
Qwest Corporation d/b/a CenturyLink
QC's Petition for Statewide Exemption
from Carrier of Last Resort Obligations

DOCKET NO. 23-049-01

ORDER ON PETITION FOR REVIEW,
REHEARING, OR RECONSIDERATION OF
THE COMMISSION'S MARCH 15, 2024
ORDER

ISSUED: May 13, 2024

BACKGROUND

On June 21, 2023, Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") filed a petition requesting the Utah Public Service Commission (PSC) to exempt it, in whole or in part,¹ from its Carrier of Last Resort ("COLR") obligations as defined in Utah Code § 54-8b-15(1)(b) ("Application"). The parties to this docket are CenturyLink, the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), and intervenor the Utah Rural Telecom Association ("URTA").² All Parties filed written direct testimony, CenturyLink and URTA filed written rebuttal testimony, and the OCS, CenturyLink, and URTA filed written surrebuttal testimony.

The Parties participated in an evidentiary hearing on February 8, 2024, putting forth witnesses who testified to facts relating to the Application and other submissions, and who were also subject to cross-examination. CenturyLink's witness was Alan Lubeck, DPU's witness was Alan Smith, OCS's witness was Alyson Anderson,

¹ This alternative request for relief was not developed in this docket and has not been raised as an issue in CenturyLink's petition for review.

² CenturyLink, DPU, OCS, and URTA are sometimes collectively referred to as the "Parties."

and URTA's witness was Douglas Meredith. A public witness hearing was also held on February 8, 2024.

By written order dated March 15, 2024, the PSC denied the Application ("Order"). On April 11, 2024, CenturyLink filed a Petition for Review, Rehearing, or Reconsideration of the Commission's March 15, 2024 Order ("Petition"). The OCS and URTA timely filed responses in opposition to the Petition on April 26, 2024 ("Response").

DISCUSSION

Utah law allows CenturyLink's Petition by a timely filing that includes specific information.³ We review the Petition pursuant to Utah Admin. Code R746-1-801. If the Petition "challenges a finding of fact ..." CenturyLink must "marshal the record evidence that supports the challenged finding[.]"⁴ The Petition cannot simply identify facts that CenturyLink believes support its argument on review, but must instead marshal the evidence in support of the PSC's findings and then demonstrate why that evidence is insufficient. Although failure to marshal is not fatal to the Petition, "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."⁵

³ See, e.g., Utah Code Ann. §§ 63G-4-301(1) and 54-7-15(1)&(2).

⁴ Utah Admin. Code R746-1-801(2). See also, *State v. Nielsen*, 2014 UT 10, ¶ 41 (the focus of marshaling the record evidence is "on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings[.]").

⁵ *State v. Nielsen*, 2014 UT 10, ¶ 42.

Critical in adjudicating this docket is the recognition of the legislative policy declarations of Utah Code Ann. § 54-8b-1.1. These declarations present a number of considerations, which generally range from endeavoring to make telecommunications services at just and reasonable rates available to all classes of customers and residents throughout Utah, to encouraging competition and the development of competition in telecommunications services in Utah and to protect customers who do not have a competitive choice.⁶ These policy declarations are particularly important here because CenturyLink seeks to be relieved of a statutory requirement that it provide public voice telecommunications service to any new Utah customer or resident that requests voice service within a given local exchange.

CenturyLink provides four topics upon which it specifically requests review, asserting “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.”⁷ We address each of CenturyLink’s four topics as follows.

1. *Sufficiency of the Evidence.*

In broad terms, we may only grant the exemption from COLR obligations CenturyLink seeks if we find it is subject to effective competition and that the exemption is in the public interest.⁸ CenturyLink challenges our factual findings that it

⁶ This articulation of the legislative policy declarations is offered for illustration only and is not complete. See Utah Code Ann. § 54-8b-1.1(1)-(10).

⁷ Petition at 2.

⁸ See Utah Code Ann. § 54-8b-3(4).

failed to meet its burden of proof. The Petition specifically challenges our finding, as articulated by CenturyLink, “that [CenturyLink’s] evidence of geographic scope of competing telecommunication[s] services offered by alternative telecommunication[s] providers was incomplete to support [a] conclusion of effective competition.”⁹ While the Petition recites some examples of the evidence supporting this finding, it does not meaningfully contradict or even attempt to explain why that finding is in error.¹⁰

The Order sets forth various examples of CenturyLink’s evidentiary deficiencies, including insufficient evidence of “functionally equivalent or substitutable” services that are reasonably available at comparable prices, terms, quality, and conditions.¹¹ Moreover, the Petition does not impeach the ample evidence provided by witnesses Anderson and Meredith establishing that services asserted by CenturyLink to be functionally equivalent or substitutable are, in fact, neither functionally equivalent nor substitutable.¹²

The Petition argues “[t]he evidence relied upon in the [O]rder 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.”¹³ This argument ignores the statutory criteria we may consider in

⁹ Petition at 3.

¹⁰ The OCS and URTA in their respective responses to the Petition identify that CenturyLink’s Petition ignores (and therefore does not address) other evidence supporting our findings on this topic in the Order. *See, e.g.*, OCS Response at 4-5; URTA Response at 4 & 6-7.

¹¹ *See, e.g.*, Order at 17-19.

¹² *See, e.g.*, Meredith Surrebuttal at lns. 113-121 and 343-349; Anderson Surrebuttal at lns. 29-58.

¹³ Petition at 3.

determining whether the offerings of alternate providers constitute “effective competition.”¹⁴ As explained in the Order, CenturyLink failed to establish “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.”¹⁵

Moreover, the supplemental data CenturyLink provided to DPU, OCS, and URTA on January 18, 2024,¹⁶ does not refute our findings regarding the absence of functionally equivalent or substitutable service at comparable prices. It is undisputed that CenturyLink’s supplemental data did not reflect stand-alone voice services, which is the subject of the Application, but instead was data based on the availability of broadband internet services. While CenturyLink provided no specific evidence as to the cost of broadband service with voice, witness Meredith testified that generally broadband services do not include stand-alone voice service, although that service can often be added at additional cost,¹⁷ which would result in a higher overall cost to the customer. Consequently, CenturyLink’s evidence, including its supplemental data, does not establish the existence of effective competition when we apply the statutory criteria. Additionally, Mr. Meredith testified, without challenge, that CenturyLink had

¹⁴ See Utah Code Ann. § 54-8b-3(5).

¹⁵ Utah Code Ann. § 54-8b-3(5)(b).

¹⁶ See Petition at 4.

¹⁷ Hearing Trans. at 127:23-128:5 and 130:24-131:9. CenturyLink’s witness also testified that its broadband customers must pay an additional fee for voice service. Hearing Trans. at 78:25-79:9.

(or should have had) data available to it specifically relating to the availability of stand-alone voice service,¹⁸ yet it did not provide that data to meet its burden of proof in this docket. It is because of evidentiary shortcomings like these, and others as noted elsewhere,¹⁹ that we did not find substantial evidence to support CenturyLink's position on the effective competition prong of the exemption analysis.

2. PreHearing Briefing

CenturyLink asserts that we erred by failing to consider the Parties' prehearing briefing,²⁰ at least as to the definition of "captive customers."²¹ The Petition does not, however, specify any error that results from that failure. Instead, the Petition simply repeats – almost verbatim – the arguments CenturyLink made in its prehearing briefing on this topic, namely that "captive customers" can only be defined to mean existing customers and not future potential customers.²² Yet nowhere does the Petition assert that the Order took a position one way or the other on this issue.

CenturyLink argues that the PSC must look at the impact to existing customers who "may lack alternative telecommunication[s] options[.]"²³ The undisputed record

¹⁸ See, e.g., Order at 10.

¹⁹ See, e.g., *id.* at 18-19 (finding the positions of URTA, OCS, and DPU credible on their determinations that CenturyLink's data was incomplete in showing effective competition, was not enough to show the public interest will be served, and was not substantial evidence detailing statewide competition or functional equivalence of available alternative telecommunications services).

²⁰ See Petition at 5.

²¹ There were two subjects of prehearing briefing: the Parties' positions on their respective interpretation of the phrases (1) "captive customers" in § 54-8b-3(6); and (2) "functionally equivalent or substitutable" in § 54-8b-3(5)(b). CenturyLink raises this later issue in a different section of the Petition, which is addressed below.

²² Petition at 5.

²³ *Id.*

evidence shows that at least 2,688 existing CenturyLink locations²⁴ do not have an alternative voice provider.²⁵ These are captive customers according to CenturyLink.²⁶ Thus, in assessing whether the Petition is in the public interest, CenturyLink's own data establishes that at least 2,688 customers would be adversely impacted by the requested exemption. More importantly, no more rigorous examination of the meaning of the term "captive customers" was necessary because of CenturyLink's failure to establish the existence of effective competition.

3. Stand-Alone Voice Services

Although not entirely clear, it appears CenturyLink interprets the Order to mean that a determination was made that any functional equivalent or substitutable telecommunications service "must be stand-alone voice only or that a functionally equivalent service cannot incur additional cost."²⁷ The Petition asserts that such a determination is inconsistent with Utah Code Ann. § 54-8b-3(5)(b).²⁸

In support of this assertion, the Petition repeats – again, almost verbatim – the arguments CenturyLink made in its prehearing briefing on this topic, namely that "[s]ervices that already qualify for COLR funding must be considered 'functionally equivalent' alternative telecommunication[s] services for purposes of granting COLR

²⁴ The record is not clear on what the term "locations" means as it is nowhere defined by CenturyLink.

²⁵ See Lubeck Surrebuttal at 6, lns. 7-11, and Hearing Trans. at 27:19-22.

²⁶ Hearing Trans. at 15:23-16:4.

²⁷ See Petition at 6.

²⁸ See *id.* CenturyLink cites Utah Code Ann. § 54-8b-15(b) throughout its argument on this topic. Given the context, we agree with URTA's assumption that because there is no such Utah statutory provision, CenturyLink intended to refer to Utah Code Ann. § 54-8b-3. See URTA Response at 7.

relief.”²⁹ CenturyLink essentially argues that because Utah’s Universal Public Telecommunications Service Support Fund statute provides funding, under limited circumstances, for wholesale broadband internet access service as that term is defined in 47 C.F.R. § 8.2, broadband internet access service “must be [a] functionally equivalent [telecommunications service]” for purposes of the requested exemption.³⁰ We implicitly rejected this argument in the Order, and expressly reject it now. The plain language of the statute at issue here – Utah Code Ann. § 54-8b-3 –provides no basis for concluding that the wholesale broadband services addressed in the UUSF statute constitute a telecommunications service that is functionally equivalent to, or substitutable for, CenturyLink’s stand-alone voice service.

The Petition also argues CenturyLink provided evidence concerning comparable pricing, asserting such evidence showed “that depending on what service the customer is seeking, at times competitors can offer faster services at lower prices.”³¹ That evidence, however, is unhelpful because it is at best unclear as to whether it is addressing, for example, stand-alone voice service, just broadband, or broadband with voice service.

²⁹ Petition at 7. We also agree with URTA’s observation that the Petition’s reference to “COLR funding” likely refers to funding available under Utah’s Universal Public Telecommunications Service Support Fund, or “UUSF funding” as addressed in Utah Code Ann. § 54-8b-15.

³⁰ *See id.*

³¹ *Id.* at 6.

A fundamental requirement of Utah Code § 54-8b is that CenturyLink, as an incumbent telephone corporation, “shall offer basic residential service throughout the area in which [it] is authorized by certificate to provide basic residential service.”³² Basic residential service is defined in the Code to include, *inter alia*, a “single line with access to the public switched network” and “no feature.”³³ CenturyLink’s COLR obligation specifically includes the obligation to provide public telecommunications services to any customer or class of customers that requests service within the local exchange.³⁴ In the most basic sense, the issue in this docket is CenturyLink’s acknowledged obligation as a COLR to provide voice service to Utahns,³⁵ not the availability of some other service – such as satellite or broadband – that must first be obtained by a customer to then allow that customer to add on basic voice service. As previously noted and explained in the Order, the record evidence shows that satellite and broadband services typically only provide voice service as an add-on at an additional cost.³⁶ CenturyLink has not disputed this evidence in its Petition.

³² Utah Code Ann. § 54-8b-2.3(2)(b)(ii).

³³ Utah Code Ann. § 54-8b-2(3).

³⁴ See Utah Code Ann. § 54-8b-15(1)(b).

³⁵ See Application at 2 (“Utah’s COLR obligations currently require that CenturyLink provide public voice telecommunication[s] service to any new customer that requests voice service within a given local exchange. ... This [Application] ... seeks relief from the obligation to provide voice service to every new [Utah] customer location regardless of the cost of service.”).

³⁶ See Order at 19.

4. Public Interest

CenturyLink appears to misunderstand the Order with respect to at least part of the public interest analysis. The Petition asserts “the Order improperly weighs the benefits to CenturyLink when it should be determining benefit to public interest.”³⁷ The Petition further asserts that the public interest analysis should be limited to “the impact the exemption would have on captive customers,”³⁸ but this assertion ignores the express language of Utah Code Ann. § 54-8b-3(6) which mandates that the Commission consider “other relevant factors.”

The provision of a reasonably priced and reliable basic residential service is a long-standing fundamental statutory obligation of the incumbent telephone corporation³⁹ that cannot be eliminated absent a strong public interest showing. CenturyLink has failed to establish it is in the public interest to eliminate this statutory requirement.

