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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	UTAH RURAL TELECOM ASSOCIATION’S RESPONSE TO CENTURYLINK’S PETITION FOR REVIEW, REHEARING, OR RECONSIDERATION OF THE COMMISSION’S ORDER DATED MARCH 15, 2024 DOCKET NO. 23-049-01

The Utah Rural Telecom Association (“URTA”), on behalf of itself and the URTA members, All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, E Fiber Moab, LLC, E Fiber San Juan, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URTA Members”), pursuant to Utah Code §§ 54-7-15 and 63G-4-301 and Utah Administrative Code R746-1-801(3), hereby submits this Response to Qwest Corporation d/b/a CenturyLink QC’s (“CenturyLink’s”) Petition for Review, Rehearing, or Reconsideration (“Petition for Review”) of the Order Issued by the Utah Public Service Commission (“Commission”) dated March 15, 2024 (the “Order”). The Commission should deny CenturyLink’s Petition for Review.

INTRODUCTION

On June 21, 2023, CenturyLink filed a Petition for Statewide Exemption from Carrier of Last Resort Obligations (the “Petition for Exemption”) with the Commission. The Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”) and URTA participated in the docket with various rounds of pre-filed testimony. CenturyLink, URTA, the Division and the Office also filed pre-hearing briefs on the following issues: (1) whether the term “captive customers” in Utah Code § 54-8b-3(6) refers to present customers only, or whether it includes present and potential customers in CenturyLink’s certificated exchange areas, including new/potential customers who move into locations presently served by CenturyLink; and (2) 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).

A hearing on CenturyLink’s Petition for Exemption was held on February 8, 2024, including testimony from public witnesses. On March 15, 2024, the Commission issued its Order denying CenturyLink’s Petition for Exemption on the grounds that CenturyLink failed to meet its burden of proof in demonstrating (1) that CenturyLink’s service area is subject to effective competition for telecommunications services;¹ (2) that functionally equivalent competing telecommunications services at comparable rates, terms and conditions are available throughout CenturyLink’s service area in Utah;² or (3) that granting CenturyLink’s Petition for Exemption is in the public interest.³ CenturyLink filed its Petition for Review on April 11, 2024.

¹ Order, p. 17

² Id. at p. 18-19

³ Id. at p. 20-21

ARGUMENT

I. Legal Standard

CenturyLink's Petition for Exemption is governed by Utah Code §54-8b-3. Under Utah Code 54-8b-3, the Commission may, after public notice and a hearing, issue an order exempting any telecommunications corporation or public telecommunications service from any requirement of Title 54 only if the Commission finds that the telecommunications corporation or service is subject to effective competition; and the exemption is in the public interest.⁴ In this case, the Commission, in the Order found that CenturyLink had failed to meet its burden of proof that it or its service is subject to effective competition, or that exempting CenturyLink from its carrier of last resort ("COLR") obligations is in the public interest.

II. Findings Challenged.

In its Petition for Review CenturyLink argues that the Commission made errors of fact and law in its Order. Specifically, CenturyLink challenges the Commission's finding that CenturyLink failed to meet its burden of proof in demonstrating that it is subject to effective competition for telecommunications services. This argument has two subparts: (1) that the Commission erred in finding that data provided by CenturyLink was not sufficiently granular data to demonstrate effective competition throughout its service area; and (2) that the Commission erroneously interpreted COLR technology to mean stand-alone voice services. Additionally, CenturyLink claims that the Commission erred in not considering the pre-hearing briefing submitted by the parties; and that the Commission erred when it improperly weighed the benefit to the public interest.

