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**Phil Grate**  
Director Montana  
Regulatory and Legislative Affairs

August 27, 2014

Montana Public Service Commission  
Kate Whitney  
Division Administrator - Regulatory Division  
1701 Prospect Avenue  
Helena, MT 59620

**Hand delivered**

Re: *Docket No. D2013.11.78 IN THE MATTER OF the Petition of CenturyLink for Waiver, in Part, of 69-3-805(1), MCA*

Dear Ms. Whitney:

Transmitted herewith is a Joint Stipulation and Settlement Agreement dated August 12, 2014 in the above referenced matter (Settlement Agreement). The parties to the Settlement Agreement are Qwest Corporation d/b/a Centurylink QC and Montana Consumer Counsel.

Qwest Corporation and Montana Consumer Counsel respectfully request a hearing on this settlement agreement at the Commission's earliest convenience.

A handwritten signature in black ink that reads "Philip E. Grate".

Phil Grate  
CenturyLink

cc: Gary Duncan  
Montana Consumer Counsel

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

\* \* \* \* \*

IN THE MATTER OF the Petition	)	REGULATORY DIVISION
of CenturyLink for Waiver, in Part,	)	
of 69-3-805(1), MCA	)	DOCKET NO. D2013.11.78

**JOINT STIPULATION  
AND  
SETTLEMENT AGREEMENT**

This Joint Stipulation and Settlement Agreement (“Joint Stipulation”) is entered into between Qwest Corporation d/b/a CenturyLink QC and CenturyTel of Montana d/b/a CenturyLink (collectively “CenturyLink”) and Montana Consumer Counsel (“MCC”).

**INTRODUCTION**

On December 23, 2008 the Montana Public Service Commission entered final orders in the following dockets: D2008.1.6 [Order No. 6889n, Investigation into Qwest Rates]; D2005.6.105 [Order No. 6670d, Investigation into Universal Service Funds]; and D2006.10.143 [Order No. 6811j, Customer Complaint Docket] (“Final Order”). The Final Order approved Qwest Proposal for an Alternative Form of Regulation dated April of 2008 and modified November 3, 2008 (“amended AFOR Plan”).

Order 6889n set May 1, 2009 as the effective date for the amended AFOR Plan (“Plan Effective Date”). See Order No. 6889n, at p. 20, ¶ 2. The amended AFOR Plan provided that it will be effective for five years after the Plan Effective Date, or until May 1, 2014. In a Motion to Stay Proceeding filed October 31, 2013 (“Motion”), CenturyLink requested that the Commission stay any review of the amended AFOR Plan in Docket No. D2008.1.6, and that the existing AFOR remain effective, pending resolution of CenturyLink’s Petition in this docket.<sup>1</sup> The Motion also asked that the Commission, should it approve the Petition, would allow the AFOR to expire.<sup>2</sup>

**RECITALS**

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<sup>1</sup> Docket No. D2008.1.8, CenturyLink Motion to Stay Proceeding (“Motion”) (October 31, 2013).

<sup>2</sup> *Id.*

WHEREAS, on October 31, 2013 CenturyLink filed pursuant to Montana Code Annotated §69-3-805(2) a Petition for Waiver of Montana Code Annotated §69-3-805(1)(e) (“Petition”).

WHEREAS, the MCC intervened in this docket and caused to be filed on April 30, 2014 the written direct testimony of John W. Wilson that recommends the PSC grant the Petition subject to certain conditions that Dr. Wilson’s pre-filed testimony proposes.

WHEREAS, no other intervenor filed testimony in this docket.

WHEREAS, CenturyLink and MCC (collectively the “Parties”) agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding unless independently discoverable or lawfully offered for other purposes.

WHEREAS, the Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties’ entire agreement on all matters set forth herein and it supersedes any and all prior oral and written understandings or agreements, on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

WHEREAS, the Joint Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, CenturyLink and MCC hereby agree that upon the Commission’s approval of this Joint Stipulation, the Petition shall be deemed granted subject to the following conditions.

