BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of THE CENTURYLINK COMPANIES – QWEST CORPORATION; CENTURYTEL OF WASHINGTON; CENTURYTEL OF INTERISLAND; CENTURYTEL OF COWICHE; AND UNITED TELEPHONE COMPANY OF THE NORTHWEST To be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135	DOCKET UT-240029

POST-HEARING BRIEF OF PUBLIC COUNSEL

August 14, 2024

Shaded Information is Designated as Confidential per WAC 480-07-160

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I. INTRODUCTION

1. This case requires the Commission to determine whether the Settling Parties, CenturyLink Companies (the Company or CenturyLink) and UTC Staff (Staff) have proven that an alternative form of regulation (AFOR) containing a provision allowing a summary determination that consumers have reasonable alternatives without allowing those consumers an opportunity to be heard meets the statutory criteria for approving an AFOR and is in the public interest. The record in this case confirms that there are significant and compelling reasons for rural Washingtonians to contest whether the market has provided sufficient reliable alternatives to landlines in rural Washington such that CenturyLink may discontinue service without a hearing. On this record, the Washington Utilities and Transportation Commission (Commission or UTC) should not approve a settlement that deprives those hundreds of thousands of Washingtonians who currently rely on landlines of their right to contest the discontinuance of public utility service without the regulatory safeguards provided by Commission regulations.

2. Here, the record establishes that the discontinuance of service process negotiated[1] between the Company and Staff to draw a line between "where competition exists and where it doesn't exist"[2] is not sufficient for the Commission to abdicate its role in reviewing utility discontinuances. Initially, the record does not establish that the Settling Parties came up with a definition that accurately draws a line where there is enough competition to ensure service through market forces alone. Additionally, the process relies on a company with a terrible service

[1] Public Counsel objects to paragraph 9 of the proposed settlement agreement. With one slight modification in for paragraph 8, Public Counsel does not object to the remaining clauses of the proposed settlement agreement. Accordingly, this Brief focuses on the proposed process for approving discontinuance of service without Commission approval.
[2] Peter Gose, TR. 159:12–17.

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record, does not contain enough guarantees that after-the-fact review will be able to catch errors, and would disadvantage rural and older Washingtonians. On this record, the Commission must reject the settlement.

II. FACTS

A. The Rural Washington Market Is Not Served by Telecommunications Market

3. The record here establishes that the telecommunications market is insufficient to meet the needs of rural Washingtonians.[3] By statute, the legislature established a universal services program to provide voice and broadband services that were historically provided by incumbent local exchange networks.[4] This is part of what the legislature has declared as being in the public interest: preserving affordable universal telecommunications service.[5] As Staff witness Sean Bennett conceded, there are significant barriers to broadband expansion because of the cost of building and maintaining infrastructure.[6] There are, "many areas where [individual companies] have not [expanded service]."[7] Within CenturyLink's service area, in fact, there are 248,000 Washington households without mobile internet access.[8] One compelling indication of the inefficiency of the market is that the federal government has promised up to $1.7 billion dollars for the State of Washington to "push broadband services deeper into the network in the state."[9] Left to itself, the telecommunications market has proven that it will not expand universal

[3] David Brevitz, TR. 302:12–19.
[4] RCW 80.36.650(1).
[5] RCW 80.36.300(1).
[6] Sean Bennett, TR. 190:2–23.
[7] Bennett, TR. 190:16-17.
[8] *Id.* at 193:20–194:5.
[9] Gose, TR. 92:1–11.

telecommunication services to many areas of Washington. Continued government investment and regulation is necessary.

4. One aspect of this market failure is the persistence and distribution of copper wire landline service that is the subject of this petition. Copper wire networks, like broadband now, were extended into rural areas because of federal investment and not through effective market competition.[10] While Staff hopes that over the next several years federal funding will expand broadband competition into rural areas, for the time being copper wire networks remain necessary.[11] According to the National Center for Health Statistics, 114,469 Washington adults use landline phone service only, 162,666 adults use mostly landline phone service, and 379,555 are dual users.[12] Consistent with the fact that broadband is slow to expand in rural areas, rural areas are twice as likely to rely on landlines.[13] Additionally, landline use tends to be higher among older Washingtonians.[14] These two populations, rural and older Washingtonians are, in the telecommunications market, underserved.

5. The evidence strongly suggests that this pattern of rural use is a result of market failure. While the Company suggested that some of these 656,690 Washingtonians who use landlines either primarily or through dual use do so as a matter of preference,[15] such an argument cannot explain why landlines are concentrated in rural areas. The testimony of Joseph Medeiros is

[10] Bennett, TR. 189:23–190:1.
[11] Bennett, TR. 234:11–235:8. Direct Testimony of James D. Webber, Exh. JDW-1CT at 15:8–12 ("A closer inspection of relevant data reveals a significant subset of the Washington population still rely solely or primarily on landlines for their voice communication needs.").
[12] Gose, Exh. PJG-31, Gose, TR. 120:14–121:19.
[13] Webber, Exh. JDW-1CT at 18:10–14.
[14] *Id.* at 17:9–10.
[15] *See e.g.* Brevitz, TR. 252:11–20.

illustrative; even when his rural east Pierce County community tried to replace copper with broadband using a state grant, he was unable to obtain broadband because CenturyLink backed out.[16] Mr. Mederos testified that the Company explained that he lived in a low-revenue area and that the only solution the Company could offer him was for him to move.[17] The better explanation for the concentration of landlines in rural areas is that available alternative services lack some functionality that hundreds of thousands of Washingtonians have rationally determined is necessary.

6. CenturyLink complaint and trouble ticket data confirms that CenturyLink landline consumers lack access to effective competition, particularly in rural areas. A significant number of consumer complaints to the Washington Attorney General from rural areas are about CenturyLink and many reference poor service quality.[18] Staff witness James Webber reviewed the Company's trouble ticket data and examined chronic and repeat troubles.[19] Mr. Webber found a significant number of Company consumers experienced multiple troubles, with some [redacted] customers experiencing filing two or more trouble tickets.[20] A significant number of customers experienced more than five trouble tickets with the average per customer of 7.6.[21] Many of these tickets were coded with services codes indicating that the "problem was caused by deteriorated outside plant facilities—typically occurring in the copper distribution cable portion of the

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[16] Gose, Exh. PJG-39X, 40:8–22 (Public Comment Hearing Transcript Excerpt of Joseph Mederios, *WUTC v. CenturyLink*, Docket UT-240029) (filed July 15, 2024).
[17] *Id.* at 40:23–41:21.
[18] Direct Testimony of Jean Marie Dreyer, Exh. JMD-1Tr at 9:2–8.
[19] Webber, Exh. JDW-1CT at 45:4–13.
[20] *Id.* at 49, Table 2.
[21] *Id.* at 49, Table 2.

network."[22] Alarmingly, these problems are occurring at an accelerating rate.[23] As Mr. Webber concluded, this pattern suggests that the Company "does not feel the practical effect of competitive pressure in many of its service areas" because if "competitors were providing functionally equivalent alternatives at competitive rates, customers would not stand for such poor service quality."[24] Washington State Attorney General's Public Counsel Unit's (Public Counsel) witness David Brevitz agreed, noting that at the level of complaints described by Mr. Webber, strongly suggests that customers do not have reasonable alternatives.[25]

7. This conclusion is bolstered by Mr. Gose's testimony during the hearing that had the automatic credit provision related to outages been active in 2023 there would have been $150,000 worth of automatic credits.[26] He admitted that this was an underestimate since it relied only on those customers who were motivated enough to file a trouble ticket.[27] Because Mr. Gose assumed $1 per day, this is an admission that CenturyLink customers experienced 150,000 days, or 410 years, of outages in service in 2023. A customer base willing to put up with 410 years of outages is a captive customer base.