⁴ Utah Code Ann. §54-8b-3(1) and (4)

A. Marshaling the Evidence.

URTA will respond to each of the findings challenged by CenturyLink in turn, however, at the outset, it should be noted that each of the findings by the Commission identified in the Petition for Review by CenturyLink is a finding of fact. Under R746-1-801(b), CenturyLink has a duty “to marshal the record evidence that supports the challenged finding as set forth in *State v. Nielsen, 2014 UT 10, Section 33-44*.⁵ According to the State Supreme Court in *State v. Nielsen*, while failure to marshal does not act as hard-and-fast default procedural rule, the Court found that “a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal.”⁶

In the case, the Commission correctly determined that CenturyLink’s proffered evidence had failed to meet its burden of proof necessary to establish effective competition or public interest in support of its Petition for Exemption. CenturyLink has continued down that same path with its Petition for Review. CenturyLink does not marshal the evidence in support of the Commission’s finding and then demonstrate why such evidence is insufficient, as required by Utah law. Rather, CenturyLink merely restates its evidence in support of its position and states that the Commission relied on evidence contrary to CenturyLink’s proffered evidence. However, as the Commission is aware, this is precisely what a trier of fact is required to do - consider all the evidence presented and determine what evidence is credible and competent, and whether such evidence is sufficient to meet the burden of proof.

As the Petitioner, CenturyLink has the burden of proving it meets the elements of Utah Code 54-8b-3 and that it is entitled to statewide exemption from its COLR obligations. After

⁵ Utah Administrative Code, R746-1-801(2)

⁶ *State v. Nielsen, 2014 UT 10, ¶42*

reviewing the pre-filed testimony of all parties, and observing the cross-examination during the hearing, the Commission concluded that CenturyLink’s evidence was “incomplete to support a conclusion that effective competition for telecommunications service exists.”⁷ The Commission further found that “while CenturyLink has articulated various claimed public interest benefits, it has not provided adequate evidence to support these claims.”⁸ In short, the Commission found that the testimony offered by CenturyLink didn’t carry its burden of proof. To challenge these findings and carry its burden of persuasion on appeal, CenturyLink should marshal the evidence in support of the Commission’s findings and demonstrate why such evidence is insufficient. As demonstrated below, CenturyLink has not marshaled the evidence or carried its burden of persuasion, and its Petition for Review should be denied.

B. Effective Competition.

1. CenturyLink Claims the Commission’s Determination that CenturyLink’s Supporting Evidence Was Not Sufficiently Granular is Erroneous.

The Commission found that “the extent (or geographic scope) of available competing telecommunications services offered in Utah by alternative telecommunications providers is not supported by the evidence.”⁹ While the Commission found that CenturyLink had provided testimony of this factor, the Commission found CenturyLink’s evidence to be “incomplete to support a conclusion that effective competition for telecommunications service exists.”¹⁰ In making this determination, the Commission identified several areas of testimony that cast doubt on the sufficiency of CenturyLink’s evidence.

⁷ Order, p. 17

⁸ Id.

⁹ Id.

¹⁰ Id.

CenturyLink witness, Mr. Lubeck, testified that “only one-third of a single percent of customers in CenturyLink’s wire centers do not have alternate provider options.”¹¹ The Commission found this evidence insufficient to prove effective competition exists in CenturyLink’s wire centers.¹² CenturyLink states that the evidence relied on in the order is contrary to CenturyLink’s proffered evidence.¹³ CenturyLink is correct that the Commission relied on evidence that was contrary to CenturyLink’s proffered conclusory statements regarding effective competition. That is what triers of fact do. They weigh the often-conflicting evidence before them to determine the facts of the case.

In this particular case, the Commission relied on other evidence in the record that was contrary to CenturyLink’s conclusory statements regarding effective competition. First, there was significant testimony offered by URTA’s witness, Douglas Meredith, that CenturyLink’s data provided in Exhibit 5 included coverage of broadband service and was not limited to voice service coverage.¹⁴ Although Mr. Meredith testified that voice coverage data are provided by CenturyLink to the FCC in Form 477, CenturyLink chose not to present such data in this case.¹⁵ Second, Mr. Meredith testified that the data provided by CenturyLink was flawed for purposes of establishing whether effective competition for voice telephony exists because the data submitted by CenturyLink includes data for broadband and fixed wireless.¹⁶ Mr. Meredith testified that fixed wireless providers have no obligation to provide voice service or any other public telecommunications service and broadband internet is not a substitute for voice service or other

