18 (admitting infrequency of ILEC use of Section 214 process).

48 Bennett, Ex. SB-28T, at 26:11-13; Brevitz, Tr. 279:24-280:6 (admitting that the FCC would likely give weight to WUTC input on a Section 214 application: "**Q. Okay. Do you have any reason to believe that the FCC wouldn't consider the commission's position if it did comment on a discontinuance application?** A. No. I think -- I think it's open public comment, and the FCC staff would consider the comments that they get and probably be more interested in what a state utility commission had to say, perhaps, than an individual commenter.").

49 Bennett, Tr. 223:25-224:9.

42. Elaborate Checks and Balances. If CenturyLink pursues discontinuance, the proposed AFOR imposes a rigorous process to ensure that existing voice customers have adequate replacement services. First, CenturyLink will utilize the frequently-updated FCC Broadband Data Collection data sets and maps (which are subject to an ongoing challenge process)[50] on a location-by-location basis to determine what alternative services are available to each existing CenturyLink voice customer. If even one customer in the discontinuance area lacks alternative services meeting the AFOR's criteria (rendering it a CCL), discontinuance of the entire area would require Commission approval on top of FCC approval.[51]

43. Second, CenturyLink will then prepare a very detailed notice to customers (in the form attached to the proposed AFOR),[52] to be delivered three ways, that informs customers of the potential discontinuance and of the alternative providers available to them. The notice will likewise indicate how customers can reach Staff and/or Public Counsel and will invite them to provide feedback if they disagree that the identified services are truly available at their location.[53] Customers will have 45 days to provide feedback, and CenturyLink (in the event a customer lodges a concern) will work with the customer to investigate and validate whether

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[50] Gose, Tr. 140:20-141:5; Bennett, Tr. 228:22-229:10. Information concerning the FCC's broadband data collection, including the challenge process, can be found at https://www.fcc.gov/BroadbandData

[51] See CenturyLink's response to Bench Request 8.

[52] In response to Bench Request 5, both Staff and CenturyLink expressed openness to additional review and fine tuning of the customer notice. We are aligned in the goal of providing clear and actionable information to potentially-impacted customers.

[53] Extensive resources are available to assist uncertain or anxious customers to navigate the transition from traditional copper voice services to modern mobile and internet services. As noted above, very few customers in Washington (including very few older customers or rural customers) are entirely dependent on traditional landline service; most exclusively or predominantly rely on wireless services. See footnote 33 above. That said, as Bennett explained at hearing, the Washington State Broadband Office offers a digital navigation program to assist customers. Bennett, Tr. 226:2-6 ("It also informs people about the Washington State Broadband Office's digital navigation program and language access services, and there are actually digital navigators to help people transition from -- or not necessarily help from transition from voice to broadband, but to help people understand and be able to set up and use those – the modern technology with internet and mobile services."). CenturyLink will also be happy to assist concerned customers navigate their options should the need arise. Gose, Tr. 143:8-144:7, 145:15-147:17.

or not the service operates at the residence.

44. Despite Public Counsel's implication at hearing, CenturyLink and Staff have sufficient resources to comply with the agreed-upon CCL and validation processes.[54] Both Gose and Bennett made clear that the settling parties are motivated and dedicated to following this process should it ever arise.[55] Further, CenturyLink has never before sought FCC or WUTC approval to discontinue service in Washington. As such, it is overblown to assume that scores of discontinuances are on the way, thus overwhelming company and Staff resources. Speaking only for itself, if CenturyLink in the future performs the calculus that discontinuance is appropriate and economically necessary in a particular area due to a road move or for whatever reason,[56] the company will obviously be sufficiently motivated to follow through on Section 9's processes to ensure that it can do so, hopefully without the need for a protracted approval proceeding.

45. Third, if CenturyLink concludes (after the notice and challenge process) that there are no CCLs in the proposed area of discontinuance, it will provide enhanced notice (within 5 days of filing its Section 214 application and at least 90 days prior to the proposed effective date) to Staff and Public Counsel, along with all the data and notes concerning its validation efforts. This will afford Staff and Public Counsel ample opportunity to independently review CenturyLink's findings and to seek redress from the Commission if they disagree with

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54 Gose, Tr. 104:5-107:14; Bennett, Tr. 216:19-218:13.