- 1. Geographic Deaveraging.** Neither Centurytel of Montana nor Qwest Corporation will geographically deaverage its prices for retail residential and business wireline services, including packages, otherwise under the jurisdictional authority of the the Montana Public Service Commission.
- 2. Customer-Specific Contracts.** CenturyTel of Montana and Qwest Corporation may negotiate and enter into individual customer based (ICB) contracts, with terms and

conditions tailored to the specific customer's needs so long as the proposed price is above relevant costs, consistent with the contracting provision in the previous Qwest AFOR.<sup>3</sup>

The companies are not required to file notice of these contracts with the Commission, but will make such contracts available to the Commission and Montana Consumer Counsel on request.

**3. Broadband Access.** In Docket No. D2005.6.105, Qwest entered into a settlement agreement with the Montana PSC Advocacy Staff, MCC and other parties regarding deployment of DSL technology to provide broadband service. It provided that Qwest would deploy DSL in 27 wire centers where it was not then deployed. The settlement agreement also provided that Qwest need not deploy DSL to six wire centers—Conrad, Fairview, Shelby, Sidney, Terry, and Wibaux—because customers had competitive options in these wire centers. In compliance with the settlement agreement CenturyLink deployed DSL in each of the 27 wire centers.

In Docket No. D2010.5.55, concerning the merger of Qwest and Centurylink, the Commission's Order No. 7096e provides:

The Merged Company shall spend a minimum of \$10 million over five years for broadband investment in Montana. The five year period will begin as of the Merger Closing Date. The \$10 million will be over and above the dollars required to be spent as part of the Qwest DSL commitment ordered in the Qwest Alternative Form of Regulation Docket No. D2008.1.6. The dollars shall be spent in the territories of both Joint Applicants. The priority for the broadband deployment is to serve underserved (1.5Mbps or less current availability) and unserved areas. However, the broadband expenditures are not limited to such areas. In the first year the applicants will report to the Commission their plans for year one of the investment. At the end of year one the applicants will report on the actual investments made in year one and the plans for year two, etc.

In a progress report to the Commission dated March 26, 2013, CenturyLink reported its broadband expenditures in 2011 and 2012 exceeded \$18 million.<sup>4</sup>

CenturyLink and MCC acknowledge that the FCC's federal high-cost support programs are undergoing a transition from support for voice service to support for broadband networks capable of providing voice and high speed internet services through the Connect America Fund ("CAF"). In CAF Phase I, the FCC replaced several legacy

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<sup>3</sup> For example, CenturyLink may negotiate individual contracts with business customers regarding special access or ISDN-PRI.

<sup>4</sup> Qwest report filed March 25, 2013 in Montana Public Service Commission Docket D2010.5.55.

high-cost support mechanisms provided to “price-cap” carriers with CAF Frozen High-Cost Support. The FCC claims that later this year, “price cap” carriers will be given the opportunity to accept CAF Phase II support in high cost areas based on detailed local cost estimates, calculated by the FCC’s cost model. While the CAF II rules have not been finalized, and are subject to a *Further Notice of Proposed Rulemaking* in WC Docket No. 10-90 et al, released on June 10, 2014, incumbent carriers ultimately must chose to accept or decline the offer of support for the high-cost locations they serve in a given state. If they decline, the high-cost subsidies will be made available and awarded through the CAF Phase II competitive bidding process.<sup>5</sup>

With the pendency of the CAF Phase II offer, this settlement agreement does not specify any particular DSL deployments or minimum broadband expenditures by CenturyLink in Montana. However, CenturyLink recognizes the importance of broadband in Montana and commits that regardless of whether or not it accepts the CAF Phase II offer, it will continue to expand the reach of its broadband service in Montana and will increase the broadband speeds it offers in Montana as sound financial and business practices permit.

**4. Service quality obligations unaffected.** CenturyLink will continue to be subject to applicable service quality rules promulgated by the Commission.

