

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: WELDON STUTZMAN
DEPUTY ATTORNEY GENERAL**

DATE: APRIL 6, 2012

**SUBJECT: CASE NOS. QWE-T-12-01, CEN-T-12-01, CGS-T-12-01
CENTURYLINK'S PETITION FOR AN EXEMPTION OF THE
COMMISSION'S TELEPHONE CUSTOMER RELATIONS RULE 502
(IDAPA 31.41.01.502)**

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, has 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.

On January 25, 2012, the Commission issued a Notice of Petition and Notice of Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201-.204. Interest parties were given notice to file written comments within 28 days, and to file reply comments within 14 days thereafter. Written comments were filed by Commission Staff and Frontier Communications. CenturyLink filed reply comments.

Staff stated that it is not universally true that all customers in the CenturyLink service areas have access to alternative telephone service, and identified some areas where cell phone service is not available. Staff also argued that Rule 502 remains relevant to provide an incentive to CenturyLink to dedicate resources to quickly restore service outages for customers. Staff stated it does not believe sufficient evidence has been provided to conclude that Rule 502 is no longer necessary, "but does agree that CenturyLink has raised concerns that merit broader discussion and analysis." Staff Comments, p. 4. Staff stated that 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 recommended the Commission deny the Company's request for an exemption and that the Commission open a negotiated rulemaking regarding Rule 502.

Frontier in its comments supported CenturyLink's request for a waiver of Rule 502. Frontier asserted that it, like CenturyLink, "faces the challenges of retaining and capturing new customers in a highly competitive market where our competitors are not held to the same regulatory requirements." Frontier Comments, p. 1. Frontier also recommended the Commission open a rulemaking to discuss changes to Rule 502 "to meet the statutory mandate that non-economic regulatory requirements relating to basic local exchange service be technologically and competitively neutral." Frontier Comments, p. 2, *citing Idaho Code* § 62-605(5)(b). Frontier supports granting CenturyLink and other similarly situated companies a temporary exemption to Rule 502 while the broader rulemaking is considered.

On March 28, 2012, Staff met with CenturyLink to discuss a possible compromise exemption or waiver pending a rulemaking proceeding. Rather than agreeing to a limited exemption, Staff and CenturyLink agreed to convene a workshop on Monday, April 30, 2012, to consider changes to Rule 502. On April 4, 2012, CenturyLink filed a Motion asking the Commission to delay a determination on its request for a waiver or exemption until after the workshop on April 30, 2012.

Staff recommends the Commission issue a Notice of Rule Review and Notice of Workshop so that Staff and all interested companies can discuss Rule 502 and the feasibility of a negotiated rulemaking to change Rule 502. If the parties agree to changes to Rule 502 at the workshop, CenturyLink and other companies may refile a request for interim relief from the rule pending completion of the rulemaking process.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Rule Review and Notice of Workshop so Staff and other interested companies can discuss Rule 502 and the feasibility of a negotiated rulemaking to change Rule 502?



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