55 *Id.; see also* Bennett, Tr. 241:13-244:20.

56 In addition to asking the Commission to dictate geographic or customer count limitations, Public Counsel urges the Commission to prescribe the *reasons* why CenturyLink would be permitted to seek discontinuance. Brevitz, Ex. DB-9T, at 19:6-17. This is not a requirement any ILEC faces under federal or Washington law (*Id.*, at 254:8-24, 264:21-25), and Brevitz offers no compelling obligation why the Commission should be substituting its judgment for CenturyLink's in terms of when it is appropriate to discontinue service to an area in which all customers have suitable alternative services available to them. Public Counsel's position is directly at odds with RCW 80.36.135(2)(b) and 80.36.300(5) and (6).

CenturyLink and if a solution cannot be worked out with the company.[57] In this event, the Commission will have the ultimate word as to whether any CCLs exist in the proposed area.

46. Section 9 of the proposed AFOR is rigorous, well balanced and affords CenturyLink an appropriate level of flexibility, while still preserving the needs of the very few customers who could be affected by the transition from exclusive reliance on traditional POTS lines to modern services already utilized by most Washingtonians, including rural Washingtonians.[58]

2. Customer Out of Service and Noise Credits are Likewise in the Public Interest.

47. Section 8 of the proposed AFOR, which calls for automated monthly recurring charge credits to customers in the event of out-of-service or noise-on-line conditions, is not a controversial one. Public Counsel does not appear to oppose the credits; it simply makes the point that CenturyLink and Staff had not quantified in settlement testimony the financial impact of the credits. Gose did so at hearing.[59] There can't be any doubt that the credits will provide incentive to CenturyLink to shorten repair times, and more importantly will provide direct redress to customers affected by out of service or noise conditions.[60]

48. At hearing, most of the attention given to Section 8 was based on a potential

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[57] Bennett, Tr. 204:24-205:13 ("**Q. Is there any remedy allowed in the settlement for staff to bring the issue in front of the UTC?** A. I know we do have standing to bring a complaint from working with the company through this -- I'm certainly not an attorney. But from discussing this process with the company, it's our understanding that as they kind of send out a notice to these individuals, that individuals are allowed to call either the company, public counsel, or staff and to ask questions. And so as part of that, I assume consumer protection would definitely be receiving those calls, and then as consumer protection gets those and after the fact when we receive that notice, we would work through kind of that data to ensure that they followed the outline process, yes.").

[58] At hearing, Chair Danner inquired about the effect of potential discontinuance on local service customers subscribed to price for life plans. Gose, Tr. 149:25-150:17. As CenturyLink explained in response to Bench Request 4, there are not a large number of local customers on price for life plans. In the unlikely event that CenturyLink pursues discontinuance affecting such a customer, the company is open to exploring providing a courtesy gift card or discussing alternative solutions with the customer.

[59] Gose, Tr. 131:18-132:16.

[60] Bennett, Tr. 226:10-24.

misunderstanding of Section 8.d., which states: "Should CenturyLink fail to issue the required credits or should CenturyLink misapply the credit amount to the customer's detriment, CenturyLink shall (in lieu of Commission penalties associated with a failure to apply and/or not apply the correct credit amount) issue manual credits to the customer at double of the amount owed under this provision." As Bennett explained at hearing in response to Commissioner Rendahl's questioning,[61] and as both Staff and CenturyLink explained in response to Bench Request 6.b., Section 8.d. of the proposed AFOR does not limit the overall scope of the Commission's authority to regulate retail service quality. The only limitation relates to the very narrow issue of CenturyLink failing to properly apply individual customer credits pursuant to Section 8. In that event, the proposed AFOR contains a form of liquidated damages – one that inures directly to the impacted customer, rather than the state fund – in lieu of Commission penalties. To be frank, the potential scope of $1,000 per day penalties that could theoretically stem from an unexpected system issue on credits of $1-$2 per day would be so daunting that CenturyLink would not agree to the inclusion of Section 8 in the AFOR.