8. Even assuming that some number of CenturyLink's rural customers choose landlines by preference, there is significant evidence to suggest that alternatives available do not provide sufficiently reliable service in rural communities.[28] For example, copper-based landlines operate

[22] *Id.* at 55:1–13.
[23] *Id.* at 42:3–6.
[24] Settlement Response Testimony of David Brevitz, Exh. DB-9T at 27:5–20.
[25] Brevitz, TR. 272:21–273:4.
[26] Gose, TR. 131:15–132:2.
[27] *Id.* at 132:2–14.
[28] Dreyer, Exh. JMD-1Tr at 1–7.

when power is out, which can be particularly important during a wildfire or natural disaster.[29] As Richard Johnson explained, living in Okanagon County, his electricity goes out when there is snow, strong winds, or fires, and his landline is the only connection.[30] In fact, two years ago, the snow caused outages from November through April.[31] Mr. Johnson's concerns about reliability are well founded. In a study of the recent California wildfires, the authors concluded "the most striking observation…is how vulnerable cell service is to loss of power."[32] This concern is only strengthened by the response to Bench Request 7, in which CenturyLink related Verizon's observation that, "Backup power provides limited benefit if Verizon's technicians are unable to access cell towers due to road closures."[33] In rural and isolated areas of Washington, access for repairs is not a trivial difficulty. Mr. Johnson, who describes snow blocking roads over a period of months, could rightly observe that just four or eight hours of backup power for a cell tower made inaccessible because of snow is a cold comfort. Depending on the individual situation, even if cell service is available, the reliability problems mean it is not an adequate alternative.[34]

9. The best explanation for the distribution of landline use in Washington in rural areas is market failure. That explanation is consistent with CenturyLink's initial petition for competitive classification and with the focus of this settlement on CenturyLink's ability to discontinue service. The looming issue for larger telecommunication companies like Lumen, which have a blend of urban and rural territory, is that during this period of transition from copper to

[29] *Id.* at 8–12.
[30] Gose, Exh. PJG-40X at 44:19–25 (Public Comment Hearing Transcript Excerpt of Richard Johnson, *WUTC v. CenturyLink*, Docket UT-240029) (filed July 15, 2024).
[31] *Id.* at 44:25–45:5.
[32] Bennett, Exh. 32X at 166–167.
[33] CenturyLink's Response to Bench Request No 7, Exh. BR-7C.
[34] *See eg.* Dreyer, Exh. JMD-1Tr at 10:30–35 (noting that "cell phone coverage is very spar[s]e" on Mason Lake).

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broadband, the copper wire network is not well-suited to compete with broadband and is expensive to maintain.[35] CenturyLink's desire to discontinue copper wire is part of a national trend among companies with copper wire networks seeking to stop maintaining legacy networks.[36] In Utah, one CenturyLink affiliate sought and was denied competitive classification and relief from its obligation to provide voice service regardless of cost of service.[37] As Commissioner Doumit noted, there is an "irresistible sort of pull" for these companies to "say, look, there only a few people here, that's just not cost beneficial for us."[38]

10. It is the ability to discontinue service that is motivating this petition. Company witness Peter Gose's response to Commissioner Doumit's question about the irresistible pull was telling, "So the Company has a compact with the Commission that, you know, we're certificated to serve certain areas. And until such time that a[sic] agreement *like this multiparty settlement* or some other form occurs, those areas where we are–have a service obligation, we will attend to."[39]

11. CenturyLink views this settlement as a way to dispense with its service obligations. Although CenturyLink identified the administrative burden of applying for an AFOR as the reason for its petition,[40] the Company made no attempt to quantify the cost of that administrative burden.[41] Instead, Company witness Peter Gose explained that the Company is focused on ending the "uneconomic replacement of legacy technologies" when "very few customers are

[35] Brevitz, TR. 300:14–24.
[36] Brevitz, Exh. DB-9T at 27:5–20.
[37] *Id.* at 29:8–30:5.
[38] Gose, TR. 160:15–22.
[39] *Id.* at 160:23–3. (Emphasis added).
[40] Gose, Exh. PJG-30T at 2:17–19.
[41] Gose, TR. 84:6–8.

even served by those facilities."[42] At the hearing, Mr. Gose agreed that "the real issue" was the Company's desire to avoid paying for projects like road moves for locations serving only a few customers.[43] The Company's response to the bench request reveals that in 2023 and 2024, the Company spent [redacted] on [redacted] road move projects.[44] Given the Company's avowed desire to avoid road moves and the number and expense of those road moves, it is reasonable to expect that CenturyLink intends to begin discontinuances. Despite the size and frequency of these road move projects, however, the Company provided no testimony to identify how many of these projects would qualify under the proposed discontinuance of service process.

12. One additional note must be added to the factual background. All of the witnesses assumed that federal funding would introduce significant expansion of broadband in Washington.[45] After the hearing concluded, the U.S. Fifth Circuit Court of Appeals concluded that the Federal Communications Commission's (FCC's) funding for universal service is unconstitutional.[46] This creates a circuit split of authority on the constitutionality of the FCC's universal service funding with the Eleventh and Sixth Circuit.[47] There is no binding decision in the Ninth Circuit. The ultimate resolution of this constitutional challenge may have to wait on a decision by the United State Supreme Court, but should the Supreme Court affirm the Fifth Circuit decision, the circumstances in Washington's markets could substantially change in favor of needing to maintain the copper wire legacy systems significantly longer than anticipated.

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[42] Gose, Exh. PJG-30CT at 25:10–14.
[43] Gose, TR. 84:18–85:21.
[44] CenturyLink's Response to Bench Request No 1.
[45] Gose, TR. 161:4–17; Bennett, TR. 189:19–22; Brevitz, TR. 301:13–22.
[46] *Consumers' Research v. FCC* __ F.4th __, 2024 WL 3517592, (July 24, 2024) at *8.
[47] *Id.* at *6–7 (noting the circuit split and explaining that the FCC waived issue preclusion that led to identical claims being denied).

