

April 11, 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

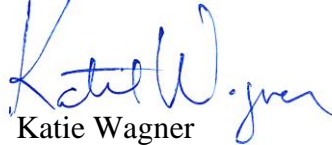
**RE: Docket No. 23-049-01
Petition for Statewide Exemption from Carrier of Last
Resort Obligations**

Dear Mr. Widerburg:

Attached for filing is CenturyLink's Petition for Review, Rehearing or Reconsideration of the Commission's March 15, 2024 Order.

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 *CenturyLink's Petition for Review, Rehearing or Reconsideration of the Commission's March 15, 2024 Order* was served by email this 11th day of April 2024 on the following:

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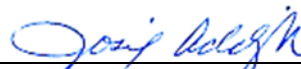
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**BEFORE THE PUBLIC SERVICE
COMMISSION OF UTAH**

<p>In the Matter of</p> <p>QWEST CORPORATION d/b/a CENTURYLINK QC</p> <p>Petition for Statewide Exemption from Carrier of Last Resort Obligations</p>	<p>Docket No. 23-049-01</p> <p>CenturyLink’s Petition for Review, Rehearing or Reconsideration of the Commission’s March 15, 2024 Order</p>
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Pursuant to §§ 54-7-15 and 63G-4-301 of the Utah Code, and R746-1-101 through 801 of the Utah Administrative Code, Qwest Corporation d/b/a CenturyLink (“CenturyLink”) respectfully petitions the Utah Public Service Commission’s (the “Commission”) to review, rehear, or reconsider the issues enumerated below from its March 15, 2024, Order (the “Order”).

I. Introduction

On June 21, 2023, CenturyLink filed a petition requesting the PSC to exempt it, in whole or in part, from its COLR obligations as defined in Utah Code Section 54-8b-15(1)(b). An evidentiary hearing and a separate hearing to receive public statements were held on February 8, 2024. On March 15, 2024, the Commission issued its Order denying CenturyLink’s Petition determining that:

- a. (1) CenturyLink has lost market share within a shrinking market for landline telephone services; (2) many Utah residents have dropped their landline telephone services; and (3) voice and data services from a variety of different types of providers including mobile, satellite, cable, and broadband exist in much of the State of Utah;
- b. The extent (or geographic scope) of available competing telecommunications services offered in Utah by alternative telecommunications providers is not supported by the evidence;

- c. The evidence also does not adequately support the availability of competing telecommunications services in Utah at comparable prices, terms, quality, and conditions;
- d. The record does not support that granting the Petition is in the public interest;

In determining whether effective competition exists, the Commission “shall consider all relevant factors, which may include: (a) the extent to which competing telecommunications services are available from alternative telecommunications providers; (b) the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions; (c) the market share of the telecommunications corporation for which an exemption is proposed; (d) the extent of economic or regulatory barriers to entry; (e) the impact of potential competition; and (f) the type and degree of exemptions to this title that are proposed.” Utah Code § 54-8b-3(5)(a)-(f). In determining whether the exemption is in the public interest, the Commission “shall consider, in addition to other relevant factors, the impact the exemption would have on captive customers of the telecommunications corporation.” Utah Code Ann. § 54-8b-3(6).

CenturyLink submits that the Order is not consistent with Utah Code §§ 54-8b-3; 54-8b-15, and 47 C.F.R. § 8.2 and that the Order rests on errors of fact and law. CenturyLink respectfully asks this Commission to reconsider the issues and correct and modify its Order accordingly. Support for this Petition for Review, Rehearing, and Reconsideration of the Commission’s decisions on the issues identified above is set forth in the following.

II. Argument

a. The Commission's Determination that CenturyLink's Supporting Evidence Was Not Sufficiently Granular is Erroneous.