49. But to be crystal clear, the proposed AFOR does not alter the Commission's jurisdiction over CenturyLink's retail service quality at all or relative to the current, expiring AFOR. Title 80 and the Commission's rules continue to apply.

50. Tangentially (but not directly) related to Section 8, Public Counsel continues to beat the drum that high levels of service quality complaints reflect a lack of effective competition in Washington. Even if CenturyLink's overall service quality were squarely at issue in this case, which it is not given that the proposed AFOR does not alter the scope of the Commission's authority to resolve service quality failures, Public Counsel is way off base.

[61] Bennett, Tr. 239:2-240:11

51. First, it is confusing why Brevitz is testifying about a lack of "effective competition" when responding to a settlement agreement that does not grant CenturyLink competitive classification, and when he does not object to CenturyLink being treated as competitively classified under the AFOR. The AFOR statute does not require a finding of effective competition, as Brevitz admits.[62]

52. Second, it is an absurd suggestion that a customer should be *de facto* considered to be "captive" if they have experienced a service quality issue (reporting it to the company and having it resolved) and remained with the company. Even Brevitz admitted at hearing that customers can experience single or multiple service issues and *choose* to remain with their current provider.[63]

53. Third, Public Counsel's focus on retail service quality – the regulation of which it fully knows is not going to change as between the expiring and proposed AFORs (outside of the credits being issued) – is dizzyingly contradictory. Public Counsel dedicates inordinate attention to deriding CenturyLink's service quality,[64] while simultaneously arguing that it serves as rural and older customers' only reliable means of communication. Public Counsel ignores the CDC's data that shows that older and rural customers overwhelmingly utilize wireless services. Instead, it argues by unsubstantiated anecdote that CenturyLink POTS lines are critical, but also admits otherwise by asserting that high speed internet is the new universal service.[65] These messages are so internally inconsistent that they are challenging to respond to. They certainly shouldn't be relied upon by the Commission to reject the well-

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[62] Brevitz, Tr. 273:5-14.

[63] Brevitz, Tr. 274:10-275-19 (…"**Q. Is it your position that it's unreasonable for a customer to experience service issue and still remain with the provider?** A. No. I've had service issues with my own service, and I stick with the providers usually…").

[64] Brevitz, Ex. DB-9T, at 24:1-27:2.

[65] Brevitz, Ex. DB-1T, at 16:12-14, 28:9-10; Brevitz, Tr. 249:10-18.

balanced settlement forged by Staff and CenturyLink.

3. The Proposed AFOR's Approval Rules Concerning Property Transfers are in the Public Interest.

54. Section 6 of the proposed AFOR largely carries forward the waiver found in the expiring 2014 AFOR, except that it no longer requires Commission approval over mergers. This reflects a reasonable compromise. The agreement requires approval of exchange and access line sales, preventing CenturyLink from selling off chunks of its service territory without Commission review.

55. The parties' compromise, one part of the overarching compact achieved through good faith negotiations, reduces asymmetric regulation in Washington, which is in the public interest. Not one competitor in CenturyLink's ILEC territories is subject to Commission merger approval. Among regulated telephone companies (who provide a miniscule percentage of the voice connections in CenturyLink's service territories), none are subject to RCW 80.12 approval. Instead, they merely provide notice to the Commission. Those companies who provide the overwhelming majority of the voice connections – CMRS providers, cable companies and other fixed internet providers – have no state Commission reporting or approval obligation. To hold CenturyLink to this monopoly-era requirement, subjecting it to expensive, year-long litigation, is not reasonable and is not in the public interest.[66]

C. THE SETTLEMENT AGREEMENT IS CONSISTENT WITH THE STATE'S POLICY GOALS.

56. The Commission's decision will be primarily focused on whether it believes the settlement is in the public interest. Taken as a whole, the agreement promotes each statutory policy goal