B. The Proposed AFOR Discontinuance Provision

13. It is in the context of an ineffective market and an "irresistible pull" on a company seeking to limit expenses that the proposed AFOR settlement must be evaluated. The Company, Staff, and Public Counsel engaged in a years long process to draw a line between those areas of Washington where the market is sufficiently robust to provide alternative service and those areas where it is not.[48]

14. The key term is that CenturyLink seeks permission to discontinue service without UTC prior approval. Under the current AFOR, all discontinuances must be filed with the Commission, with the full panoply of procedural protections, including public filing and notice, formal discovery, public comment hearings, and adjudication of contested factual issues by a neutral third party. This proceeding is, itself, a good illustration of the value that that a full Commission proceeding can offer. The Commission has the benefit of hundreds of public comments, a full set of written testimony, adversarial testing of witness in cross examination. And the formal Commission process has, as all of the parties acknowledged, materially improved the Commission's understanding of the telecommunications market in Washington.[49] These advantages are foregone in the proposed settlement's process for discontinuance of service.

15. The proposed AFOR settlement would create, in essence, a summary discontinuance of service process without normal Commission procedural protections in areas of Washington where consumers have access to fixed internet or mobile wireless service at $61.13 per month or

[48] Gose, TR. 107:23–108:6, 110:2–25. Bennett, TR. 182:18–23 ("It's --- It's really about the definitely the – the discontinuance process was born out to protect consumers that may not have other available options available to them.").
[49] *See e.g.* Gose, TR. 110:12–111:8.

less.[50] In order to confirm service availability, CenturyLink promises to consult the FCC Broadband Data Collection (BDC) to determine if every location within a proposed discontinuance has fixed internet or mobile service.[51] The Company will then survey identified providers in the area to ascertain whether those alternative providers offer service below the $61.13 threshold.[52]

16. The affordability price of $61.13 per month is not based on any data point, it is the result of a negotiation between Staff and the Company.[53] Both Staff witnesses, Mr. Bennett and Mr. Webber, identified $55.13 per month as a conservative estimate of affordability for Washington consumers.[54] And, in fact, $55.13 is already two standard deviations above the average price for copper wire service of $34.27.[55] CenturyLink's price in Washington is $38.50.[56] At $61.13, the settlement would approve up to a 62 percent price increase for some customers.

17. Because the BDC data is not specific enough to provide individual location data,[57] the Company pledges to reach out to each affected customer by letter, phone, and e-mail to confirm that the location has cell or fixed service.[58] If the customer affirmatively represents that her or his location has insufficient alternatives, the Company will dispatch a technician who will perform a signal strength test to determine if the cell signal is above a certain threshold to be determined

[50] Full Multiparty Settlement Agreement, Attachment A, ¶ 9(a) (filed July 1, 2024) (hereinafter Settlement).
[51] *Id*. ¶ 9(b).
[52] *Id*. ¶ 9(b).
[53] Bennett, TR. 200:25–201:16.
[54] *Id.* at 200:25–201:16, Webber, TR. 173:6–17.
[55] Webber, TR. 174:19–25.
[56] Webber, Exh. JDW-1CT at 31:24–31.
[57] Bennett, TR. 229:11–21 ("But, ultimately…we don't want to rely on that [data] exclusively, which is why we built in a validation process.").
[58] Gose, TR. 93:12–23.

later in a workgroup.[59] Thus, whether the a consumer has a reasonable alternative to copper wire will be based solely on "quantitative findings…from some tests [Staff and the Company] all agree upon."[60]

18. Assuming that all customers in a proposed discontinuance area either agree that they have reasonable alternatives, or the company determines that there is sufficient signal strength data, the proposed AFOR settlement would permit CenturyLink to file a petition for discontinuance with the FCC, where the FCC automatically grants applications within 31 days unless the FCC notifies the carrier otherwise.[61]

19. Using currently available data, the settlement definition of affordability and availability means that the discontinuance protections will apply to a very limited number of Washingtonians. Despite the fact that there are 248,000 Washington households without mobile internet access, and some 656,000 adults who either only use landlines, mostly use landlines, or are dual users of landlines, only 1,233 households meet the definitions in this discontinuance provision.[62] No matter what explanation the Company or Staff offers, this disparity in numbers means that this settlement provision will remove UTC oversight over disconnections that will impact hundreds of thousands of Washingtonians who do not have currently have access to universal service. This is a very significant reduction in Commission review.

[59] Settlement, ¶ 9(b)(ii)(1).
[60] Gose, TR. 130:1–3.
[61] Brevitz, Exh. DB-9T at 30:7–31:2.
[62] Gose, TR. 126:3–17.

C. Public Counsel Criticisms of the Discontinuance Process

20. In written testimony and in the hearing, Public Counsel identified several flaws in the proposed discontinuance provision. Public Counsel here enumerates eight flaws in the design of this provision that collectively raise sufficient doubt to reject the provision.

21. First, as Staff witness Sean Bennett conceded, in order for this process to work, "if [the company] want[s] to try to go through that discontinuance process, they have to do the work."[63] But "the work" here requires CenturyLink's customer service to facilitate a complicated interaction with customers, and the record establishes that CenturyLink is simply not reliable. Although Staff believes that the methodology is sound and will produce enough documentation that a later review will be an adequate check,[64] the process fundamentally involves an interaction between a customer service representative and a customer that will not be observed or documented. For example, while the settlement may require a phone call, email, and letter, it is easy to imagine a customer like Joy Markaraf being confused about what her rights might be or what remedy she could pursue. And because the contact with the customers occurs before Staff or Public Counsel is aware of the possible discontinuance and before they have the data, it will do little good for a confused customer to have referral information. Additionally, Company employees have the same incentives as the Company to terminate service, creating the possibility for manipulation.[65] It would be possible for a customer service representative incentivized to save the Company money to convince a consumer that a signal strength test is dispositive and for the customer to be cowed into accepting, as inevitable, the cancellation of their phone service.

[63] Bennett, TR. 216:25–217:1.
[64] *Id.* at 217:16–25.
[65] Brevitz, TR. 298:16–299:6.

The documentation that Staff will receive for that customer will show that the customer received the required notice and did not protest, but will not provide that customer with an opportunity to be heard.

