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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
Qwest Corporation d/b/a CenturyLink QC's Petition for Statewide Exemption from Carrier of Last Resort Obligations	Docket No. 23-049-01 Prehearing Brief

Pursuant to Utah Code § 54-10a-303, UTAH ADMIN. CODE r. 746-1, and the Public Service Commission of Utah's (PSC) January 8, 2024 Order Granting Motion to Amend Scheduling Order To Allow For Limited Prehearing Briefs, the Office of Consumer Services (OCS) submits this Prehearing Brief addressing two issues of statutory construction identified in the parties' Joint Motion to Amend the Scheduling Order to Allow for Limited Prehearing Briefs and for Expedited Treatment.

APPLICABLE RULES OF STATUTORY CONSTRUCTION

“When interpreting a statute, [the PSC’s] primary objective is to ascertain the intent of the legislature, the best evidence of which, is the plain language of the statute itself.” *Taylor v. Taylor*, 2022 UT 35, ¶ 28, 517 P.3d 380, (quoting *McKittrick v. Gibson*, 2021 UT 48, ¶ 19, 496 P.3d 147 (cleaned up)). “We read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Taylor*, 2022 UT 35, ¶ 28, (quoting *State v. Bess*, 2019 UT 70, ¶ 25, 473 P.3d 157 (cleaned up)).

ISSUE ONE

Does the term “captive customers” in Utah Code § 54-8b-3(6) refer to present customers only, or does it include present and potential customers in CenturyLink’s certificated exchange areas, including new/potential customers who move into locations presently served by CenturyLink?

Under the applicable rules of statutory construction, the term “captive customers,” as it appears in section 54-8b-3(6), must be harmonized with the definition of a Carrier of Last Resort (COLR) contained in Utah Code § 54-8b-15(1)(b) leading to the conclusion that “captive customers” means both present and potential customers, including future customers who move into locations presently served by Qwest Corporation d/b/a CenturyLink QC (CenturyLink). Section 54-8b-3(6) provides: “In determining if the proposed exemption is in the public interest, the commission shall consider, in addition to other relevant factors, the impact the proposed exemption would have on *captive customers*, of the telecom corporation.” (emphasis added). CenturyLink argues that the term “captive customers” refers only to present customers and because it does not seek to discontinue present customers, CenturyLink’s Petition has no impact on captive customers. 23-049-01, Direct Testimony Ziegler, pg. 14 ln. 8-14 (August 1, 2023).

However, section 54-8b-3(6) does not indicate whether the term captive customer refers to potential as well as present customers. Therefore, to determine its meaning, the term must be harmonized with other related terms in Chapter 8b, Public Telecommunication Law. *Taylor*, 2022 UT 35, ¶ 28; *Bess*, 2019 UT 70, ¶ 25. In the context of Chapter 8b, the plain meaning of “captive customers” refers to customers who have no option other than one telecom service. *Taylor*, 2022 UT 35, ¶ 28 (terms interpreted according to plain meaning); *McKittrick*, 2021 UT 48, ¶ 19 (same). This means that “captive customers,” who have only one choice in telecom services, must be

customers of a COLR because COLR's have the obligation of serving all customers who request services.

Therefore, a logical nexus exists between the concept of “captive customers” in section 54-8b-3(6) and the concept of a COLR defined in section 54-8b-15(1)(b). Section 54-8b-15(1)(b) provides, in pertinent part: “Carrier of Last Resort” means . . . a telecommunications corporation that . . . has the obligations to provide public telecommunication service to any customer or class of customer that request services within a local exchange.”¹ As this provision expressly provides that a COLR has the obligation to provide services to all customers *requesting* services, the definition clearly applies to both existing and potential customers. Thus, harmonizing these provisions leads to only one reasonable interpretation of the term “captive customers” in section 54-8b-3(6), i.e., captive customers refer to existing *and* potential customers, including future customers who move into locations presently served by CenturyLink.