**5. Interconnection, resale, switched access and wholesale obligations unaffected.** CenturyLink’s obligations and agreements regarding wholesale services, including interconnection with other carriers, resale of services to other carriers, unbundled network elements, and switched access remain unaffected.

**6. Universal Service Support.** Since 2012, CenturyLink, as a price-cap carrier, has utilized \$1.075 million of CAF Phase I Frozen High-Cost Support monthly. On April 23, 2014 the FCC issued a press release explaining that price-cap carriers will be given the opportunity to accept CAF Phase II support in high cost areas based on detailed local cost estimates, calculated by the FCC’s cost model. Incumbent carriers will be required to accept or decline support for all entire high-cost locations they serve in a given state; if they decline, the subsidies will be made available and awarded through a Phase II competitive bidding process. On June 10, 2014, the FCC released a *Report and Order*,

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<sup>5</sup> Other providers and incumbents will be eligible to submit bids in the competitive bidding process.

*Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking* in WC Docket No. 10-90 et al. The FCC has requested comment on a number of issues, and the final CAF II rules have not yet been established.

At this time CTL does not know the final conditions of the CAF II offer and does not know if it will be able to accept CAF II funding in Montana. As stated in condition 2 above, regardless of whether or not it accepts the CAF Phase II offer, CenturyLink will continue to expand the reach of its broadband service in Montana and will increase the broadband speeds it offers in Montana as sound financial and business practices permit.

**7. Services left in tariff.** Consistent with this Agreement and in addition to the terms and conditions otherwise set forth herein, the following listed services will remain in tariff:

- Qwest Corporation's services provided under Qwest Corporation's Montana Exchange and Network Services Tariff
  - Section 4.6d(1) and (2) concerning Construction of Facilities Outside the Base Rate Area (subject to condition 10 of this Settlement Agreement);
  - Section 5.1.1 concerning List of Exchange Areas and Local Calling Areas unless the Company elects to make local calling area descriptions and maps available on its website;
  - Section 5.2.6 concerning Telephone Assistance Program;
  - Section 9.2 concerning Emergency Reporting Service and;
- CenturyTel of Montana's services provided under Montana's Tariff PSC Montana No. 12
  - Section A.4 of Schedule 1 concerning Low Income Telephone Assistance Program (Lifeline);
  - Schedule 13 concerning Line Extension Service (subject to condition 10 of this Settlement Agreement);
  - Schedule 31 concerning Emergency Communications Services and
  - Schedule M concerning Maps of Exchange and Base Rate Areas unless the Company elects to make local calling area descriptions and maps available on its website.

**8. Price Regulation.** Services left in tariff pursuant to this Agreement will continue to be price regulated. Rates and prices for these services may not be reduced below the cost of providing the services, unless otherwise ordered by the MPSC on its own motion and not on the motion of CenturyLink.

**9. Annual Reporting.** CenturyLink will provide an annual report on Montana competition for three years following a final order in this docket adopting this settlement agreement, so that the MCC and the Commission can evaluate how competition fares. The annual report will provide information that can be used to evaluate the status of competition in Montana. This report will utilize publicly available data from the FCC and other government agencies, as well as internal CenturyLink data. It is similar to a report CenturyLink agreed to provide to the Arizona Corporation Commission for three years after it relaxed pricing regulation in Arizona.<sup>6</sup>

The report will contain, at a minimum, the data described in sections A-E below<sup>7</sup>. In addition, CenturyLink may include other information to demonstrate the nature of competition in Montana.