The Order states that evidence of geographic scope of competing telecommunication services offered by alternate telecommunication providers was incomplete to support conclusion of effective competition. In support of this proposition, the Order cites testimony that “none of CenturyLink’s local exchanges have 100 percent coverage” and that “there may be pockets of customers or even individual customers” that do not have competitive options. *See* Meredith Direct at lines 176-188 and Anderson Direct at lines 60-64. The Order further relies on testimony that there is not “enough location-specific evidence to grant the request for exemption for only a portion of [CenturyLink’s] service territory.” *See* Evidentiary Hearing at 96:11-14.

The evidence relied upon in the order is contrary to CenturyLink’s proffered evidence that excluding satellite services, only one-third of a single percent of customers in CenturyLink’s wire centers do not have alternate provider options. *See* Evidentiary Hearing 97:1-7; 111:19-24; *see also* DPU Direct Testimony Line 148; Evidentiary Hearing 95:12-17 (“there are likely areas where effective competition clearly exists that is likely in the public interest to provide CenturyLink an exemption....”). Moreover, testimony from OCS likewise established that the effective competition statute does not require 100% market place saturation to show effective competition. Rather, CenturyLink submitted supplemental data to OCS, URTA, and DPU on January 18, 2024 – weeks prior to the February 8, 2024 evidentiary hearing – sourced from the FCC that shows with greater granularity the number of total voice locations in CenturyLink’s wire centers as well as contrasting data showing the number of locations served by a competitor. *See* Evidentiary Hearing 95:18-97:7; 110:13-111:24. While neither OCS or DPU reviewed this

supplemental data, URTA's witness did review and took issue with the data being broadband data rather than stand-alone voice. Evidentiary Hearing 134:7-23. This supplemental data was also contained in CenturyLink's January 24, 2024, sur-rebuttal testimony, which was admitted into evidence at the February 8, 2024, evidentiary hearing. *See* Lubeck Surrebuttal 5:11-6:20.

The supplemental data provided by CenturyLink – the accuracy of which was not disputed at hearing – depicts telecommunication competitive coverage with a granularity between 0.73 square kilometers (0.28 square miles), and 0.1 square kilometers (0.03 square miles). Lubeck Surrebuttal 5:25-6:2. This data includes fiber, cable, fixed wireless, satellite, and mobile providers as well as a column for all fixed providers excluding satellite. *Id.* Adding satellite service to the data set the FCC's data shows that competition exists at every location in Utah. *Id.* at 6:8-9. Alternatively, if satellite is excluded from the analysis, the FCC's data shows that across the entire state there are only 2,688 locations of the total 884,186 CenturyLink locations in Utah that would not have an alternative voice provider. *Id.* at 6:9-11; *see also* Evidentiary Hearing 27:19-22 (“Q. You testified that according to FCC data collection, there are 2,688 locations that CenturyLink exclusively serves; is that correct? A. Yes”). Effective competition does not mean that 100% of the locations in an area have an alternative. Evidentiary Hearing 144:4-146:6. Rather it means that a provider does not have any market power. No provider of any service, telecom or otherwise, who has “control” of 0.03% of a market has any power whatsoever. Additionally, a location by location determination of competitive alternatives would not apply to the relief requested. That type of analysis is only warranted if a provider is seeking to discontinue service. As stated and acknowledged, that is not the issue before this Commission. In light of this, CenturyLink urges the Commission to reconsider the issue, or at a minimum, provide evidentiary basis for its Order establishing exactly what level of granularity is required to show competitive

presence and consider what areas “effective competition clearly exists that is likely in the public interest to provide CenturyLink an exemption....” DPU Direct Testimony Line 148; Evidentiary Hearing 95:12-17.

b. The Commission Erred When It Failed To Consider the Parties Pre-Hearing Briefing.

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 speculative calculation, defeating the purpose of the required market share analysis. 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 and may never 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 and contemplated by the law.

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 CenturyLink’s right to COLR relief. Instead, the Commission is required to look at the impact to existing customers who believe they may lack alternative telecommunication options, and because CenturyLink does not seek to discontinue service to existing customers in this proceeding, there simply is no impact to “captive customers.”