22. If there was any telecommunication company that has proven that it cannot be trusted with such interactions, it is CenturyLink. In recent years, CenturyLink has downsized significantly across all its departments.[66] CenturyLink has a total of three regulatory staff covering multiple states.[67] Mr. Gose testified that he is aware that the Company needs additional people to make this process function, and while he has "opined loudly" internally that they need more staff, he could not confirm that his superiors would give him approval for that necessary staff.[68]

23. In a normal company, this would be troubling, but CenturyLink is literally the worst telecommunications company in terms of customer service. In 2023, a staggering 89 percent of all telecommunications complaints to UTC staff involved CenturyLink.[69] In fact, CenturyLink accounts for 52 percent of all complaints the Commission received for any utility.[70] And when questioned by the Commissioners about whether Company could help older customers navigate the disruption of transitioning to new technology, Mr. Gose agreed such assistance was necessary, but admitted, "I don't have the authority as I sit here today to tell you I can commit the Company to that, but I can advocate strongly for it."[71] This is not sufficient. Before the

[66] Gose, TR. 104:15–17.
[67] *Id.* at 104:10–14.
[68] Gose, TR. 107:5–14.
[69] Dreyer, Exh. JMD-1Tr at 12, Table 1.
[70] *Id*. at 12, Table 1.
[71] Gose, TR. 147:18–25.

Commission commits to this process, the Company must have the necessary staff in place and a proven track record sufficient to justify unreviewed summary discontinuances.

24. Taking the committal step of waiving Commission review of discontinuances in rural areas that relies on a short-staffed company with a track record of poor customer service and a financial incentive to lower costs to be sure that none of the hundreds of thousands of landline users is left behind is simply a bridge too far.[72] The after-the-fact review process envisioned by the proposed discontinuance proposal might allow for some review of situations where customers did articulate a protest, but it allows silence to stand for consent, and that is problematic.

25. Second, as Public Counsel witness David Brevitz noted at the hearing, the settlement agreement allocates the decision about whether a consumer has reasonable alternatives to the Company without an adequate appeal right.[73] A consumer may have a myriad of arguments regarding whether other services are reasonably available or reliable. If they have such arguments, procedural due process requires that they have the right to raise those objections and to have a neutral third party decide whether those objections are reasonable.[74] If this discontinuance policy is to supplant the well-established procedural protections allowed by Commission regulations, consumer disagreement must trigger an adjudication by a neutral Commission. The current negotiated "challenge process" only entitles a consumer to request a

[72] Public Counsel stresses that this is, in no way, questioning Mr. Gose, who has acted at all times in good faith. The reality, however, is that decisions about discontinuances are made at the Lumen corporate level. Gose TR. 164:16--165:5.
[73] Brevitz, TR. 299:7—13.
[74] *Id.* at 283:6-19.

signal strength test, which is of dubious value if the customer's problem is reliability during frequent power outages or need to have a phone during an emergency.

26. Although Staff have pledged to review the data and information from the Company to verify no one is left behind,[75] there is reason to doubt that the efficacy of that after-the-fact review by Staff would be sufficient to adequately allow customers a way to challenge a determination that they have adequate alternatives to their existing landline. Initially, as noted above, it is unclear what level of documentation the company will provide. In addition, there is a serious timing issue. The settlement agreement itself only provides that CenturyLink will provide data and "challenge documents" to Staff within five days *after* filing a petition for discontinuance with the FCC.[76] But FCC applications are granted 31 days after filing unless the FCC acts before that time. That leaves a perilously short period of time for Staff to identify, investigate, and raise a factual dispute regarding whether an individual does, in fact, have reasonable alternative service.

27. Moreover, this settlement agreement intentionally raises the quantitative findings of a single signal strength tests to being dispositive. As illustrated by Mr. Johnson's testimony, there are reasons beyond signal strength that may make cell service an inadequate substitute for copper wire service.[77] As Mr. Brevitz explained, mobile service is affected by all of the things that affect radio signals including signal strength, shared capacity, terrain, topography, and weather.[78] Additionally, as noted above, reliability of cell service can vary in rural areas, something not

[75] Bennett, TR. 223:4–224:9.
[76] Settlement, ¶ 9(c)(i).
[77] Gose, Exh. PJG-40X at 44:19–25.
[78] Brevitz, Exh. DB-1T at 31:27–32:2.

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detected by a single signal strength test.[79] While a signal strength test is a valuable piece of evidence and it may carry significant weight in an subsequent adjudication, it should not be used to deprive a consumer of the right to be heard.

28. Critically, the settlement agreement provides no mechanism for a consumer to disagree with the quantitative test or argue that a single test is insufficient to prove cell service is a reasonable alternative. Instead, a consumer's remedy is to file a complaint with the UTC or notify Public Counsel and hope that those entities can intervene.[80] This is a flawed appeal right. This settlement agreement does not provide a venue for either Public Counsel or Staff to intervene on behalf of a consumer wishing to contest the reasonable availability of cell service. Nor, since the settlement defines availability is determined by a signal strength test, is it clear for either Staff or Public Counsel what legal grounds either party would have to overturn CenturyLink's determination of availability.

29. Third, data concerns add to concerns about after-the-fact review. As Mr. Brevitz notes, it is unclear how UTC Staff or Public Counsel would verify the data or the unsuccessful challenge process.[81] In significant part, that is because the BDC data is only at the hex level; it does not provide data about individual consumers.[82] Only with the additional Fabric dataset from CostQuest would a party be able to verify service at an individual location.[83] It is Staff's hope that the hex data could be supplemented by the Company's contact with individual consumers to

[79] Dreyer, Exh. JMD-1Tr at 1–7.
[80] Gose, TR. 97:19–22.
[81] Brevitz, TR. 270:3–271:2.
[82] Bennett, TR. 196:22–197:16.
[83] *Id.* at 197:8–16.

provide assurance that there is reasonable availability.[84] It is unclear how Staff believes that in evaluating individual consumers, hex level data will provide any insight to individual disputes, particularly given the shortened time frame. Individual data from the Company outreach will only be useful if consumers understand what the company is asking and are responsive.[85] In all likelihood, without independent investigation, UTC Staff would simply be verifying that the hex data maps look right and accepting the Company's certification that all locations had service.[86]

30. Fourth, the proposed settlement contains no restriction on the size or area of a discontinuance, making after-the-fact review less reliable as a valid check. Staff's ability to review the Company document on a shortened time frame is materially different if there are 1,000 consumers or five. Staff suggests that larger areas will necessarily contain challenging consumer locations.[87] If so, there should be no issue with an explicit size requirement that would make an after-the-fact review of a Company decision manageable within the FCC timeframe. As it is, this settlement proposal could mean that the Commission is abdicating its review over an unknown number of consumers. When asked what a reasonable size for a discontinuance provision would be, Mr. Gose objected that any such limitation would be "arbitrary" because "you don't know until you look."[88] That same rationale is true for the Commission's decision to waive all procedural protections in Commission regulations for an adjudication. Not setting a reasonable limit makes this provision arbitrary.

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[84] *Id.* at 199:6–22.
[85] Brevitz, TR. 270:7–21.
[86] *Id.* at 270:25–271:2.
[87] *Id.* at 281:7–22.
[88] Gose, TR. 116:5–21.