¹¹ Hearing Transcript, 16:1-4

¹² Order, p. 17-20

¹³ Petition for Review, p. 3

¹⁴ Direct Testimony of Douglas Meredith, L. 374-383

¹⁵ Hearing Transcript, 133:6-20

¹⁶ Direct Testimony of Douglas Meredith, L. 162-169

required public telecommunications service.¹⁷ Mr. Meredith further testified that even CenturyLink’s own flawed data shows that the coverage in the rural areas of Juab, Morgan, and Kane counties is only 65.27 percent.¹⁸ Mr. Meredith testified that the essence of COLR duties is to ensure that all locations have access to public telecommunications services.¹⁹

Additionally, the Office witness, Alyson Anderson, testified (and Mr. Lubeck agreed) that if CenturyLink’s Petition for Exemption were granted, locations currently served by CenturyLink for voice service could be left with no viable option for telephone service if the home is sold to a new owner since CenturyLink will have no obligation to serve the “new customer” at the existing location.²⁰ Finally, even Mr. Lubeck’s Surrebuttal testimony and live testimony at hearing acknowledged that even when including broadband service data, there are 2688 locations in Utah with no alternate voice option.²¹

From this evidence it was reasonable for the Commission to conclude that CenturyLink had not carried its burden to establish that its service area is subject to effective competition.

2. CenturyLink Claims that the Commission Erroneously Interpreted COLR Technology to Mean Stand-Alone Voice Services.

CenturyLink claims that Utah Code 54-8b-15(b) requires the Commission to consider functionally equivalent services available at comparable prices.²² There is no Utah Code §54-8b-15(b) so URTA assumes that CenturyLink intended to refer to Utah Code §54-8b-3 which states:

(5) In determining if the telecommunications corporation or service is subject to effective competition, the commission shall consider all relevant factors, which may include:

¹⁷ Id. at L 170-178

¹⁸ Id. at L 183-190

¹⁹ Id. at L. 192-196

²⁰ Direct Testimony of Alyson Anderson, L 197-201; Hearing Transcript, 34:1; 57:2-3; 63:14-16

²¹ Hearing Transcript 57:2-3

²² CenturyLink’s Petition for Review, p. 6

...

(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;

Assuming this is the Utah Code section that CenturyLink intended to cite to, CenturyLink ignores the most pertinent language contained therein. Specifically, Utah Code 54-8b-3(5)(b) refers to telecommunications services that are functionally equivalent **or** substitutable and reasonably available at comparable prices, terms, quality and conditions (emphasis added). It is clear from this language that the legislature intended “functional equivalent” to mean “substitutable.” Mr. Meredith testified that broadband service and voice service are not functionally equivalent or substitutable.²³ Mr. Meredith and common sense tell us that broadband service provides access to the internet, and voice service provides access to the public switched telephone network. While broadband service can provide access to voice service, unless a broadband provider is also a federal eligible telecommunications carrier (“ETC”) or COLR, it has no obligation to provide voice service.

Moreover, as it relates to whether broadband service is the functional equivalent as voice telephone in terms of rates, terms, quality and conditions, the Commission acknowledges that CenturyLink provided evidence of this factor, but found that the evidence provided was incomplete to support a conclusion that effective competition for telecommunications services exists.²⁴ Specifically, the Commission found that CenturyLink’s claim that satellite and broadband service are equivalent to standalone voice service was not supported by the evidence.²⁵ CenturyLink’s Petition for Review argues that the Commission in its Order had