As an example of this, URTA's testimony at evidentiary hearing stated that 100% competition would be required to show effective competition, and that captive customers should include those future customers who might one day exist. But when pressed to clarify how 100% market competition could be found when a captive customer would always have the potential of existing at a later date, the witness was unable to provide a direct answer. Evidentiary Hearing 144:4-146:6. In light of this, CenturyLink urges the Commission to reconsider the issue, or at a minimum, provide evidentiary basis for its Order establishing what exactly constitutes a captive customer and its impact on forward looking relief for CenturyLink's COLR, which is not a discontinuance request to existing customers.

c. The Commission Erroneously Interprets COLR Technology To Mean Stand-Alone Voice Service.

The Order states that "CenturyLink claims that satellite and broadband service are equivalent to stand-alone voice service. However, the evidence shows that voice service is typically not included in satellite service and must be added-on by the customer at an additional cost." Utah Code § 54-8b-15(b) requires the Commission to consider functionally equivalent services available at *comparable* prices. However, the Order contemplates that the service must be stand-alone voice only or that a functionally equivalent service cannot incur additional cost. This is inconsistent with Utah Code § 54-8b-15(b). Notwithstanding this, CenturyLink has provided evidence that depending on what service the customer is seeking, at times competitors can offer faster services at lower prices. *See* Lubeck Surrebuttal 7:15-16. The fact that Utah customers find these alternatives comparable – 95% of Utahns find these services comparable – is further demonstrated by CenturyLink's exhibits depicting loss of overall market share as

customers move away from standalone voice products. *Id.* at 7:24-8:2; *see also* Petition at Exhibit 1.

Services that already qualify for COLR funding must be considered “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. *See also*, Utah Code § 54-8b-2(18) (“Public telecommunications service’ means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.”)

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 ... carrier of last resort’s deployment and management of networks capable of providing: (i) access lines; (ii) connections; or (iii) broadband [or wholesale broadband] Internet access service.” Utah Code § 54-8b-15(3)(c); *Id.* at § 54-8b-15(3)(d). 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 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). In light of this, CenturyLink urges the Commission to reconsider the issue, or at a minimum, provide evidentiary basis for its Order establishing what exactly constitutes a functionally equivalent service.

d. The Commission Erred When It Improperly Weighed The Benefit To The Public Interest.

In discussing the public interest, the Order states “[w]e find there appears to be no real benefit to exempting CenturyLink from its COLR obligations when its federal ETC obligations will remain unchanged regardless of its COLR status in Utah.” In relying on this analysis, the Order improperly weighs the benefits to CenturyLink when it should be determining benefit to public interest. None of the factors the Commission is instructed to weigh in determining effective competition in Utah Code § 54-8b-3(5)(a)-(f) include consideration of what benefit CenturyLink stands to gain. Similarly, in determining public interest, the Commission is instructed to determine “the impact the exemption would have on captive customers” rather than the impact to CenturyLink. Utah Code Ann. § 54-8b-3(6).

Additionally, the Order states that CenturyLink did not provide adequate evidence to support public interest benefits. However, CenturyLink’s testimony at hearing explains that a “COLR exemption in the public interest, as... it would advance the policies of the state to encourage competition, allow flexible and reduced regulation, and most importantly, facilitate the

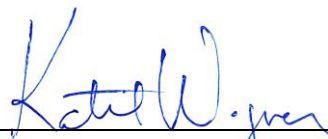
deployment of advanced services.” Evidentiary Hearing at 20:16-21. Likewise, testimony from DPU supported that “there are likely areas where effective competition clearly exists that is likely in the public interest to provide CenturyLink an exemption....” DPU Direct Testimony Line 148; Evidentiary Hearing 95:12-17. In light of this, CenturyLink urges the Commission to reconsider the issue, or at a minimum, provide evidentiary basis for its Order establishing what exactly constitutes a factor favorable to public interest.

III. Conclusion

Based on the foregoing, CenturyLink respectfully requests review, rehearing and/or reconsideration of the Commission’s Order as set forth herein.

Dated this 11th day of April, 2024.

CENTURYLINK



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