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31. Fifth, the proposed settlement discontinuance process gives Staff no information to evaluate whether the proposed discontinuance is in the public interest because it does not require the Company to identify the incremental costs and revenues associated with the discontinuance.[89] CenturyLink complains that such a requirement is not imposed on any other telecommunications provider.[90] But no other incumbent local exchange carrier is seeking to discontinue service without UTC review in an area where the market is admittedly inefficient. Since this discontinuance provision is supposed to address areas in which there may be reasonable dispute over whether there is sufficient competition; asking for justification in marginal cases is justified. There is a significant difference in analysis if CenturyLink wishes to discontinue service for a road move that would save $5,000 and force 1,000 consumers to pay 62 percent more for voice service, or if the road move would save $1 million. In this proceeding, the only public interest factor that the Company has identified in favor of discontinuance is expense. If the Commission is going to forego a contested hearing at which that factor can be weighed against a consumer losing copper wire service, the Company should be able and willing to articulate what the savings are.

32. Sixth, the proposed settlement discontinuance provision fails to require information linking the issue of customer service to the area of discontinuance. The customer service automatic credit may return money to consumers all over the Company's service area, but it will not help Staff determine whether there are sufficient customer service problems in a rural area to call into question whether there are reasonable alternatives.[91] As discussed above, trouble ticket

[89] Brevitz, Exh. DB-9T at 17:6–17.
[90] *See e.g.* Brevitz, TR. 254:8–255:9.
[91] Brevitz, Exh. DB-9T.

data provide context for whether a particular location may or may not have adequate alternatives.[92] A discontinuance that involves locations with multiple complaints would help inform Staff and Public Counsel whether they should more closely examine a particular discontinuance.

33. Seventh, the proposed settlement discontinuance provision uses a price point that is untethered from data, and which misapprehends the purpose of the price threshold. The only testimony in the record identified the $55.13 price for a conservative estimate for a comparable service.[93] While it is true that the $61.13 price proposed was reached as a compromise, the purpose of the price is not to define when there is an affordable alternative, but when to trigger Commission review. That purpose is best served by setting a conservatively low trigger to be sure that no one is left behind. If the Commission is going to waive procedural protection, it should do so only when there is no doubt that there is a possible dispute that needs to be adjudicated.

34. Eighth, Public Counsel shares the Commissioners' concerns with the five-year stay-out provision in the proposed settlement.[94] The Company takes the position in its responses to Bench Request No. 6, that alterations to the settlement agreement would have to comply with WAC 480-07-875 and 870, which places the burden on the challenging party to prove the permitted reasons for modification.[95] This process would invert the appropriate burden of proof, which remains on CenturyLink to justify that the AFOR continues to be in the public interest.

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[92] Webber, Exh. JDW-1CT at 59:17–60:2.
[93] Bennett, TR. 200:25–201:16, Webber, TR. 173:6–17.
[94] *See e.g.* Gose, TR. 164:1–7.
[95] WAC 480-07-875; WAC 480-07-870.

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Moreover, it would lock the Commission into an untested procedure for five years. When the proposed, and as yet untested, settlement discontinuance process implicates procedural due process rights, five years is too long a period to be locked into a procedure that harms consumers.

D. Additional Provisions of the Proposed Settlement

35. Public Counsel does not object to most of the other provisions of the proposed AFOR with the exception of the section in the automatic credit provision that waives Commission penalties if CenturyLink fails to provide the automatic credits for outages. The Commissioner's questions regarding the size of the $1/per day penalty for such an error were on point. A $360 penalty for 180 days of missed service is woefully inadequate.[96] Public Counsel suggests that the Company and Staff's answers acknowledging that nothing in this settlement limits the Commission's ability to investigate and punish service quality complaints in response to the Commission's Bench Request 6 be made a condition of the settlement.

III. STANDARD OF REVIEW

36. Although this petition originated as a petition for competitive classification, which is governed by RCW 80.36.310 and WAC 480-121-061, the Company now seeks an AFOR under RCW 80.36.135. The Company bears the burden of proof to demonstrate that the AFOR is in the public interest and satisfies the statutory criteria of RCW 80.36.135.[97] Under that statute, the

[96] Gose, TR. 156:8–15.
[97] RCW 80.36.135(3) (requiring the Company to petition to establish an AFOR, *Wash Util. & Transp. Comm'n v. Pac. Northwest Bell Telephone Co d/b/a US WEST Comm'n, Inc*, Dockets U-89-2698-F, U-89-3245-P, Nineteenth Supp. Ord., at 10 (Sept. 03, 1993) (holding the company bears the burden of proving modifications to an AFOR are in the public interest and meet the statutory factors).

Commission must determine whether the proposed AFOR, with the as proposed discontinuance provision, will:

a. Facilitate the broad deployment of technological improvements and advanced services to underserved areas;
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 and 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.[98]

37. Relevant here are the first, second, third, and fourth factors. As discussed above, there are significant areas of rural Washington which do not currently have access to universal service. Despite the best efforts of the Company and Staff to design an abbreviated regulatory process for permitting a discontinuance of service, the proposed AFOR fails to adequately protect the access of rural Washingtonians during a period of transition from copper wire telephone service to broadband.

38. Even if the Commission finds that these factors are met, the Company and Staff must demonstrate that the discontinuance provision is in the public interest. This analysis relies on the means for the Commission to "protect[99]" consumers. The Commission does not ensure a substantive outcome; it offers procedural protections of a neutral Commission resolving factual disputes to determine what is in the public interest. The key question for evaluating the

[98] RCW 80.36.135(2).
[99] Bennett, TR. 182:18–23 ("It's --- It's really about the definitely the – the discontinuance process was born out to protect consumers that may not have other available options available to them.").

settlement is whether it appropriately triggers Commission review where there may be a factual dispute between the Company, its consumers, UTC Staff, or Public Counsel, such that the full procedural protections of the UTC regulatory process should apply.

IV. ARGUMENT

39. The Commission should find that CenturyLink and Staff have failed to show that the discontinuance provision in the proposed settlement agreement is in the public interest. Neither the Company nor Staff has provided any evidence for why such a provision is necessary and the consequences of waiving Commission review of a discontinuance outweigh the benefit. As David Brevitz cogently identified, "Withdrawal of public utility service is an important enough issue that the Commission should be having a look at each circumstance."[100] In the alternative, the Commission should condition approval of the settlement on the imposition of the eight conditions enumerated above, as those conditions would improve the proposed process.

