

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)
REVIEW OF TELEPHONE CUSTOMER) **CASE NO. GNR-T-12-03**
RELATIONS RULE 502, IDAPA 31.41.01.502)
) **ORDER NO. 32572**
)

On December 22, 2011, 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) filed a Petition 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 changes in the telecommunications industry in Idaho since the rule was adopted make the rule obsolete. Case Nos. QWE-T-12-01, CEN-T-12-01, CGS-T-12-01; Petition, p. 2. CenturyLink argued the rule creates unusual and unreasonable hardships in a competitive marketplace that did not exist when the rule was adopted.

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 31.41.01.502.01.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 local telephone service providers 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 31.41.01.502.03.

The Commission determined to initiate a review of Telephone Customer Relations Rule 502 and update the rule, if appropriate, to recognize changes that have occurred in the telecommunications industry since 1993. On April 10, 2012, the Commission issued a Notice of Rule Review and Notice of Workshop. Commission Staff convened a public workshop on April 30, 2012, to discuss Rule 502, obtain information and expertise from industry representatives and

to consider possible changes to the rule. Representatives from CenturyLink, Frontier Communications Northwest Inc. and Citizens Telecommunications Company of Idaho dba Frontier Communications of Idaho (Frontier), TDS Telecommunications Corp. (TDS), the Idaho Telecom Alliance (ITA), and Commission Staff attended the workshop.

The parties attending the workshop agreed to revise Rule 502, simplifying the rule and removing the reporting requirements and customer credits. On May 4, 2012, the parties filed a Settlement Stipulation with the Commission. The rule as revised by agreement of the parties is the following:

502. REPAIR SERVICE STANDARDS (RULE 502).

01. Restoration of Service. When a telephone company providing local exchange service is informed by a customer of a service outage as described in Rule 500.02, the telephone company must restore service within forty-eight (48) hours after the report of the outage, except (a) for outages reported on Thursday, the company must restore service no later than the following Monday by 6:00 pm, and (b) for outages reported on Friday, Saturday or Sunday, the company must restore service no later than the following Tuesday by 6:00 pm. ()

02. Extenuating Circumstances. Following disruption of telephone service caused by natural disaster or other causes not within the telephone company's control and affecting large groups of customers, or in conditions where the personal safety of an employee would be jeopardized, the telephone company is required to use reasonable judgment and diligence to restore service, giving due regard for the needs of various customers. When a customer causes the customer's own service outage or does not make a reasonable effort to arrange a repair visit within the service restoration deadline, or when the telephone company determines that the outage is attributable to the customer's own equipment or inside wire, the telephone company is not required to meet the restoration timelines of Rule 502.01. ()

03. Compliance Standard. Each month at least eighty percent (80%) of out-of-service trouble reports shall be cleared in accordance with Rules 502.01 and 502.02. ()

The parties requested that the Commission approve the Settlement Stipulation without alteration or modification, and further requested that the Commission's consideration of the Settlement Stipulation be processed by Modified Procedure with a 21-day comment period. On May 10, 2012, the Commission issued a Notice of Settlement and Notice of Modified Procedure,

establishing a period of 21 days for interested parties to file written comments. CenturyLink and Staff filed comments recommending Commission approval of the Stipulation and the changes to Rule 502. Seven comments were filed by members of the public, and AARP filed comments opposing changes to the rule.

BACKGROUND

The telecommunications industry has changed significantly in the last 20 years, starting even before Rule 502 was promulgated in 1993. The Idaho Legislature enacted the Telecommunications Act of 1988 with the stated intent “to encourage innovation within the industry by a balanced program of regulation and competition.” *Idaho Code* § 62-602(1). After the federal Telecommunications Act of 1996 was enacted, the Idaho Legislature found “that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry.” *Idaho Code* § 62-603(4). The Legislature amended the 1988 Idaho Act to encourage “the development of open competition in a telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.” *Id.* With amendments to the Idaho Act in 2005, the Legislature gave telephone companies that provide local service the option to remove their services from rate regulation by the Commission. The Legislature preserved for the Commission “continuing authority to determine the non-economic regulatory requirements relating to basic local exchange service for all telephone corporations providing basic local exchange service including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunication service, filing of price lists, customer notice and customer relation rules, and billing practices and procedures.” *Idaho Code* § 62-605(4)(b). Any non-economic regulatory requirements enacted by the Commission, however, must be technologically and competitively neutral. *Id.*

Prompted by technological advances, and encouraged by new state and federal laws, competitive providers have dramatically increased the availability of alternatives to wireline, local telephone service since Rule 502 was promulgated. In 1993, the wireless industry was a nascent industry, and cell phones were considered more of a luxury item, but that has changed significantly. According to FCC data, at the end of 2009 Idaho had 1.2 million wireless connections, far more than the wireline connections in the state. Staff Comments, p. 3. In addition to wireless competition, traditional telephone companies are seeing increased

competition from voice over Internet protocol (VoIP) providers, often from cable television providers.