²³ Rebuttal Testimony of Douglas Meredith, L. 107-132

²⁴ Order, p. 17

²⁵ Id. at 19

determined that the functional equivalent service must be stand-alone voice or that it cannot incur additional cost, and that such a determination is inconsistent with Utah Code 54-8b-15(b) [sic].²⁶ Again, assuming CenturyLink intended to refer to Utah Code 54-8b-3(5)(b), CenturyLink has missed the point. Broadband service alone offers no connection to the PSTN. On the other hand, broadband service with interconnected voice service offers a connection to the PSTN and would likely be considered substitutable for standalone voice service. If CenturyLink had demonstrated that the customers in its wire centers have access to broadband service with voice (PANS and POTS) at rates, terms, and conditions that are comparable to what they currently pay for basic voice service, the Commission likely would have found that such services were functionally equivalent (or substitutable) and available at comparable rates, terms, quality and conditions. However, as noted by the Commission, CenturyLink did not submit such evidence. CenturyLink provided no evidence as to the cost of broadband service with voice, but acknowledged that a broadband subscription alone does not provide access to the public switched telephone network.²⁷ Additionally, Mr. Meredith testified that broadband and satellite services are not functionally equivalent to voice service in terms of cost,²⁸ and Mr. Lubeck admitted that a customer who takes broadband service must subscribe to voice service as an "add-on" service with an additional cost.²⁹ The Commission found that the evidence in the record "does not adequately support the availability of competing telecommunications services in Utah at comparable prices, terms, quality and conditions," and that CenturyLink had failed to meet its burden to demonstrate that the alternate services identified by CenturyLink's witnesses

²⁶ Petition for Review, p. 6

²⁷ Hearing Transcript 47:8-10; 48:16 and 56:6-12

²⁸ Id. at 128:1-5; 131:1-9; and 139:1-9

²⁹ Id. at 79:7-9

as available in the CenturyLink service area were the functional equivalent in terms of rates, terms and conditions.

Finally, contrary to the testimony and assertions of CenturyLink, the fact that the **networks** that provide both broadband and voice are supported by the Utah Public Telecommunications Service Support Fund (UUSF) does not make the **services** provided over such networks “functionally equivalent.” Utah Code §54-8b-3(5)(b) provides that “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.” CenturyLink argues that all services that explicitly qualify for COLR funding,³⁰ must be considered “functionally equivalent.”³¹ There is absolutely no statutory support for this position. The UUSF statute, Utah Code §54-8b-15, merely states that the UUSF shall be used to support networks capable of providing: (i) access lines; (ii) connections; or (iii) wholesale broadband internet access service. Nothing in Utah Code 54-8b-15 suggests that these are functionally equivalent services, and the fact that each is eligible for UUSF has nothing to do with the functional equivalence of the service. In fact, the fact that the Legislature listed all three as separate services illustrates that these services are not functionally equivalent. Clearly, the fact that a service may be eligible for UUSF support under §54-8b-15 does not address the functional equivalence standard that the Commission needs to address under §54-8b-3(5).

Moreover, a basic understanding of the various services clearly demonstrates that such services are not the functional equivalent of each other. The plain meaning of “functionally equivalent” or “substitutable” services means the function of the services are the same, or the

³⁰ URITA is not aware of what “COLR funding” is, but suspect, based on the reference to Utah Code 54-8b-15, this should be “UUSF funding.”

³¹ Petition for Review, p. 7

services perform the same function and can be substituted for one another. Access lines and connections allow a customer to send and receive telephone messages using the public switched telephone network. Broadband internet access service allows a customer to send and receive data over the Internet. The COLR obligations relate to public telecommunications service, including voice service. Broadband service by itself cannot satisfy a COLR's duty to offer basic local exchange service in a defined service area. Therefore, even though networks that provide access lines or wholesale broadband internet access service are both eligible for UUSF support, these are not "functionally equivalent" services.

All of this demonstrates that despite CenturyLink's failure to marshal the evidence, the record is replete with credible evidence from URТА, the Office, and the Division for the Commission to determine that CenturyLink's entire service area is not subject to effective competition. Further, while it is conceivable that CenturyLink could have shown that certain areas are subject to effective competition, it did not provide such evidence. The Commission, as the finder of fact, agreed with the URТА, Office and Division witnesses that the data provided by CenturyLink was insufficient to meet its burden of proof.

