

January 25, 2024

Via Email:
psc@utah.gov

Gary Widerburg
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

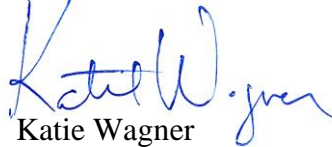
**RE: Docket No. 23-049-01
Petition for Statewide Exemption from Carrier of Last
Resort Obligations**

Dear Mr. Widerburg:

Attached for filing is the Pre-Hearing Brief Regarding Statutory Construction of “Captive Customers” and “Functionally Equivalent” Technology.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Katie Wagner
Senior Corporate Counsel

Attachments

cc: Service List

Certificate of Service

Docket No. 23-049-01

I hereby certify that a true and correct copy of the foregoing *Pre-Hearing Brief Regarding Statutory Construction of “Captive Customers” and “Functionally Equivalent” Technology* was served by email this 25th day of January 2024 on the following:

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of QWEST CORPORATION d/b/a CENTURYLINK QC Petition for Statewide Exemption from Carrier of Last Resort Obligations	Docket No. 23-049-01 Pre-Hearing Brief Regarding Statutory Construction of “Captive Customers” and “Functionally Equivalent” Technology
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The undersigned, representing Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”), hereby submits this Pre-Hearing Brief Regarding Statutory Construction of “Captive Customers” and “Functionally Equivalent” Technology. In support thereof, CenturyLink states as follows:

I. THE TERM “CAPTIVE CUSTOMERS” IN UTAH CODE § 54-8B-3(6) REFERS TO PRESENT CUSTOMERS ONLY.

The term “captive customers” refers to present customers only and does not refer to potential customers. As an initial matter of statutory construction, “captive customers” must be interpreted within the context of both the entire statute section (Utah Code § 54-8b-3) as well as the entire Public Telecommunications Law chapter to which the phrase “captive customers¹” belongs, Utah Code § 54-8b-1 *et seq.* See, *Wells Fargo Armored Serv. Corp. v. Pub. Serv. Comm'n*, 626 P.2d 450, 451 (Utah Sup.Ct. 1981) (“The words of the statutory provision and the statutory policy embodied therein assist in ascertaining that meaning.”) Nowhere in the Public Telecommunications Law chapter did the Utah Legislature choose to reference potential customers that might or might not one day move into locations served by a carrier. If the Legislature had intended “captive customers” to include future individuals, they would have defined the term as such. Instead, that nuance was omitted from statute. Likewise, nowhere in

¹ The term captive customers appears only one time in Title 54, § 54-8b-3(6).

the definitions section in the Public Telecommunications Law chapter is the word “customer” used in a context that refers to future customers or individuals that could potentially purchase service one day. Utah Code § 54-8b-2 (definitions). Instead, all references are to existing customers. Interpreting “captive customers” to include future customers is therefore clearly contradictory to the intent of the Utah Code.

Additionally, interpreting “captive customers” to include future individuals leads to a self-defeating and counterproductive result. Utah Code § 54-8b-3(5)(c) instructs the Commission to examine the market share of the telecommunications corporation for which an exemption is proposed. It is only possible to calculate market share by looking at *existing* customers. Any attempt to define “captive customers” to include future individuals would result in a completely speculative calculation, thus eliminating the ability to calculate and utilize market share data as a factor in determining effective competition. Similarly, it contravenes the tenets of rational legal discourse for the Commission to attempt to determine the “impact a proposed exemption [could] have on [potential] captive customers,” when those customers do not exist. Utah Code § 54-8b-3(6). It would require the Commission to base its decision on speculation and hypothetical conjecture rather than the actual facts existing in the record.

Relying on this code section to define “captive customers” as including future, potential, speculative, and currently non-existing customers is circular reasoning that cannot be relied upon in determining a request for relief. Instead, the Commission is required to look at the impact to existing customers when considering whether or not an exemption is in the public interest. A request for relief from COLR does not have an impact on existing customers regardless of whether or not they may lack alternative telecommunication options. However, a discontinuance of service could impact captive customers, but because CenturyLink does not seek to discontinue

service to existing customers in this proceeding, there simply is no impact to “captive customers” in CenturyLink’s request for COLR relief.

II. 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).

Utah Code § 54-8b-15 establishes both a definition of Carrier of Last Resort (COLR) and the services a COLR can provide that qualify for UUSF support. Services that qualify for COLR funding must be included when determining “functionally equivalent” alternative telecommunication services for purposes of granting COLR relief. Utah Code § 54-8b-15 and 47 C.F.R. § 8.2. Here, the Utah Legislature has adopted by reference the definitions contained in federal regulation 47 C.F.R. § 8.2 in determining what services are eligible for universal service support.

Utah’s governing statute for universal service fund states that “the commission shall use funds in the Universal Public Telecommunications Service Support Fund to ... fund one-time distributions from the Universal Public Telecommunications Service Support Fund for a non-rate-of-return regulated carrier of last resort’s deployment and management of networks capable of providing: (i) access lines; (ii) connections; or (iii) broadband Internet access service.” Utah Code § 54-8b-15(3)(d).² This statute further clarifies that “‘broadband Internet access service’ means the same as that term is defined in 47 C.F.R. Sec. 8.2.” *Id.* at § 54-8b-15(1)(a). It is clear then, that Utah has adopted by reference the definitions contained in federal regulation 47 C.F.R. § 8.2. This

² The definitions section further states that “[w]holesale broadband Internet access service’ means the end-user loop component of Internet access provided by a rate-of-return regulated carrier of last resort that is used to provide, at retail: (i) combined consumer voice and broadband Internet access; or (ii) stand-alone, consumer, broadband-only Internet access.” Utah Code § 54-8b-15(g). Clearly, the legislature made multiple references to including broadband products for COLR purposes.

federal regulation therefore sets forth the type of services that qualify for Utah’s universal service funding support for carriers of last resort. Because these services explicitly qualify for COLR funding, they must be considered functionally equivalent. *See* Utah Code § 54-8b-3(5)(b) (functionally equivalent services as a factor of competition).

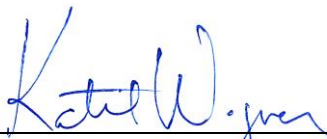
Consequently, functionally equivalent broadband internet access services includes both wire and radio service. 47 C.F.R. § 8.2(a). Functionally equivalent fixed broadband internet access service includes fixed wireless services (including fixed unlicensed wireless services), and fixed satellite services. 47 C.F.R. § 8.2(d). And functionally equivalent mobile broadband internet access service means a “broadband Internet access service that serves end users primarily using mobile stations.” 47 C.F.R. § 8.2(e).

III. CONCLUSION

WHEREFORE, CenturyLink prays the Commission enter an Order (1) stating that the term “captive customers” refers only to present customers only and does not refer to potential customers; and (2) stating that “functionally equivalent” alternative telecommunication services for purposes of granting COLR relief includes, but may not be limited to, those definitions contained in federal regulation 47 C.F.R. § 8.2 and Utah Code § 54-8b-15.

Dated this 25th day of January, 2024.

CENTURYLINK

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