[66] Bennett, Tr. 165:17-166:5 ("Number one, as this AFOR is constructed, it's a very fair balance and compromise of all decisions here. Number two, CenturyLink is far from a monopoly service provider that may have been, you know, post divestiture. When I had, you know, close to three million subscribers 20-some years ago and today I have only 300,000 out of five or six million voice grade connections in the state of Washington, that likelihood is -- or necessity to have authority over the company for those actions is very asymmetric. In terms of that authority, if any other similarly situated carrier, small carrier in the state of Washington, do -- to answer the question, do they operate under that same level of regulatory scrutiny."), 230:14-231:20.

set out in RCW 80.36.300 and .135. The question before the Commission is not whether it is possible for the agreement to offer more customer protections or impose more requirements on CenturyLink. If that was the standard, the Commission would revert CenturyLink to full rate of return regulation, an outcome at which even Brevitz scoffed.[67] Instead, the Commission should evaluate the policy goals set out in RCW 80.36.300 and .135 and, considering the agreement in its entirety, determine whether the agreement is contrary to law, enhances the public interest and is supported by record evidence. The settlement agreement between Staff and CenturyLink is in the public interest.

57. Preserve affordable universal telecommunications service (RCW 80.36.300(1)): The agreement does not alter level of price regulation in Washington as compared to the expiring AFOR. The market is fully competitive, with CenturyLink copper POTS constituting less than four percent of the voice connections in the state.

58. Maintain and advance the efficiency and availability of telecommunications service (RCW 80.36.300(2)): This weighs heavily towards approval of the settlement. The Commission recognized a decade ago in the Frontier and CenturyLink proceedings that traditional landline incumbents are at a competitive disadvantage in the modern telecommunications market (and that has only become more acute in the past decade) and are in need of regulatory relaxation. The proposed AFOR largely carries forward the expiring AFOR, but grants CenturyLink a modest amount of increased flexibility. This will promote CenturyLink's ability to more efficiently serve its existing POTS customers and deploy modern, fiber based services customers want and Public Counsel describes as the new universal service.

59. Ensure that customers pay only reasonable charges for telecommunications service (RCW 80.36.300(3)): By carrying forward the price deregulation found in the current, expiring

[67] Brevitz, Tr. 248:16-25.

AFOR, the settlement remains consistent with existing law and practice. The exception is found in Section 8, which directly supports this policy goal by assuring automatic service credits (to be doubled if misapplied) to customers whose line is out of service or affected by noise.

60. Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies (RCW 80.36.300(4)): There is no change from the existing AFOR, and no allegation has been made that this policy principle is jeopardized by the settlement.

61. Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state (RCW 80.36.300(5)): This factor is overwhelmingly supported by the settlement, not that the proposed AFOR is needed to create diversity of supply. As Gose details, there is overwhelming competition from multiple different technologies. The settlement will enhance CenturyLink's ability to deploy high speed internet services, thus squarely promoting this policy goal.

62. Permit flexible regulation of competitive telecommunications companies and services (RCW 80.36.300(6)): It goes without saying that the proposed AFOR supports this goal. There is no credible argument that the telecommunications market in Washington is not extremely competitive. The proposed AFOR largely carries forward the regulatory flexibility of the 2014 AFOR, with some additional flexibility in recognition of the further development of the competitive market over the past decade.

63. Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes (RCW 80.36.135(2)(a): The settlement does exactly this by continuing the diminished regulation that has applied under the expiring AFOR and offering additional flexibility, all of which is reasonable and well measured. This will enhance the company's ability to expand broadband

services in Washington.

64. Improve the efficiency of the regulatory process (RCW 80.36.135(2)(b)): The settlement agreement is consistent with, and certainly not at odds with, this statutory principle. By continuing the price deregulation and waivers in effect under the expiring AFOR, the agreement reduces unnecessary burdens on the company and the Commission that simply do not make sense in this era of heightened competition. The settlement advances this principle by removing the *inevitability* of additional AFOR litigation (Section 3), eliminating litigation over potential mergers (bringing CenturyLink in line with how its competitors are treated) (Section 6) and potentially limiting litigation on hypothetical discontinuances (Section 9). All of this is done without the Commission ceding oversight of exchange sales, access line sales, service quality or discontinuances. As to discontinuances, while lengthy Commission litigation is not going to be assured in all cases, Commission Staff and Public Counsel will still be involved to assure that customers are properly protected.