3. CenturyLink Claims that the Commission Erred by Not Considering the Parties' Prehearing Briefs.

CenturyLink claims that the Commission erred by not considering the parties' pre-hearing briefs.³² Specifically, CenturyLink argues that analysis of market share, which is identified as a factor of consideration in determining effective competition under Utah Code §54-8b-3(5)(c) is the same examining the impact to captive customers when considering whether the exemption is in the public interest under Utah Code §54-8b-3(6). Moreover, CenturyLink is

³² Petition for Review, p. 5

improperly conflating the “effective competition” analysis with the “public interest” analysis. Analyzing market share to determine effective competition is very different from analyzing the impact of COLR exemption on captive customers of CenturyLink. Under Utah Code 54-8b-3(5)(c), while market share is one of the factors the Commission should consider when determining whether there is effective competition, it is not the only factor. While the Commission found that CenturyLink had lost market share in a shrinking market of landline telephone, the Commission found that the evidence “as applied to other relevant factors does not support granting the Petition.”³³

Determining the impact that granting CenturyLink’s exemption from COLR obligations might have on captive customers, on the other hand, is a question to be answered in the context of “the public interest” inquiry required by Utah Code 54-8b-3(6). Specifically, “the Commission shall consider, in addition to other relevant factors, the impact the exemption would have on captive customers of the telecommunications corporation.” As stated in URTA’s pre-hearing brief, “captive customer” is not defined in Utah Code. However, in utility regulation, and in the law, the term “captive customer” means “a customer who does not have realistic alternatives to buying power from the local utility, even if that customer had the legal right to buy from competitors.”³⁴ There is no limitation in the Black’s Law Dictionary definition that limits the definition’s applicability to only those customers who actually take the service, rather “captive customer” refers to any customer who has no meaningful choice of utility providers. If a customer wants a particular service but has no choice as to who provides the service, they are a “captive customer” - whether they actually subscribe to the utility service or not.

³³ Order, p. 17

³⁴ *Blacks Law Dictionary, 2nd Ed.*

This interpretation is bolstered by reviewing the structure and language of the statutory scheme as discussed by the Supreme Court in *McKittrick v. Gibson*. Utah Code §54-8b-15 defines a COLR as an incumbent telephone corporation; or a telecommunications corporation that, under §54-8b-2.1: (A) has a certificate of public convenience and necessity to provide local exchange service; and (B) has an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.” Utah Code 54-8b-15(1)(b). An “incumbent telephone corporation” is defined as a telephone corporation, its successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state.” Utah Code 54-8b-2(9). Historically, the COLR is a monopoly provider of the public telecommunications service in the local exchange. While some residents may not subscribe to a COLR service, a customer’s act of not subscribing to service at any given time does not mean that the customer is not served by the COLR. When there is a COLR identified in a particular service area of the state, that COLR has an obligation to serve any customer or class of customer who requests service in that area.

The evidence presented in this docket by URTA, the Office, the Division, and even CenturyLink demonstrates that granting CenturyLink’s Petition for Exemption will have an impact on captive customers and could result in captive customer locations having no access to a voice services.³⁵ However, the Commission’s Order did not specifically address the captive customer issue. Rather, the Commission found that CenturyLink did not meet its burden to demonstrate that granting its Petition for Exemption is in the public interest. The Commission found that CenturyLink articulated various claimed public interest benefits, but it did not provide

³⁵ Hearing Transcript, 104:9-25; 105:1-4; 111:7-12; 115:13-21; Direct Testimony of Alyson Anderson, L.72-92; Confidential Exhibit OCS 1.2D;

adequate evidence to support such claims. Specifically, CenturyLink cited advancing the policies of the state to encourage competition, but offered no testimony in support of such claim beyond the initial conclusory statement.³⁶ CenturyLink stated that granting its Petition for Exemption would allow for flexible and reduced regulation, but acknowledged in its testimony that under Utah Code §54-8b-2.3 pursuant to which CenturyLink is subject to flexible and reduced regulation, CenturyLink continues to have an obligation under Utah Code §54-8b-2.3 to provide basic residential service throughout its certificated area.³⁷ And further, that as a Federal ETC, CenturyLink remains obligated to continue to provide its voice services in the state.³⁸ CenturyLink cites that “most importantly” the granting of its Petition for Exemption is in the public interest to facility the deployment of advanced services, but offered no testimony as to how deployment of such advanced services would be facilitated by granting the Petition.³⁹

