

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Tariff Adoption)
Notice Filing of) DOCKET UT-111241 (*Consolidated*)
)
) ORDER 01
QWEST CORPORATION,)
)
In the name of Qwest Corporation d/b/a)
CenturyLink QC for Tariff WN U-40)
)
.....)
In the Matter of the Tariff Adoption) DOCKET UT-111242 (*Consolidated*)
Notice Filing of)
) ORDER 01
QWEST CORPORATION,)
)
In the name of Qwest Corporation d/b/a)
CenturyLink QC for Tariff WN U-44)
)
.....)
In the Matter of the Tariff Adoption) DOCKET UT-111278 (*Consolidated*)
Notice Filing of)
) ORDER 01
QWEST CORPORATION,)
)
In the name of Qwest Corporation d/b/a)
CenturyLink QC for Tariff WN U-42)
)
.....)
In the Matter of the Tariff Adoption) DOCKET UT-111279 (*Consolidated*)
Notice Filing of)
) ORDER 01
QWEST CORPORATION,)
)
In the name of Qwest Corporation d/b/a) ORDER ON CONSOLIDATION AND
CenturyLink QC for Tariff WN U-43) REQUIRING ADDITIONAL
) DISCLOSURE
)
.....)

BACKGROUND

- 1 On March 14, 2011, the Washington Utilities and Transportation Commission (Commission) entered Order 14 in Docket UT-100820 (Order 14), approving the proposed acquisition of Qwest Communications International Inc. by CenturyTel, Inc. (collectively Joint Applicants) subject to the Joint Applicants accepting the conditions specified in that Order. Specifically, paragraph 294 of Order 14 provides that the Joint Applications “must accept the modifications to the settlement agreements and the additional conditions imposed by the Commission or elect not to proceed with the transaction.”
- 2 On March 29, 2011, the Joint Applicants submitted a letter to the Commission in that docket stating in reference to Order 14 that the “Joint Applicants hereby notify the Commission that they accept the modifications to the settlement agreements and the additional conditions set forth in the Order.” The letter also states, “Joint Applicants do not waive their right to obtain judicial review of the Order.”
- 3 On April 1, 2011, Joint Applicants closed the transaction.
- 4 On April 13, 2011, CenturyLink, Inc. (CenturyLink), as CenturyTel, Inc., is now known, filed a complaint in United States District Court for the Western District of Washington, Case No. 2:11-CV-00633 (CenturyLink Complaint Case), asserting that its acceptance of the settlement modifications was conditional and challenging as unlawful certain of the provisions in Order 14. That case remains pending before the federal district court.
- 5 On July 8, 2011, Qwest Corporation (Qwest or Company) made two filings with respect to its Washington intrastate Tariffs WN U-40 and WN U-44, each of which would revise the tariff to include a “Tariff Adoption Notice” and to change the company’s name on the tariff to “Qwest Corporation d/b/a CenturyLink QC.” The Tariff Adoption Notice states that effective August 8, 2011, the Company is operating under the new name and adopts all aspects of the Qwest tariff. These filings were assigned Dockets UT-111241 and UT-111242, respectively. On July 14, 2011, Qwest made two virtually identical filings for its Tariffs WN U-42 and WN U-43, which were assigned Dockets UT-111278 and UT-111279, respectively.
- 6 All four Qwest filings came before the Commission at its regularly scheduled Open Meeting on July 28, 2011.

DISCUSSION

- 7 Each of the filings in Dockets UT-111241, UT-111242, UT-111278, and UT-111279 make the same revisions to four different Qwest tariffs, and thus the factual and legal issues in all four dockets are the same. Accordingly, these dockets will be consolidated for Commission consideration.
- 8 A unique and unfortunate situation requires that the Commission formally consider these tariff filings, rather than simply permit them to go into effect as would routinely be the case. The Commission in Order 14 approved the change in control of Qwest and its regulated affiliates subject to the Joint Applicants' acceptance of conditions the Commission adopted to ensure that the transaction was in the public interest. The Joint Applicants expressly accepted those conditions and closed the transaction. Shortly thereafter, however, CenturyLink placed the status of that change in control in Washington in doubt by filing the CenturyLink Complaint Case.
- 9 The tariff revisions at issue in these dockets would be appropriate if the court agrees with the Commission and concludes that having accepted the conditions in Order 14 and closed the transaction, CenturyLink may not thereafter seek judicial review of any of those conditions. Under those circumstances, the conditions necessary to safeguard the public interest would be in place, and the Commission's approval of the change in control of Qwest would be confirmed.
- 10 Permitting Qwest to use the d/b/a of "CenturyLink QC" would be impermissible, however, if the court decides that CenturyLink may repudiate its acceptance of Order 14 and challenge certain of the conditions in that order. The Commission presented the Joint Applicants with two, and only two, alternatives: (1) accept the conditions in Order 14 and close the transaction with the Commission's approval; or (2) reject those conditions, not close the transaction at least as to operations in Washington, and seek judicial review of the Commission's decision. Because there was no third option to accept some conditions and challenge others while proceeding with the change in control, the company's acceptance of the merger conditions and the Commission's approval of the merger are matters of dispute before the federal court.
- 11 The Commission takes the position that if a reviewing court rejects or alters any of the conditions we adopted in Order 14, it would be necessary to remand that order in its entirety to the Commission for us to determine whether, and if so under what substitute conditions, the Commission should approve the change in control of Qwest's operations in Washington. Pending such a determination, CenturyLink