A. *The percentage of consumers who have no landline voice connection as specified in the National Center for Health Statistics Report.*

Every six months, the National Center for Health Statistics (“NCHS”) provides estimates of the percentage of households in the United States that have “cut the cord” and have wireless telephones only. For the most recent time period available, January-

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<sup>6</sup> In Decision 73354, released on August 21, 2012, the Arizona Corporation Commission approved a settlement reached by CenturyLink, the Arizona Corporation Commission Utilities Staff (“Staff”), the Residential Utility Consumer Office (“RUCO”) and the Arizona Investment Council in Docket T-01051B-11-0378 (In the Matter of the Application of Qwest Corporation dba Century Link QC to Classify and Regulate Retail Local Exchange Telecommunications Services as Competitive and to Classify and Deregulate Certain Services as Nonessential). Section 2.3 of the Settlement Agreement states: “CenturyLink will file semi-annual reports with the Commission, Staff, and RUCO for a period of three years, commencing six months after the date of the Order Approving Settlement, setting forth data to be agreed with Staff and RUCO showing the state of competition in the State.” CenturyLink’s additional submissions are based on competitive reports, data and statistics, including but not limited to the National Center for Health Statistics Wireless Substitution Report, the Federal Communications Commission (“FCC”) Local Competition Report, and the FCC Internet Access Services Report.

<sup>7</sup> These data are derived from public sources, such as FCC reports. To the extent that the FCC no longer provides these data, CenturyLink will supply similar data from other sources as available.

June 2013, the NCHS reported that 39.4% of American homes had wireless service only.<sup>8</sup> The NCHS also periodically provides state specific wireless-only data. However, this study does not contain Montana-specific data due to a small sample size in the state. CenturyLink will report the national wireless-only data unless data for Montana becomes available.

B. *Wireless and Wireline connections, as set forth in the FCC’s Local Competition Report.*

The FCC releases its Local Competition Report every six months. This report shows the number of ILEC, non-ILEC and wireless voice connections in each state, including Montana. The table below provides the number (*in thousands*) of ILEC wireline, non-ILEC wireline and wireless connections in Montana for December 2010, December 2011 and December 2012, as well as the share percentages.<sup>9</sup>

	December 2010		December 2011		December 2012	
ILEC	327	25.3%	302	23.2%	282	21.3%
Non-ILEC	117	9.1%	137	10.5%	151	11.4%
Wireless	846	65.6%	862	66.3%	888	67.2%

The Competitive Report will provide this data annually for the next three years.

C. *Broadband availability in Montana, as set forth in the FCC Internet Access Services Report*

Every six months, the FCC releases its Internet Services Report, which shows the number of high speed internet (“HSI”) connections for each state, including Montana. The latest FCC Internet Services Report shows the growth of broadband, including the number of ADSL and Cable Modem connections. The chart below shows the change in

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<sup>8</sup> *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2013*, Centers for Disease Control and Prevention, National Center for Health Statistics, released December 2013, p. 1.

<sup>9</sup> *Local Telephone Competition: Status as of December 31, 2012*; Industry Analysis and Technology Division, Wireline Competition Bureau, November 2013, tables 13, 14 and 18.

ADSL and Cable Modem connections (in thousands) in Montana from 2010 to 2012.<sup>10</sup> Each of these subscribers has a high speed internet connection (at least 200 kbps) that can be used for VoIP service that is a substitute for traditional voice services.

	Dec. 2010	Dec. 2011	Dec. 2012
ADSL	119	122	122
Cable Modem	119	NA*	150
Total**	238	NA	272

\*Due to confidentiality concerns, the FCC did not provide cable modem numbers for 2011.

\*\*Does not include fiber or wireless connections.

The Competitive Report will provide this data, which delineates broadband trends (and thus the availability of VoIP), for three years.

D. *CenturyLink Access Line Data*

In the Competitive Report, CenturyLink will report residential and business access lines for the three year period.

E. *CenturyLink Basic Service Prices*

CenturyLink will describe any changes in stand-alone basic local exchange service prices for Qwest Corporation or CenturyTel of Montana in the Competitive Report. For example, if Qwest Corporation raises its basic rates in order to comply with the FCC's Urban Rate Floor, this change would be reported in the Annual Competitive Report.