In reviewing the testimony offered by CenturyLink, the sum total of all testimony related to the public interest factor is as follows:

Direct Testimony of David Ziegler:

Q. WOULD THE PUBLIC INTEREST BE SERVED BY GRANTING CENTURLINK RELIEF FROM ITS CURRENT CARRIER OF LAST RESORT OBLICATIONS?

A. Yes. This petition is about improving and modernizing the telecommunication industry. In Utah, CenturyLink no longer receives state or federal universal service support in these high-cost areas. CenturyLink cannot modernize if it is required to fund antiquated modes of service that the majority of Utah citizens no longer want or use. New customers entering the market are not purchasing landline service; instead, the public interest is advanced by expanding broadband infrastructure. As illustrated in the exhibits, use of landline voice services has naturally declined with the rise of more useful, advanced technologies. As Utah works toward a goal of broadband equity, access, and deployment, relief from

³⁶ Hearing Transcript, 20:16-21

³⁷ Id. at 56:12-25 and 67:1-2

³⁸ Id at 66:4-7

³⁹ Id. at 20:16-21

COLR obligations allows CenturyLink to devote greater resources to expanding high-speed internet to connect all Americans and ensure that unserved populations gain access to the global digital community.

Rebuttal Testimony of Alan Lubeck

Q. IN WEIGHING PUBLIC INTEREST, WHY IS IT CRITICAL THAT THE COMMISSION TAKE INTO ACCOUNT BEAD FUNDING?

A. A wholistic approach to existing COLR obligations that focuses on modernizing the telecommunication industry is undoubtedly in the public interest as “federal and state regulators must reconsider how legacy regulatory obligations should evolve as service providers accelerate their transition from Public Switched Telephone Network (PSTN) to an all-IP world.” *See* FCC 11-161, ¶15.3 At the same time that Utah is receiving an unprecedented influx of funding – \$317 million – to expand broadband access, this Commission is tasked with determining whether CenturyLink (1) is subject to effective competition and (2) whether a COLR exemption is in the public interest. *See* Utah Code § 54-8b-3(4)(a) and (b). The purpose, in part, of this enormous amount of BEAD funding is to expand competing telecommunications services available from alternate providers. *Id.* at § 54-8b-3(5)(a). The BEAD expansion will therefore allow for alternate providers to supply competing services that are functionally equivalent or suitable. *Id.* at § 54-8b-3(5)(b). This will undoubtedly further erode CenturyLink’s market share as competition increases. *Id.* at § 54-8b-3(5)(c). Additionally, BEAD funding reduces economic and regulatory barriers of entry into the telecommunication market as Utah’s \$317 million of BEAD funding is distributed to telecommunication providers. *Id.* at § 54-8b-3(5)(d). The impact of this competition is simple – Utah consumers can continue to expect more and more options and availability in telecommunication providers. *Id.* at § 54-8b-3(5)(e).

Hearing Testimony of Alan Lubeck

20:16-25; 21:1-2: A COLR exemption in the public interest, as it -- as it would -- it's 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. This exemption would not harm the public interest because existing locations will continue to receive telephone service. In addition, future customers will have expanded options for both broadband and voice service as broadband internet becomes more widely available with BEAD funding.

23:3-11: In closing, this petition is about improving and modernizing the telecom industry regulations, which is undoubtedly in the public interest. And with the implementation of BEAD funding and Utah's Digital Connectivity Plan, it's clear that Utah residents are more interested in obtaining accents -- access to broadband

than they are in traditional landline service. The Commission can take a step towards modernizing its rules by approving CenturyLink's request.