A. CenturyLink Has Failed Its Burden to Prove That the Proposed Settlement Meets the Statutory Criteria

40. Public Counsel concedes, at the outset, that for many parts of Washington, the telecommunications market is sufficiently robust that UTC review of a discontinuance by CenturyLink would not add substantial protections. Mr. Brevitz testified that, depending on the circumstances, a discontinuance based on a road move in an urban area might be routinely granted even with Commission review.[101]

41. Both CenturyLink and Staff also effectively concede that rural Washington is inadequately served by the telecommunications market. Staff witness Sean Bennett explained,

[100] Brevitz, TR. 283:20–22.
[101] *Id.* at 283:22–284:5.

"It's—it's really about the definitely the–the discontinuance process was born out to protect consumers that may not have other available options available to them." Company Witness Peter Gose agreed with Commissioner Doumit that this proceeding was properly focused on whether the settlement, "developed a process for determining where competition exists and where it doesn't exist."[102]

42. It follows from these concessions that the Commission should compare the definition of affordable and available protection as defined by the settlement process against the factual record regarding the rural market to determine whether or not CenturyLink and Staff have met their burden to prove that the settlement meets the statutory criteria of facilitating technological progress and preserving effective competition in underserved rural areas.[103]

43. This record shows CenturyLink has failed to meet its burden that the discontinuance provision facilitates technological progress or preserves competition in rural underserved areas. Initially, Public Counsel notes that, by definition, the discontinuance provision fails to meet the statutory elements of facilitating technological progress and preserving competition in underserved and rural areas. Removal of a market competitor frustrates competition and technological progress, especially when the removal occurs before universal broadband service reaches those underserved areas. Where there are 243,000 households in Washington without mobile internet service and it will be at least five years before federal investment reaches rural

[102] Gose, TR. 159:12–17.
[103] RCW 80.36.135(a), (c), (d).

Washington,[104] assuming that federal funding is constitutional,[105] any discontinuance needs to be closely examined.

44. The best that CenturyLink and Staff can argue is that the discontinuance provision does not materially denigrate technological progress or effective competition in underserved and rural areas, but the facts do not support that position. The parties agree that, using the settlement definition of fixed internet or mobile wireless availability at $61.13, there are 1,233 households in Washington without effective competition.[106] That definition does not track with the factual evidence presented in this case, or explain how there are 114,469 Washington adults who use only landline or 162,666 adults who use mostly landline phone service, or why there are 379,555 consumers who are dual users.[107] CenturyLink suggests, without evidence, that the 270,000 adults who rely mostly on a landlines do so a as matter of preference.[108] Evidence in the record from actual consumers suggests that these quarter of a million consumers are, in fact, suffering from a lack of reliable and affordable alternatives.

45. Mr. Webber's testimony about the repeated pattern of multiple trouble tickets and Mr. Gose's testimony about the 410 years' worth of outages provide persuasive evidence that either these are exceptionally loyal customers, or like Mr. Medeiros, they cannot get reliable service.[109] Just on the trouble ticket data, there are [redacted] customers who filed more than two trouble tickets.[110] The number of consumers with more than four trouble tickets, [redacted], is [redacted] times

Shaded Information is Designated as Confidential per WAC 480-07-160

[104] Bennett, TR. 193:20–194:5, Gose, TR. 92:1–11.
[105] *Consumers' Research,* __F.4th__, 2024 WL 3517592, (July 24, 2024) at *8.
[106] Gose, TR. 126:3–17.
[107] Gose, Exh. PJG-31; Gose, TR. 120:14–121:19.
[108] *See e.g.* Brevitz, TR. 252:11–20.
[109] Webber, Exh. JDW-1CT at 59:17–60:2; Gose, TR. 131:15–132:2; Gose, Exh. PJG-39X at 41:6–14.
[110] Webber, Exh. JDW-1CT at 49, Table 2.

more customers than the 1,233 identified in settlement definition. Moreover, as Mr. Johnson's testimony suggests, there is a significant difference in reliability between cell service and landlines when living in an area made inaccessible for months at a time or where there are forest fires.[111]

46. It is certain that the truth about where the line of effective competition should be drawn falls somewhere between the 1,288 customers who don't have access to mobile voice service as defined by this settlement proposal, the 270,000 adults who primarily use landlines, or the 379,555 who are dual users. Some adults likely do eschew cell phones as unreliable for unsound reasons. But it is not justified to conclude that a half a million Washingtonians are unreasonable in continuing to rely on copper wire service for its unique reliability.

47. CenturyLink cannot claim that allowing discontinuances will free up more investment by CenturyLink to expand broadband. First, that is not a condition in this settlement agreement. Second, while CenturyLink has participated in some funded expansion, Mr. Gose could only say that CenturyLink was considering applying for Broadband Equity Access and Deployment (BEAD) funding.[112] Third, CenturyLink has disclaimed any plans to engage in discontinuances, meaning this Commission has no context for concluding that this provision would free up significant resources for expanding broadband service. In Mr. Gose's illustrative examples, he suggested that CenturyLink would save a few hundred thousand dollars per road move, which will not stretch fiberoptic cables very far. Finally, and conclusively, UTC review of discontinuances might add a slight administrative burden but would not stop CenturyLink from

[111] Gose Exh. PJG-40X at 44:25–45:5.
[112] Gose, TR. 140:8–18.

filing petitions to discontinue with the Commission to persuade the Commission that a discontinuance that would fund expansion in the same area was in the public interest.

48. Fundamentally, CenturyLink and Staff can only say that they came up with the best possible in light of the limitations of currently available data. Because it is CenturyLink and Staff's burden to prove that the proposed definition facilitates technological process, good enough is not sufficient. Unless the Commission can conclude, definitively, that 1,233 consumers constitute the entirety of the Washington population without adequate compensation, the Commission should reject this discontinuance provision.

1. CenturyLink and Staff failed to prove that the proposed discontinuance provision would not disadvantage rural and elderly customers.

49. The factual record also fails to meet the statutory criteria regarding underserved populations because this process will disproportionally impact rural and older Washingtonians.[113] Here, the parties concede that landlines tend to be most heavily used in rural areas[114] and to be most frequently used by older Washingtonians.[115] The market forces, or "irresistible pull," affecting CenturyLink and other copper-wire providers logically implicates rural areas without a sufficient customer base to justify expensive infrastructure.[116] In fact, Mr. Gose's illustrative example was in rural southwest Washington.[117] And Mr. Gose conceded that CenturyLink views this settlement agreement as releasing the Company from its compact to serve certain areas.[118]

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[113] RCW 80.36.135(2)(f).
[114] Webber, Exh. JDW-1C at 18:10–14.
[115] *Id.* at 17:9–10
[116] Gose, Exh. PJG-30T at 25:10–14.
[117] *Id.* at 21 (the Yacoult example).
[118] Gose, TR. 160:23–3.

The Commission should conclude that without regulation and government spending, the market will not reach into rural areas. In rural settings, particularly rural areas with uncertainty around continued federal funding, the Commission should focus on preserving the existing universal service–copper wire service–and find that the Company and Staff have failed to prove that this settlement will not disadvantage rural customers.