The ability of many customers to find substitutes for local telephone service in Idaho markets has significantly affected incumbent local exchange carriers' line counts and access minutes of use. According to the Idaho Universal Service Administrator's report, residential wireline connections decreased last year by approximately 11% and business lines increased by 1%.¹ There was a decrease of approximately 11% in minutes of use from 2010 to 2011.² The number of residential lines has decreased an average of 8% each year in the last five years, and the billed minutes of use for the same period has decreased by 4%.

CenturyLink's local service lines in Idaho have declined from 544,640 in 2001 to 310,870 in 2010. In its comments, CenturyLink noted that as of June 2010, more than 30% of Idaho households no longer have wireline service and rely solely on wireless service. CenturyLink Comments, p. 2. CenturyLink cited Federal Communications Commission reports identifying "1,221,000 wireless connections in Idaho in 2009, while the 2009 census recorded only 647,502 housing units in the state." CenturyLink Comments, p. 3 (citations omitted). As of December 2010, the FCC reported only 455,000 incumbent local exchange carrier access lines in Idaho. *Id.* CenturyLink estimates that in its geographic service area, only 550 customers currently do not have access to wireless service. CenturyLink Reply Comments, Case Nos. QWE-T-12-01, CEN-T-12-01, CGS-T-12-01, p. 7. CenturyLink also points out that broadband connections are now widely available in Idaho, citing an FCC report showing 706,000 broadband connections in Idaho as of December 2010. CenturyLink Comments, p. 3. Broadband connections provide service alternatives to customers, as "[e]ach of these broadband customers can use VoIP for voice calling and avoid buying basic local exchange service from an ILEC such as one of the CenturyLink companies." *Id.*

WRITTEN COMMENTS

Staff in its comments recognized the significant changes in the local telecommunications markets as it assessed whether it is appropriate to modify Rule 502. Although wireless and broadband services have not penetrated every corner of the state, Staff asserted that "[t]hese areas are isolated and difficult to determine and it is impractical to try to

¹ 2011 Annual Idaho Universal Service Administrator Report. Commission Order No. 32336.

² 2011 Idaho Universal Service Fund Administrator Report.

develop a rule that addresses those areas alone.” Staff Comments, p. 4. Noting that the Commission’s regulation of local telephone services must be “technologically and competitively neutral,” Staff stated this is not an easy task, given that the Commission has no authority over wireless and VoIP providers. Staff Comments, p. 4. Staff’s stated goal in this case was a compromise that allows companies regulatory latitude while still providing consumer protection in the increasingly smaller areas where service alternatives are not available. Staff believes that current competitive pressures provide a sufficient incentive to drive quality service from the local telephone companies. *Id.*

By close of the comment period on May 31, 2012, the Commission received approximately a dozen comments from the public, as well as comments filed by AARP. Almost the same number of comments were filed after the end of the comment period, and the Commission considered those additional comments. Two of the comments were filed by people who do not have local telephone service in Idaho, one of whom lives in Arizona. One customer in Soda Springs recognized that he can change service providers, but he chooses to stay with CenturyLink because it has provided reliable service. This customer stated his elderly mother likes her landline service as a “security blanket,” although he is not concerned that CenturyLink’s service will be out for any length of time because it has not happened in the past. One CenturyLink customer in Boise filed comments, opposing the changes to Rule 502. This local service and broadband customer does not want to remove her landline service, and opposes removing the credit requirement if service is not restored in time, arguing that the rule will have no teeth without the credit requirement.

The Commission received only a handful of comments from customers in areas with no or few competitive alternatives. One customer in eastern Owyhee County receives “extremely spotty cell phone service,” and broadband and cable service are not available. The customer identified several instances when he and neighbors needed to call 911 in emergencies during the last 15 years. The customer also relies on his landline telephone to notify Idaho Power of outages during the summer. Another customer in rural Latah County lives outside reliable cell phone range and loses Internet service during power outages.

AARP in its comments acknowledged that “many consumers may have access to wireless phones during a service outage,” but reminded that “this is not always the case.” AARP’s comments highlighted service to elderly customers. AARP asserted that “elderly are far

less likely to rely on cell phone service than are other residents, and those residing in rural areas often have limited or spotty cell phone coverage.” Other commenters also mentioned the importance of reliable service to elderly customers, and to business customers.

COMMISSION DISCUSSION

The proposal to modify Rule 502 brings into focus the Legislature’s finding that “the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry.” *Idaho Code* § 62-603(4). The Commission is asked to evaluate whether modifying Rule 502 will help achieve the “balanced program of regulation and competition” contemplated by the Legislature in *Idaho Code* § 62-602(1). The presence of service alternatives to most customers is an important consideration, as competitive options are expected to replace the incentive created by Rule 502 to timely repair outages. Customers who receive poor service from their telephone company are more likely to change providers, thus prompting those companies to provide reliable service. It is undisputed that service alternatives, specifically wireless and Internet providers, are present in most of the areas served by basic local telephone providers subject to Rule 502, to an extent that significant numbers of customers are dropping their landline service.