would have no authority to own or control Qwest, and any attempt by Qwest to do business as “CenturyLink QC” would be unlawful.

- 12 The federal district court, however, has not yet rendered a decision in the CenturyLink Complaint Case and is not likely to do so for several months. While awaiting that decision we do not wish to unnecessarily restrict Qwest’s lawful business operations, but we would be remiss in our responsibility to protect the public interest if we permit Qwest to do business in the name of CenturyLink if that company ultimately has no legal authority to control Qwest’s operations.
- 13 Under these circumstances, we cannot simply permit the tariff revisions in these consolidated dockets to take effect by operation of law. Neither are we inclined to reject these tariff filings or initiate adjudicative proceedings to determine their permissibility at this point in time. Rather, we will require that the Company’s tariffs reflect the uncertainty of Qwest’s use of the CenturyLink name to do business.
- 14 Accordingly, we will order Qwest to revise the tariff filings in these consolidated dockets and any future tariff filings to expressly state that Qwest’s use of the d/b/a “CenturyLink QC” is subject to the ultimate outcome in the CenturyLink Complaint Case. Qwest must maintain this language in its tariffs until that case is ultimately resolved, either through a judicial decision or Commission action, as applicable.

ORDER

THE COMMISSION ORDERS THAT:

- 15 (1) Dockets UT-111241, UT-111242, UT-111278, and UT-111279 are consolidated for purposes of Commission consideration and determination.
- 16 (2) Qwest Corporation shall revise the Tariff Adoption Notice in each of the tariffs in which that notice is included to include the following paragraph:

CenturyLink, Inc., has filed a complaint in U.S. District Court for the Western District of Washington, Case No. 2:11-CV-00633 (Complaint) challenging certain portions of the Washington Utilities and Transportation Commission (Commission) Order 14 in Docket UT-100820 (Order 14), approving the acquisition of Qwest Communications International Inc. by CenturyTel, Inc., subject to the companies’ acceptance of the conditions specified in that order. The Company’s continued use of the d/b/a “CenturyLink

QC” is subject to the Court’s decision in the Complaint and any subsequent judicial review of, or Commission action in response to, that decision. By permitting the Company to use the d/b/a “CenturyLink QC,” the Commission does not waive any position it has taken or may take in response to the Complaint, including but not limited to taking the position that any judicial decision invalidating any part of Order 14 must result in a remand to the Commission to determine whether, and if so under what substitute conditions, the Commission should approve the transfer of control of Qwest Corporation to CenturyLink, Inc.

- 17 (3) The d/b/a “CenturyLink QC” shall be followed by an asterisk (*) each time that d/b/a is included in any tariff, and at the bottom of the title page of each tariff in which that d/b/a is included, the Company shall insert the following text:

*Subject to the decision in U.S. District Court for the Western District of Washington Case No. 2:11-CV-00633 and any subsequent judicial review of that decision and to Washington Utilities and Transportation Commission action in response to that decision or the decision of a reviewing court.

- 18 (4) Qwest Corporation shall refile the tariff revisions in Dockets UT-111241, UT-111242, UT-111278, and UT-111279 to comply with this Order on or before August 4, 2011.

- 19 (5) Qwest Corporation shall continue to include the language required by this Order in the Company’s tariffs until CenturyLink’s challenge to the conditions the Commission adopted in Order 14 in Docket UT-100820 has been resolved through a final order of a court or the Commission that is not subject to appeal, further Commission action, or additional judicial review.

- 20 (6) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, and effective July 28, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner