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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF QWEST CORPORATION )</b>	
<b>DBA CENTURYLINK QC, CENTURYTEL OF )</b>	<b>CASE NO. QWE-T-12-01</b>
<b>IDAHO, INC. DBA CENTURYLINK AND )</b>	<b>CEN-T-12-01</b>
<b>CENTURYTEL OF THE GEM STATE, INC. DBA )</b>	<b>CGS-T-12-01</b>
<b>CENTURYLINK'S PETITION FOR AN )</b>	
<b>EXEMPTION OF THE COMMISSION'S )</b>	
<b>TELECOMMUNICATIONS CUSTOMER )</b>	
<b>RELATIONS RULE 502 (IDAPA 31.41.01.502) )</b>	<b>COMMENTS OF THE</b>
	<b>COMMISSION STAFF</b>

**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and in response to the Notice of Petition and Notice of Modified Procedure issued in Order No. 32446 on January 25, 2012, submits the following comments.

**BACKGROUND**

On December 22, 2011, a Petition was filed by Qwest Corporation dba CenturyLink QC, CenturyTel of Idaho, Inc. dba CenturyLink, and CenturyTel of the Gem State, Inc. dba CenturyLink (the CenturyLink Companies or CenturyLink) requesting an exemption from the Commission's Telephone Customer Relations Rule 502 (IDAPA 31.41.01.502). Rule 502 establishes standards for a telephone company to restore basic local service after an outage, and requires payment of customer credits when standards are not met. The rule was initially adopted

in 1993, and CenturyLink asserts in its Petition that profound changes in the telecommunications industry in Idaho since the rule was adopted make the rule obsolete. Petition, p. 2. CenturyLink contends the rule now creates unusual and unreasonable hardships in a competitive marketplace that did not exist when the rule was adopted. Customer Relations Rule 3 states the Commission may grant exemptions to a rule if “unusual or unreasonable hardship results from the application” of the rule. IDAPA 31.41.01.003.

CenturyLink asserts that when Rule 502 was adopted, incumbent local telephone providers were the predominant providers of local telecommunications service. Very few customers used wireless service and most had no alternative resource for voice communication in the event of an outage. Petition, p. 3. The development of alternative telecommunications technology and changes in laws to encourage competition in telecommunications markets have significantly altered the local telecommunications business. Petition, pp. 3-4. CenturyLink notes that its total line count in Idaho declined from 544,640 in 2001 to 310,870 in 2010. CenturyLink points out that the competitors in the marketplace, including wireless, cable and VoIP providers, are not subject to the Commission’s service performance rules. CenturyLink contends this disparity in treatment between its companies and the competitors creates for CenturyLink an “unusual or unreasonable hardship that justifies an exemption to the rule.” Petition, pp. 6-7.

Rule 502, under most circumstances, requires a telephone company to restore local service within 24 hours after an outage is reported to the company. IDAPA 31.01.41.502.01.b. If a telephone company does not restore service within the time required by the Rule, the company must credit the customer’s account for an amount equal to the monthly rate for one month of local exchange service. *Id.* The rule requires telephone companies to keep monthly records of out-of-service reports and to notify the Commission if the company is not able to clear at least 90% of outages within the time required by the rule for a period of three consecutive months. IDAPA 31.01.41.502.03.

CenturyLink in its Petition recognizes “that an exemption of this scope for the largest ILEC in Idaho as well as the two other CenturyLink companies may itself constitute a significant change in the regulatory landscape in Idaho.” Petition, p. 7. With this acknowledgement, CenturyLink stated its willingness to participate in a rulemaking to address Rule 502 in a more comprehensive context should the Commission deem such an effort to be appropriate.

## **STAFF REVIEW**

Throughout CenturyLink's petition for relief from Rule 502, examples are given to explain that customers have the ability to receive services through broadband, VoIP and/or wireless services. The Company is having difficulty complying with Rule 502 in one small rural segment of its service territory (fka CenturyTel of the Gem State). However, CenturyLink's waiver request as a practical matter would eliminate the rule entirely for all customers throughout its service territory. While this would resolve CenturyLink's problem – the inability to meet the standard for service restoration that the Commission requires of all certificated carriers - it does nothing to insure that its customers have reliable telephone service. Staff is concerned that there are customers who either do not subscribe to or have access to alternative services.

### **Alternatives to Landline Phone Services**

CenturyLink argues that a large percentage of customers now have access to wireless and broadband voice services. For CenturyLink's legacy Qwest customers located in urban areas, this may be true. It may not be true for customers in the very rural parts of CenturyLink's service territory. When wireline service fails, few, if any, alternative communication services are available in some rural areas.

Staff looked into the availability of broadband and VoIP services in the rural areas formerly served by CenturyTel of the Gem State and CenturyTel of Idaho. CenturyLink currently does not offer broadband service to its customers located in the legacy area formerly served by CenturyTel of the Gem State. CableOne does not provide any services in Grandview, Bruneau, Richfield, Grasmere-Riddle, Salmon, Leadore or North Fork.<sup>1</sup>

Staff learned that some wireless alternatives are available in the former Gem State/Idaho service territories. In the former CenturyTel of the Gem State service territory, customers in Grandview and Richfield have access to wireless service, but there are no cellular services available in Bruneau or Grasmere-Riddle. In the former CenturyTel of Idaho service territory,

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<sup>1</sup> In its petition, CenturyLink identified Cable One as a major competitor. Cable One offers broadband, VoIP and cable television service in parts of CenturyLink's service territory.

customers in Salmon and Leadore have access to cellular service. Staff found that it is not universally true that customers have viable alternatives to wireline service, particularly in rural areas.

Staff also notes that small business customers could be affected by granting CenturyLink an exemption to Rule 502. Small business customers may have a greater reliance on wireline service, using it not only for voice service, but fax and dial-up internet services as well. Many businesses may maintain wireline service for directory listing and advertising purposes, providing a vital link to existing and potential customers.

### **Rule 502 Remains Relevant**

CenturyLink maintains that “the development and widespread adoption of alternative communication technologies by customers destroys the basic assumption supporting Rule 502, i.e., that where wireline service outages occur, customers cannot communicate until service is restored.” Petition at 9 & 10. Staff agrees that competition exists within the telecommunications industry, but does not agree that the existence of competition within a large geographic area renders Rule 502 obsolete.

In addition to compensating customers, Rule 502 provides a modest incentive for companies to restore service in a timely manner and to maintain its network in such a way that service quality and reliability are not compromised. Rule 502 requires CenturyLink “to dedicate resources to the specific activities that are required to quickly restore service outages for voice customers.” Petition at 10. Staff agrees that this is the purpose of the rule. The Company asserts that it is difficult to meet this requirement given the “capital expenditures to expand the reach, speed and capabilities of their broadband network so they can attract and retain broadband customers and remain competitive in the marketplace.” Petition at 11. CenturyLink describes the challenges it has faced in the former CenturyTel of the Gem States service territory, resulting in its inability to meet the compliance standard specified in Rule 502.

Staff does not believe sufficient evidence has been provided to conclude that Rule 502 is no longer necessary or appropriate in today’s telecommunications environment, but does agree that CenturyLink has raised concerns that merit broader discussion and analysis. It is likely that other parties, especially CenturyLink’s customers and other regulated local exchange companies, would be interested in participating in that discussion. Rather than granting CenturyLink a

waiver at this time, Staff suggests that a Negotiated Rulemaking Proceeding is a more appropriate venue for exploring the issues that have been raised.

**Immediate Need for a Rule Exemption**

Although Staff agrees that the Company has raised concerns that need to be addressed, CenturyLink has not demonstrated that an unusual or unreasonable hardship exists to compel the Commission to immediately grant a permanent exemption to Rule 502. Staff recommends that the Company continue to file its compliance report with the Commission as required by Rule 502.03 so that Staff can monitor ongoing performance.

As the largest telecommunications service provider in Idaho, granting CenturyLink an exemption would have a major impact on the telecommunications environment in Idaho. In its Petition, CenturyLink acknowledges “that an exemption of this scope . . . may itself constitute a significant change in the regulatory landscape in Idaho. Therefore, CenturyLink is willing to participate in a rulemaking to address the service quality rules in a more comprehensive context, should this Commission deem such an effort appropriate in the future.” Petition at 7.

**STAFF RECOMMENDATION**

Staff recommends that the Commission deny the Company’s request for a permanent exemption from Rule 502.

Staff recommends that the Commission open a Negotiated Rulemaking Proceeding regarding Rule 502.

Respectfully submitted this *22nd* day of February 2012.

  
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Weldon B. Stutzman  
Deputy Attorney General

Technical Staff: Beverly Barker

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 22<sup>ND</sup> DAY OF FEBRUARY 2012, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NOS. QWE-T-12-01/ CEN-T-12-01/ CGS-T-12-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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