

DECISION MEMORANDUM

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

**FROM: WELDON STUTZMAN
DEPUTY ATTORNEY GENERAL**

DATE: JANUARY 20, 2012

**SUBJECT: CASE NOS. QWE-T-12-01, CEN-T-12-01, AND CGS-T-12-01;
CENTURYLINK COMPANIES' PETITION FOR AN EXEMPTION OF
COMMISSION RULE 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.

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.

CenturyLink requested the Commission process the Petition by Modified Procedure. Staff recommends the Commission issue a Notice of Petition and Notice of Modified Procedure inviting written comments on CenturyLink's Petition. In written comments, interested parties may indicate whether a broader rulemaking procedure is appropriate, and whether an exemption to Rule 502 should be granted to CenturyLink in the meantime.

COMMISSION DECISION

Should the Commission issue a Notice of Petition and Notice of Modified Procedure with a 28-day comment period, and a 14-day reply comment period, to process CenturyLink's Petition?



Weldon B. Stutzman
Deputy Attorney General

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