CenturyLink has offered no specific evidence demonstrating how granting it relief from its COLR obligations is in the public interest. Rather, as demonstrated above, CenturyLink offers vague conclusory statements that its Petition for Exemption is in the public interest. Again, CenturyLink is challenging the Commission's finding that granting the Petition for Exemption is not in the public interest because CenturyLink failed to carry its burden of proof on demonstrating the exemption is in the public interest, but CenturyLink has wholly failed to marshal the evidence that supports the Commission's finding or meet its burden of persuasion in any way.

As a result of CenturyLink's failure to offer any evidence of public interest, the Commission was left to weigh the burden of the COLR obligations against any benefit that CenturyLink might obtain from being relieved from such obligations. However, as the Commission notes in the Order, there is also no evidence of any benefit to CenturyLink. The evidence is clear that CenturyLink will not be relieved of providing basic telephone service because it remains obligated to provide such service under Utah Code 54-8b-2.3 and under its Federal ETC obligations. Further, CenturyLink offered no evidence that complying with its COLR obligations has cost them any money. In fact, Mr. Lubeck acknowledged that because CenturyLink would still have its obligation to provide service as an ETC and basic residential service under Utah Code §54-8b-2.3, CenturyLink's claimed financial burden associated with its Utah COLR obligations would not be relieved.⁴⁰

⁴⁰ Hearing Transcript, 50:24-51:3 and 66:20-25-67:1-2

On the other hand, Mr. Meredith and Ms. Anderson raised many concerns that CenturyLink had not met its burden to demonstrate that granting an exemption from COLR was in the public interest and that, in fact, maintaining CenturyLink's COLR obligations is in the public interest. For example, Mr. Meredith testified that it is in the public interest to maintain COLR obligations (subject to line extension tariffs) to essentially guarantee that voice service will be available to all customers or classes of customers who request it.⁴¹

Ms. Anderson identified several questions that the Office believed should be answered before the requested exemption could be found to be in the public interest, including:

- Who will be the provider for new customers in established CenturyLink service territories if CenturyLink is no longer required to provide service to an existing location because there has been a change of customers at that location?
- Will CenturyLink maintain service quality for existing customers?

The Office testified that until there is proper protection for customers without competitive choice, CenturyLink's Petition for Exemption cannot be found to be in the public interest.⁴² The Office also offered testimony that granting CenturyLink's Petition for Exemption could result in locations becoming unserved by any provider;⁴³ that the Office doesn't believe that it is in the public interest that anyone be without access to public telephone service; and that the evidence presented by CenturyLink does not allow the Office to feel secure that the public interest will be served.⁴⁴

Couple this testimony with that offered by the public witnesses (concerned that if the Commission grants the Petition for Exemption, they may lose access to voice service, including

⁴¹ Id. at 130:14-20; 131:21-24; 144:1-2; Direct Testimony of Douglas Meredith, L. 277-281; 323-328

⁴² Direct Testimony of Alyson Anderson, L. 193-208

⁴³ Hearing Transcript 104:9-20

⁴⁴ Hearing Transcript, 117:22-25; 118: 2-9

911 service⁴⁵ and access during power outages⁴⁶), and the Commission correctly found that granting CenturyLink’s Petition for Exemption was not in the public interest.

CONCLUSION

As stated by the Supreme Court in *State v. Nielsen*, “a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal.”⁴⁷ CenturyLink in its Petition for Review challenges the findings of the Commission but fails to marshal the evidence in support of the Commission findings. As demonstrated herein, the evidence in the record more than adequately supports the findings of the Commission. CenturyLink has failed, again, to meet its burden and its Petition for Review should be denied.

DATED this 26th day of April, 2024.

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⁴⁵ David Eskelsen Written Comment at 2

⁴⁶ Public Witness Hearing Transcript, 7:19-23

⁴⁷ *State v. Nielsen*, 2014 UT 10, 42

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of URTA's Response to CenturyLink's Petition for Review, Rehearing and Reconsideration, Docket 23-049-01, was served the 26th day of April, 2024, as follows:

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