CenturyLink’s own evidence shows that approximately 26.6% of Utah’s telecommunications-using public utilize landline service for some portion of their communications wants or needs.⁴⁰ This is not surprising given the long-established dependability of landline networks, such as in power outages and emergencies. Additionally, as previously noted, CenturyLink’s data shows that CenturyLink serves at

³⁷ Petition at 8.

³⁸ *Id.*

³⁹ See Utah Code Ann. § 54-8b-15(1)(b).

⁴⁰ See Ziegler Direct Testimony at 6 and Ex. 1; Lubeck Rebuttal at 14:6-11; see also Order at 19.

least 2,688 “captive customers,” as it defines that term. Further evidence shows telecommunications service availability in some rural local exchange areas in Juab, Morgan, and Kane Counties as low as 65.27 percent.⁴¹ Moreover, a confidential CenturyLink exhibit presenting the percentage of households using voice service by wire center shows that substantial percentages of households, particularly in rural areas, still utilize landline service provided by CenturyLink.⁴² It is reasonable to infer, in the absence of contrary information, that they do so because other types of service are unavailable or inadequate. These are among the relevant factors we considered in evaluating the public interest in this docket.

We reiterate that CenturyLink has not established that its request to have prospective relief from the “obligation to provide voice service to every new customer location regardless of the cost of service” is in the public interest.⁴³ While CenturyLink claims it will continue to serve existing customers, granting CenturyLink’s Petition could allow it to hereafter refuse to provide stand-alone voice service to customers who move and refuse to continue to provide such service to a new resident at the existing service location. Moreover, CenturyLink could be free to not offer stand-alone voice services at any new residential units constructed in its service territory. Utah’s population is rapidly growing. Granting CenturyLink’s Petition could eliminate

⁴¹ See Order at 17.

⁴² See Ziegler Direct Testimony at 7-8 and Confidential Ex. 4.

⁴³ Application at 2.

the option for customers to have a basic residential voice line if they relocated. Given the substantial number of customers who continue to maintain a basic residential service, such an outcome would not be in the public interest. Whether or not the customer interests we describe here fall within the undefined phrase "captive customers" we are required to consider under Utah Code § 54-8b-3(6), an issue we need not decide on the record in this docket, these interests are certainly within the "other relevant factors" we may and should consider in determining the public interest impacts of the Application.

Moreover, CenturyLink asserted in its Petition and throughout the proceeding that a "COLR exemption [is] 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 [CenturyLink capital to fund the equipment necessary to provide] advanced services."⁴⁴ Yet, the record clearly shows this "most important" public interest will not be advanced through granting the exemption, because CenturyLink's federal ETC obligations will remain unchanged. In other words, the supposed "most important" benefit will fail to materialize as the ETC obligations will require CenturyLink to continue to devote essentially the same levels of financial

⁴⁴ Petition at 8-9 (emphasis added). See also Application at 11.

resources to support its landline network. This important fact (that ETC obligations would not change) was confirmed by CenturyLink's own witness.⁴⁵

The public interest must be more broadly construed than CenturyLink contends. Based on the undisputed facts that at least tens of thousands⁴⁶ of Utah customers have chosen to utilize landline voice service and that 1.9 percent of Utah households use landlines only for their voice service, we conclude that the public interest continues to be served by not relieving CenturyLink of its COLR obligations.

CONCLUSION

CenturyLink has not effectively marshaled the evidence in its Petition and thus has not carried its burden of persuasion. The errors of fact and law it claims support the exemption largely ignore the persuasive opposing evidence and misconstrue our reasoning. CenturyLink has failed to establish any basis to rehear or modify our Order. While a day may come when CenturyLink is relieved of its COLR obligations, based on the present record, CenturyLink has not carried its burden herein to eliminate this fundamental obligation of the incumbent carrier.

ORDER

Having carefully considered the Petition in light of the evidence presented in this docket, and for the reasons set forth herein, the Petition is denied.

⁴⁵ Hearing Trans. at 50:24-51:3 (CenturyLink confirming its financial burden will be maintained even with relief from its COLR obligations because it still would have its federal ETC obligations).

⁴⁶ Approximately 26.6% of the adult population in Utah. See n.40, *supra*.

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DATED at Salt Lake City, Utah, May 13, 2024.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#333724

Notice of Opportunity for Judicial Review

Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on May 13, 2024, a true and correct copy of the foregoing was served upon the following as indicated below:

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