50. Mr. Gose acknowledged as well, that CenturyLink's proposal was likely to create significant dislocation for older citizens.[119] But this settlement discontinuance proposal contains no terms to help mitigate the impact of a discontinuance for older citizens and Mr. Gose could not commit the Company to provide such assistance.[120] Without such a provision, it is more probable than not that this settlement proposal would adversely impact older Washingtonians and fails to meet the statutory criteria.[121]

2. CenturyLink has failed in its burden to prove the proposed discontinuance provision improves the efficiency of the regulatory process.

51. In multiple contexts the Commission has explained that the goal of utility regulation is to balance the interests of customers, utilities, and the broader public.[122] Here, the settlement proposal disturbs the balance of customers' interests against the Company's interests in two ways and accordingly fails to improve the efficiency of the regulatory process. First, the discontinuance settlement proposal undermines the procedural due process rights of consumers

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[119] *Id*. at 147:18–25.
[120] *Id*. at 147:18–25.
[121] RCW 80.36.135(2)(f).
[122] *In re Puget Holding LLC and Puget Sount Energy, Inc*, Docket U-072375, Order 08, ¶ 33 (Dec. 30, 2008) ("…the institution of the Commission as a regulatory agency, which since inception has been structured and governed to balance equitably the interests of ratepayers, shareholders, and the broader public based on the facts, law, and informed judgment.)

who may wish to challenge a utility's determination of affordable and available alternative public utility services. At a minimum, procedural due process includes notice and the opportunity to be heard.[123] Unlike in a petition for competitive classification, which would relieve the Company of regulation generally, this settlement proposal calls for drawing a line between those areas in which there is sufficient competition and those where there is not.[124] But the settlement proposal provides no notice and opportunity for individuals to challenge how that line applies to them. The Company reviews data, conducts a signal strength test, files a motion with the FCC for a discontinuance and then provides its documentation to Staff and Public Counsel.[125] But while both Staff and Public Counsel advocate for ratepayers as a collective, their involvement in reviewing Company documentation related to a proposed discontinuance of service does not justify preventing individual consumers from participating to represent their own interests. By not permitting some recourse for individuals to receive notice and an opportunity to be heard by the Commission, the settlement discontinuance proposal undermines the efficiency of the regulatory process and should be rejected.

52. Second, the discontinuance proposal delegates significant discretion to UTC Staff and to Public Counsel in an untested and uncertain review process. As noted above, most of the discontinuance process relies on the public utility with the worst customer service track record in Washington where that company is incentivized to discontinue service and is significantly understaffed.[126] While Staff and Public Counsel will have some time to review the

[123] *Wash. Util. & Transp. Comm'n v. Wash. Water Supply, Inc.*, Docket No(s). UW-240079 and UW-230598, Order 04/05 ¶ 17 (May 16, 2024).
[124] Gose, TR. 159:12–17.
[125] Settlement, ¶ 9(c)(i).
[126] Dreyer, Exh. JMD-1Tr at 12, Table 1; Gose, TR. 104:15–17; Brevitz, TR. 298:16–299:6.

discontinuance documentation,[127] it is unclear how detailed that review will be given the use of less granular data and the as yet untested Company verification process.[128]

53. Moreover, the circumstances under which Staff and Public Counsel could challenge the Company's determination are unclear, as are the applicable standards. Both the Company and Staff suggested that Staff and Public Counsel could challenge a discontinuance in front of the FCC, but neither the Company nor Staff presented any evidence of what standards or process the FCC would apply. The relevant provision for the FCC provides that a carrier may obtain a certificate that a discontinuance will not adversely affect present or future public convenience.[129] The only evidence of the FCC process in the record is David Brevitz's testimony that the FCC automatically grants applications within 31 days unless the FCC has notified the carrier otherwise.[130] If the Commission is going to delegate its review to Staff and Public Counsel, the process needs to be more clearly established.

B. CenturyLink has failed in its burden to show that the discontinuance process is in the public interest.

54. Here, neither CenturyLink nor Staff provide an adequate record to prove that this settlement is in the public interest. This is because the only reason this issue is coming up now is that CenturyLink's prior AFOR is expiring. CenturyLink provides no business reason for its need to pursue discontinuances with or without UTC approval. But the settlement, by contrast, would require the Commission to endorse an untested procedure for what is, in essence, a summary determination in favor of the Company when it does decide to pursue a discontinuance.

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[127] Settlement, ¶ 9(c)(i).
[128] Brevitz, TR. 270:3–271:2.
[129] 47 U.S.C.§ 214(a) (2024).
[130] Brevitz, Exh. DB-9T at 30:7–31:2.

Weighing a hypothetical future benefit for the Company against significant degradation of procedural protections for thousands of Washingtonians who currently rely on landlines makes the Commission's balancing of interests straight forward; this settlement is not in the public interest.

55. In many ways, this settlement is an exercise in abstraction. The Company does not identify any current plans to discontinue service, and, in fact disclaims them.[131] The Company does not quantify the administrative burden that will be avoided as a result of this discontinuance procedure, and, in fact, indicated that it will need to spend significant resources on each discontinuance.[132] The Company cannot articulate what criteria it will use to decide whether to initiate a discontinuance, or how the Company will determine whether a road move is uneconomic.[133] Although the Company finally disclosed the number of road moves it made, it made no effort to identify which of those moves would trigger a discontinuance.[134] In short, CenturyLink provides the Commission with no evidence of how this provision will benefit the Company. The net effect of these failures is that the need for a discontinuation provision is premature and nascent.

56. In a telling exchange during the hearing, when cross examined about whether it would be advisable to limit the size of an unreviewed discontinuance, Mr. Gose objected that any such limitation would be "arbitrary" because "you don't know until you look."[135] That is what the settlement discontinuance proposal asks the Commission to do, make arbitrary decisions about

[131] Gose, TR. 9:17–21.
[132] *Id.* at 84:6–85:2.
[133] *Id.* at 90:6–144
[134] CenturyLink's Response to Bench Request No 1.
[135] Gose, TR. 116:5–21.

future discontinuances before anyone has looked at the facts of those discontinuances or provided a justification for their need.

57. Balanced against the unknown and unquantified benefit to the Company, Public Counsel has provided evidence of real people who believe that they will be harmed by discontinued service, some 122 comments, with 97 unique comments opposing competitive classification.[136] Public Counsel has identified hundreds of thousands of Washingtonians who still depend on landline phone service, and pointed to evidence that the telecommunications market is insufficient to discipline CenturyLink in customer service and that rural Washington is significantly behind the rest of the State in access to advanced technology. In short, there is a significant risk of harm without any corresponding evidence of benefit. On such a record, the Commission should determine that the Company has failed to meet its burden that the discontinuance provision in this settlement is the public interest.