In a balanced program of regulation and competition, the regulatory requirements that remain if Rule 502 is modified as proposed are as important as the existence of competitive market forces. Telephone Customer Relations Rules 500 and 501 specify significant service obligations, and those requirements will not be altered. For example, Rule 500 requires each local exchange company “to employ prudent management and engineering practices to ensure that customers receive the best quality of service practicable.” IDAPA 31.41.01.500.01. Additionally, each company subject to the Commission’s rules “is required to adopt and pursue a maintenance program aimed at achieving efficient operation of its systems to render safe, adequate and uninterrupted service.” *Id.* Maintenance programs “must include guidelines for keeping all plant and equipment in good repair, including the following: (a) broken, damaged or deteriorated equipment must be promptly repaired or replaced; and (b) transmission problems (including induction, cross-talk, or other poor transmission on any line) must be promptly corrected when located or identified.” *Id.*

Rule 501 requires a prompt response to reports of outages. Specifically, “[e]ach telephone company providing local exchange service shall provide for the receipt of customer

trouble reports at all hours and make a full and prompt investigation of and response to all reports.” IDAPA 31.41.01.502.01. Companies are required to “maintain an accurate record of trouble reports made by its customers,” including “accurate identification of the affected customer or service, the time, date and nature of the report, the action taken to clear the trouble or satisfy the customer, and the date and time of trouble clearance or other disposition.” *Id.* Records of outages and repair responses are required to “be available to the Commission or its authorized representatives upon request at any time within two (2) years of the date of the record.” *Id.* Finally, companies must “make every reasonable attempt to fulfill repair commitments to customers,” and timely notify customers of unavoidable changes. IDAPA 31.41.01.502.02. These are significant service requirements that will continue in place, enabling the Commission to respond to customers who experience service outages.

Based on the record presented, the Commission finds that significant service alternatives for basic local telephone service are available to customers in most areas served by incumbent local exchange companies, and that the presence of competitive alternatives is adequate in those areas to likely compel reasonable responses to reports of outages. In addition, the Commission finds that the continuing, significant obligations in Rules 500 and 501, along with the revised repair obligations in Rule 502, coupled with the incentives prompted by competition, reasonably achieves the declared goal of the Legislature of a “balanced program of regulation and competition.” *Idaho Code* § 62-602(1).

The Commission approves the Settlement Stipulation as filed, and grants an exemption to the existing Rule 502 to the companies that are parties to the Settlement Stipulation, pending completion of the rulemaking process and the effectiveness of the revised Rule 502. Any company granted an exemption will be bound by the terms of the revised Rule 502 during pendency of its enactment.

ORDER

IT IS HEREBY ORDERED that the Settlement Stipulation providing for revisions to Commission Telephone Customer Relations Rule 502 is approved. The Commission adopts the revised Rule 502 and will forward it to the State Rules Coordinator to promulgate as a temporary and proposed rule.

IT IS FURTHER ORDERED that Qwest Corporation dba CenturyLink QC; CenturyTel of Idaho, Inc. dba CenturyLink; and CenturyTel of the Gem State, Inc. dba

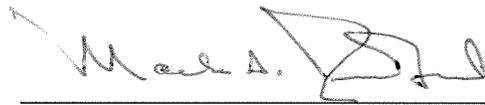
CenturyLink; Frontier Communications Northwest Inc.; Citizens Telecommunications Company of Idaho dba Frontier Communications of Idaho (Frontier); TDS Telecommunications Corp.; and the member companies of the Idaho Telecom Alliance (ITA) are granted exemptions to the existing Rule 502, but are obligated to the requirements of Rule 502 as modified.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of June 2012.



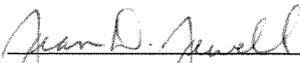
PAUL KJELLANDER, PRESIDENT



MACK A. REDFORD, COMMISSIONER

See attached Dissenting Opinion
MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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**DISSENTING OPINION
OF
COMMISSIONER MARSHA H. SMITH
CASE NO. GNR-T-12-03
ORDER NO. 32572**

The settlement proposed by the parties and the decision of the majority of the Commission to approve it are not unreasonable. As pointed out in the comments filed in support of the Stipulation, the telecommunications industry and its technologies have changed dramatically since the adoption of Rule 502 in 1993. Most customers may have competitive choices including wireless and broadband services.

My concern is for those who do not. The comments in opposition to the rule change from those in areas where broadband is not available and access to cell phone service is non-existent or intermittent convince me that we should not ignore their very important concerns and the vital nature of landline telephone service in their lives. The hardship CenturyLink believes it is subject to by Rule 502 pales in comparison to the hardship experienced by its customers when delayed service restoration means that the only telephone service available to them cannot be used for emergencies or business requirements.

It is no comfort to be told that customers who do not receive prompt repairs to their wireline service will not be ignored. If CenturyLink's primary focus is on competing in areas with mobile and broadband service availability, it is likely that customers without access to those services and captive to landline only service will be considered of lower priority when problems occur. These customers do not care less about their landline service as claimed in CenturyLink's comments. In some situations landline telephone service is their only life line.

It is my experience that business entities respond to the financial consequences that follow from their decisions. There will be changes in restoration service protocol from this rule change. I doubt they will benefit customers in Idaho who rely solely on landline telephone service.

I respectfully dissent from the opinion of the majority.


MARSHA H. SMITH, COMMISSIONER