ISSUE TWO

Whether a public telecommunication service's eligibility for UUSF support pursuant to Utah Code § 54-8b-15 makes that service a “functionally equivalent” service to landline service, as the term “functionally equivalent” is used in Utah Code § 54-8b-3(5)(b)?

Under the applicable rules of statutory construction, the fact that services are eligible for UUSF support is not sufficient to demonstrate that they are “functionally equivalent” services under section 54-8b-3(5)(b). CenturyLink argues that services that are supported by the UUSF under section 54-8b-15(3)(d) (one time distribution for non-rate-of-return COLRs)—which include wire and radio services, fixed wireless services,

¹ More fully, section 54-8b-15(1)(b) defines COLR as (1) and incumbent telecom, or (2) a telecom that under Utah Code § 54-8b-2.1, has the “obligation to provide . . . services to any customer . . . that request services . . .” Section 54-8b-2.1(4) provides that incumbent telecoms and telecom providing services pursuant to 54-8b-2.1 have identical customer service obligations.

and fixed satellite services—constitute “functionally equivalent” services to landline voice services under section 54-8b-3(5)(b). 23-049-01. Rebuttal Testimony Lubeck, pg. 2 ln.15 to pg. 4 ln. 4 (November 16, 2023). However, no clear logical nexus exists between sections 54-8b-3(5)(b) and 54-8b-15(3)(d) and therefore the leap between sections 54-8b-3(5)(b) term “functionally equivalent” and the services supported by 54-8b-15(3)(5)(b) is unwarranted. As demonstrated below, there is no inherent connection between UUSF supported services and services that are functionally equivalent to landline services under section 54-8b-3(5)(b).

When read as a whole section 54-8b-3(5)(b) precludes the possibility that services supported by the UUSF by definition constitute functionally equivalent services to landline voice services. *Taylor*, 2022 UT 35, ¶ 28 (statutes must be read as a whole); *Bess*, 2019 UT 70, ¶ 25 (same). Section 54-8b-3(5)(b) provides a factor to consider in determining the existence of effective competition is the “ability of alternative telecommunications providers to offer competing telecommunications services that are the functionally equivalent or substitutable and reasonably available at *comparable prices, terms, quality, and conditions.*” (emphasis added). The evidence produced in this docket establishes that satellite services—services that are supported by the UUSF—are in no way comparable to landline voices services in terms of price and conditions. 23-049-01, Direct Meredith, ln. 312-322 (October 19, 2023); 23-049-01, Rebuttal Testimony Lubeck, pg. 2 ln.15 to pg. 4 ln. 4; pg. 13, ln. 14-15 (November 16, 2023). Therefore, the argument that the services supported by the UUSF for non-rate-of-return COLRs constitute functionally equivalent service to landline voice services fails, as these services are not offered under reasonably comparable prices and conditions.

This conclusion is also evidenced by the fact that services supported by the UUSF for rate-of-return COLRs, under section 54-8b-15(3)(c), are also not functionally equivalent services to landline voice services under section 54-8b-3(5)(b). Specifically, under section 54-8b-15(3)(c)(iii), rate-of-return COLRs can receive UUSF funding for “wholesale broadband Internet access services.” It cannot be seriously argued that wholesale broadband internet access services are functionally equivalent to retail landline voice services. Again, there is no inherent connection between UUSF supported services and services that are functionally equivalent to landline services under section 54-8b-3(5)(b). Accordingly, counter to CenturyLink’s argument, services that are funded by the UUSF under section 54-8b-15(3)(d) are not by definition the functional equivalent to landline voice services under 54-8b-3(5)(b).

CONCLUSION

The term “captive customers” in section 54-8b-3(6), refers to existing and potential customers, including future customers who move into locations presently served by CenturyLink. Also, services that are funded by UUSF under section 54-8b-15(3)(d) are not by definition functionally equivalent to landline voice services under 54-8b-3(5)(b).

Respectfully submitted, January 25, 2024.

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