58. The Commission should reject Staff's argument that the totality of the settlement is greater than the sum of its parts and that the litigation risk of a granted competitive competition petition justifies an imperfect compromise.[137] As noted above, there are fundamental flaws with the settlement discontinuance process. If, in fact, the total number of Washington consumers without access to effective competition constitutes 1,233 consumers, this settlement affords minimal protections to consumers while also offering significant concessions to the Company, since there are hundreds of thousands of landline users. And while returning $150,000 a year to consumers is a tangible benefit, it is not possible to weigh a $1 a day for some consumers against

[136] Offer of Public Comment Exhibit, Bench Request No. 10 (filed July 26, 2024).
[137] Bennett, TR. 217:16–218:1.

Joy Markaraf being unable to speak with her family.[138] The Commission should reject the settlement.

59. CenturyLink and Staff suggest that the Commission has already determined that mobile service is comparable to voice service over landlines.[139] That is inaccurate. The Commission's prior order confirmed that continued oversight is needed in areas in Washington where the transition to new technology has not yet occurred. When the Commission granted the current AFOR in 2014, the Commission acknowledged, as Public Counsel does in this brief, that there is stiff competition in the majority of CenturyLink's service territory.[140] The Commission ultimately retained review of discontinuances as appropriate for "more targeted oversight to…assure public safety, service quality, and consumer protection."[141] The question that the parties submit now is whether that very light targeted oversight in rural areas can be further lifted even in those areas of Washington where the "competitive dynamic" in telecommunications has proven far from sufficient. In those areas of Washington, CenturyLink has failed to carry its burden of proving that this settlement is in the public interest.

C. The Commission Can Provide Guidance to the Parties.

60. As argued above, the Commission should determine that the proposed settlement discontinuance process fails to meet the statutory standards for an AFOR and is not in the public interest. But as Public Counsel has conceded, the years long work of Staff, CenturyLink, and Public Counsel has produced a better understanding of the rural telecommunications market.[142]

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[138] Gose, TR. 124:3–13.
[139] *See e.g.* Brevitz, TR. 289:6–15.
[140] *In re The CenturyLink Companies*, Docket UT-130477, Order 4, ¶ 41 (Jan. 9, 2014).
[141] *Id.*
[142] Gose, TR. 110:12–111:8.

Rejecting the proposed discontinuance settlement does not lock the parties into an all-or-nothing adjudication over competitive classification.[143] The Commission is free to provide guidance on what kind of process would be sufficient to justify the Commission's waiver of the full panoply of procedural protections. For example, Public Counsel witness David Brevitz cited five additional protections that would improve the proposed process if those protections were added as conditions.[144]

61. As Commissioner Doumit identified during the questioning of Company witness Peter Gose, the primary difficulty in this settlement is how to assess "where competition exists and where it doesn't exist."[145] This is properly combined with the guiding principle that the Commission cannot "work on a hope here…that folks aren't going to be left behind without service. [The Commission] cannot have that happen."[146] In the current proposal, CenturyLink and Staff worked to come up with a definition of an area where there is unquestionably a lack of competition. This is an improper way to set what is effectively a summary determination that a discontinuance is appropriate. At the margins–for example, in east rural Pierce County or Okanagan County–there are going to be reasonable debates over whether an alternative to landline service is reasonably affordable and comparable. It is in those marginal areas that the Commission's fact-finding and procedural protections are necessary. This settlement definition

[143] Public Counsel is confident that in such a litigation, the evidence conclusively shows that, at least in rural markets, the market is unable to provide reasonable alternatives.
[144] Brevitz, Exh. DB-9T at 16–21 (mandated CostQuest date, size limits, allowing customer challenges with or without a signal test, requiring the Company to identify criteria for discontinuance, and providing trouble ticket data).
[145] Gose, TR. 159:12–17.
[146] Bennet, TR. 241:13–18.

and proposed process arbitrarily cuts off that fact finding with an overly deterministic and quantitative line.

62. Public Counsel submits that the proper inquiry for a settlement term that will terminate Commission fact-finding and review of a discontinuance of service is coming with a definition where there is unquestionably sufficient competition to ensure that the market will provide alternative service when CenturyLink abandons its service. In other words, a summary process is understandable if there is no reasonable disagreement that a consumer has reasonably available and affordable alternatives. A close call should go to adjudication. If there is a chance of a possible dispute the Commission should make itself available as a neutral arbiter that can "balance equitably the interests of ratepayers, shareholders, and the broader public based on the facts, law, and informed judgment."[147] Applied here, this means either gathering better information about the hundreds of thousands of Washingtonians who rely on landlines or creating a definition that places the majority of landline reliant consumers in the category of litigants who deserve notice and opportunity to be heard before landlines are terminated. That means, at a minimum, accepting a definition of reasonably available alternatives that does not include mobile service because there is a reasonable dispute, in rural areas, as to whether or not wireless service is sufficiently reliable to be an alternative to landline service.

63. The other primary failing of the proposed settlement discontinuance proposal is that it relies on an untested process to resolve factual disputes between the Company, consumers, and the parties. Although Public Counsel maintains that the Company has failed to meet its legal

[147] *In re Puget Holding LLC and Puget Sount Energy, Inc*, Docket U-072375, Order 08, ¶ 33 (Dec. 30, 2008).

burden to prove that the AFOR meets the statutory requirements with the discontinuance process in place, as discussed above, there are several conditions that could improve the ability of the Commission to trust the proposal and enhance Staff's ability to review CenturyLink's discontinuation data and information. In addition to erring on the side of Commission review of possible contested matters, the Commission should not waive its regulatory duty to review utility matters without being assured, before allowing unreviewed discontinuances, that the proposed process will be effective to protect the interest of consumers. That likely means that there needs to be trial period for the proposed discontinuance of service proposal during which any party may seek an adjustment. Staff and the Company may believe that the settlement provisions will be protective, but the Commission and all of the parties have more than 100 years of experience proving that the Commission's regulatory review process works when resolving disputed matters. Any proposal that weakens the review of a public utility's discontinuance of service in an underserved area should include a requirement that allows appropriate modifications immediately upon discovery of a problem rather than using a five-year stay out period.

V. CONCLUSION

64. Public Counsel does not question that CenturyLink and Staff exercised a good faith effort to draw an effective line between where competition is sufficient to create customer choice and where it is insufficient. The record in this proceeding does not support a finding that they succeeded in this effort. The current definition risks leaving too many Washingtonians currently relying on landlines without a venue to challenge a discontinuance. It is prejudiced against rural and older Washingtonians, and it undermines procedural due process in regulatory proceedings. Nor, on this record, does CenturyLink justify these risks as being in the public interest. The

Commission should reject the settlement containing the proposed discontinuation of service provision.

DATED this 14th day of August 2024.

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