65. Preserve or enhance the development of effective competition and protect against the exercise of market power during its development (RCW 80.36.135(2)(c)): CenturyLink is already subject to effective competition across its ILEC serving territories. There is no credible argument that it has a significant captive customer base, or any captive customers whatsoever. Only a relatively small number of customers (approximately 1200) lack mobile wireless or fixed internet services meeting the proposed AFOR definition of adequate replacement. And those customers (and possibly more, if the CCL validation process uncovers that services are more limited than the FCC reports) will all receive special protection from theoretical discontinuance under the settlement. They are likewise protected by Section 7, which prohibits geographical de-averaging of rates.[68] There has been no

[68] At hearing, Staff witness Webber (hereinafter, "Webber") highlighted that this provision benefits rural customers who enjoy the downwards pressure on urban rates despite there being fewer competitors in rural areas of Washington. Webber, Tr. 186:3-20.

argument or evidence put forward that the proposed AFOR will somehow convert CenturyLink back to a monopoly it has not been for decades. It is worth noting that the greatest tension over the agreement – Section 9 – focuses on CenturyLink potentially reducing its reach, not exercising market power over its customers.

66. Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services (RCW 80.36.135(2)(d)): The agreement will preserve the Commission's existing authority over CenturyLink's retail service quality (and wholesale service quality, though that is not an issue in this case),[69] and will require CenturyLink to provide automatic service credits to customers who experience out of service or noise-on-line conditions. While Public Counsel has, from the beginning, angled to convert CenturyLink's petition for competitive classification (and now AFOR) into a referendum on CenturyLink's retail service quality, its hyper focus on the issue is off base. The Commission will have the same oversight it has had under the existing AFOR, during which time the Commission has not a single time found it necessary to pursue penalties for retail service quality.

67. Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential (RCW 80.36.135(2)(e)): CenturyLink is rate deregulated (aside from a very small number of services identified in Section 5), and the proposed AFOR will not change that status. This factor weighs in favor of approval of the settlement.

68. Not unduly or unreasonably prejudice or disadvantage any particular customer class (RCW 80.36.135(2)(f)): No allegations or evidence has been put forward that the proposed settlement will discriminate against any particular customer class.

[69] Order 02 (Feb. 5, 2024), at ¶5; see also Section 4 of the proposed AFOR.

V. CONCLUSION

69. The Commission encourages settlements, and should find that the settlement agreement and proposed AFOR negotiated and presented by Staff and CenturyLink are in the public interest. The Commission's criteria for evaluating settlements[70] require approval.

70. No allegation has been made that the settlement is contrary to law. The agreement enhances the public policy goals proscribed by the Legislature in RCW 80.36.300 and .135 and the record evidence firmly supports that the proposed elements of the settlement are a reasonable solution to the complex issues at hand. Public Counsel supports most provisions of the settlement. The modifications it demands are not reasonable and are premised on anecdotes and generalization, rather than being supported by data or analysis. As such, the Commission's *Avista* decision dictates that Public Counsel's opposition merely constitutes legal argument, rather than evidence, and does not form the basis for an order rejecting the settlement.[71]

71. Public Counsel's proposed conditions would knock the agreement out of balance and would lead to collapse of the settlement and a return to full litigation of CenturyLink's petition for competitive classification. That will leave CenturyLink's regulatory status in a state of uncertainty in the short term, and will not advance the parties towards a resolution that is needed in order to right size regulation for the highly competitive communications market. The settlement should be approved without further conditions.

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[70] *WUTC v. Avista Corp., d/b/a Avista Utils*., Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 17 (Dec. 29, 2008).

[71] See footnote 3 above.

Respectfully submitted this 14th day of August 2024.

CENTURYLINK

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