**10. Montana Telephone Low-Income Assistance Program.** The Montana Telephone Low-Income Assistance Program (MTAP) credit will be included in the tariff at a rate of \$3.50 per month.

**11. Extension of Facilities.** CenturyLink agrees that charges for the Extension of Facilities will remain in its tariffs. However, the current language in Section 4.6.D.1 of the Qwest Corporation Exchange and Network Services Tariff and Schedule 13 of CenturyTel of Montana's Tariff PSC Montana No. 12 is inconsistent and obsolete. The parties agree that the following language for Extension of Facilities, which uses the

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<sup>10</sup> *High Speed Services for Internet Access: Status as of December 31, 2012*, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, December 2013, Tables 19 and 20.

language of Qwest Corporation tariffs in several other states, will be retained in the Montana tariff for both companies:

A. Where the Company extends its facilities on public highways or on private property in order to furnish main station service (first local access line per premises) to an applicant or applicants in territory where telephone facilities are not in place, the Company will provide facilities for each applicant based on cost from the nearest available capacity.

B. When the extension of facilities is required beyond the nearest point of capacity the Company will provide a construction charge allowance of \$675.00 for the extension or reinforcement of the facilities. The route established shall be determined by the Company. Charges for construction in shall be based on cost to the Company to place facilities. These charges are in addition to the regularly applicable rates and charges to establish service stated in the Company's tariffs and catalogs. Requests for lines that exceed the initial main station line will be billed at 100% to each customer requesting an additional line(s).

**12. Pre-filed testimony.** MCC will not offer into evidence its direct testimony filed April 20, 2014 and CenturyLink will not offer any of its testimony filed in this docket into evidence.

**13. Order approving Joint Stipulation.** This Joint Stipulation shall be deemed final and binding on CenturyLink and MCC when the Commission shall have approved it by order without material modification and such approval is no longer subject to administrative or judicial review.

**14. AFOR expiration.** The amended AFOR Plan the Commission approved in the Final Order in Docket No. D2008.1.6 will expire on the effective date of the Commission's approval of this Joint Stipulation.

**15. Hearing participation.** MCC and CenturyLink agree to support the Joint Stipulation at any hearing in this matter.

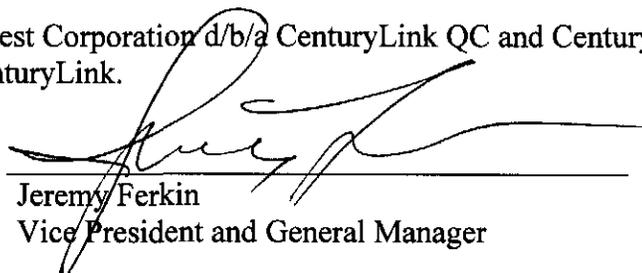
**16. Withdrawal; Commission Action.** In the event the Commission enters an order that does not satisfy the requirements of condition 11 above, CenturyLink and MCC

reserve the right to pursue all appropriate avenues of administrative review and appeal, including but not limited to seeking rehearing of this proceeding in front of the Commission, and no party shall be bound or prejudiced by the terms of the Joint Stipulation.

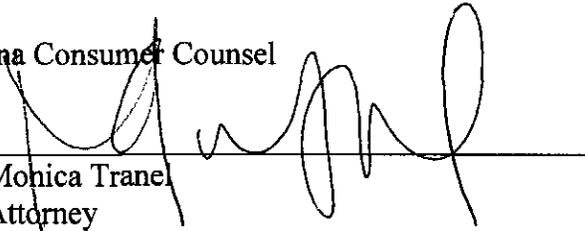
17. This Stipulation may be executed in counterparts and each signed counterpart will constitute an original document.

DATED this 25<sup>th</sup> day of August, 2014.

Qwest Corporation d/b/a CenturyLink QC and CenturyTel of Montana d/b/a CenturyLink.

By:   
Jeremy Ferkin  
Vice President and General Manager

Montana Consumer Counsel

By:   
Monica Trane  
Attorney