BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1354

In the Matter of	)
QWEST CORPORATION	)
Petition for Approval of Price Plan Pursuant to ORS 759.255	)

REBUTTAL TESTIMONY OF THE

CITIZENS' UTILITY BOARD OF OREGON

June 3, 2014

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In the Matter of QWEST CORPORATION Petition for Approval of Price Plan Pursuant to ORS 759.255	)	REBUTTAL TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON ***Redacted***

My name is Bob Jenks, and my qualifications are listed in CUB Exhibit 101.

I. Introduction

CUB responds to the Reply Testimony of CenturyLink, as well as the Opening Testimony of Commission Staff.

The Reply Testimony of CenturyLink Witness John M. Felz focuses on the issues of service quality, competition, pricing flexibility, and waivers of rules and statutes. The Reply Testimony of CenturyLink Witness Victoria Hunnicutt focuses on CenturyLink's retail service quality in Oregon. The general argument underlying the Company's testimony is, in the words of the Company, that "the pervasive competition throughout CenturyLink QC's service territory provides protection for customers for all areas, even those with more limited competition."[1,2] As such, the Company repeatedly argues, the Commission should not impose restrictive price regulation on the Company.

As discussed in its Opening Testimony, CUB could not disagree more. A competitive marketplace for voice services, should one even "ubiquitously" exist[3] in Oregon, simply cannot protect those who do not participate in it. Additionally, the Commission cannot ensure that the statutory guidelines for price plans are met—namely that any price plan must ensure that prices for telecommunications services are just and reasonable and that the plan is in the public interest—without price regulation and a public benefit offset to higher rates. CUB believes that the Oregon Plan proposed by Staff, with a modification to include a public interest offset, would be in the public interest, would protect vulnerable captive customers, and would ensure that the prices charged for telecommunications services are just and reasonable.

II. The Public Interest Standard

CUB's Opening Testimony set forth its position on the public interest standard as it applies to ORS 759.255. As stated in its Opening Testimony, CUB believes that the Commission lacks statutory discretion to approve a price plan that does not contain price regulation for basic residential phone service and other related services - a plan consistent with the Oregon Plan proposed by Staff. While CUB supports Staff's Opening Testimony with regard to the requirements that must be met pursuant to ORS 759.255 in order for a price plan to be deemed "in the public interest," CUB also argues for the

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[1] UM 1354 – CTL/200/Felz/29.

[2] CenturyLink QC's service territory represents approximately 84% of the Company's total retail access lines as of December 31, 2012. *See* UM 1354 – CTL/100/Felz/5, line 16 and UM 1686 – CTL/UTNW/100/Felz/6, line 17 (showing CenturyLink QC's access lines as of December 2012 to be 469,355 and CenturyTel/United's access lines to be 89,486 as of the same date).

[3] UM 1354 – Amended Petition of Qwest Corporation for Revision of Price Plan, pg 5 ("[I]ntermodal competitors are providing comparable services ubiquitously throughout CenturyLink QC's territory…")

inclusion of some additional benefit for customers in order to offset the Company's ability to raise rates - which, we note, the Company has attempted to disguise by dubbing it "pricing flexibility."

A. The Price Plan must contain price caps

As CUB stated in its opening testimony, ORS 759.255(1) provides the Commission with authority to "approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility."

In its current request to revise its price plan, the Company is asking the Commission to approve a plan that provides price regulation only for services that provide a mere [redacted]% of its revenues,[4] while the Company also seeks to limit the Commission's ability to regulate service quality.[5]

Under ORS 759.255(2), the standard for approval is whether the plan is in the public interest, considering such factors as whether it ensures prices that are just and reasonable. Contrary to the Company's assertions, the criterion for approval of a price plan is *not* whether the marketplace is competitive enough to self-regulate pricing.[6] While CUB agrees that some flexibility to increase prices may be reasonable, that flexibility cannot be limitless and still meet the requirements of ORS 759.255. In approving the Company's current price plan, the Commission itself stated:

> Unlike the original Qwest plan, which completely deregulated some services, under the terms of the Stipulation, every service under the Price Plan is subject to a price or rate increase cap, and these services remain

[4] UM 1354 – Staff/100/Hellebuyck/36.
[5] *See* UM 1354 – Staff/300/Brock.
[6] The appropriate forum to evaluate the impacts that competition should have on pricing is a proceeding in which the Company is seeking deregulation of its services, not one in which the Company is asking for approval of a price plan pursuant to ORS 759.255. If the Company wants the market to regulate prices in place of the Commission, it should make a filing pursuant to ORS 759.052.

> subject to the Commission's service quality standards and price increases subject to Commission Review.
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> ***
>
> We also note with approval the provisions for timely and effective Commission review and oversight of Qwest's performance under the Price Plan. These provisions will enable the Commission to measure Qwest's performance to Price Plan objectives, maintain excellent service quality, *review rate increases* and ensure the Price Plan continues to be in the public interest.[7]

Clearly, prices for basic residential phone service regulated by ORS 759.255 must be subject to price caps. If the core service in a price plan is not price regulated, then all other regulation is rendered meaningless.

B. There must be a public benefit offset

In our Opening Testimony, CUB argued that the Company is required to provide a public benefit offset for its proposed pricing flexibility under ORS 759.255.[8] In its Reply Testimony, the Company argues that a public benefit offset is not required pursuant to the price plan statute, and that the Company is "seeking additional pricing flexibility based on a demonstration that it operates in a competitive market and its pricing should be disciplined by the competitive marketplace and not regulation."[9] The Company adds that "requir[ing] CenturyLink QC [to] essentially 'buy' pricing flexibility through offsetting public benefits applies a requirement that is not contemplated by the Oregon statutes."[10]

The Company's argument is simply unsupported. The Company's current price plan is an example of a provider, pursuant to price plan regulation, being required to

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[7] OPUC Order No. 08-408 at 7 (emphasis added).
[8] UM 1354 – CUB/100/Jenks/4, lines 5-11.
[9] UM 1354 – CTL/200/Felz/24, lines 14-16.
[10] UM 1354 – CTL/200/Felz/24, lines 16-18.

provide public benefit offsets in exchange for more pricing flexibility. Specifically, in its current price plan, the Company agreed to provide $4 million in networking and project investments, including up to $2 million for a customer information center.[11] The Commission specifically recognized and praised the public benefit offset portion of the plan, stating that "[c]ustomers are also benefitted by the restrictions that the Price Plan imposed on Qwest with respect to packaging and bundling services, by the implementation of a service performance guarantee program *and by the establishment of an independent consumer information center*."[12]

Additionally, ORS 759.255 requires the Commission to approve a price plan that is "in the public interest." Raising prices (and relaxing service quality standards), with no other benefit to customers, is not "in the public interest." It is CUB's opinion that if the Commission approves the Company's proposed price plan, customers would actually be in a much worse position than they are today. Accordingly, as discussed more fully in the "CUB's Proposal" section below, CUB proposes that the Company be required to provide a public benefit offset of $1 million.

While Staff does not argue directly for a specific public benefit offset, Staff makes clear that its support of increased pricing flexibility is tied to increases in service quality and maintenance. Staff witness Mr. Hellebuyck states "[s]taff supports increased pricing flexibility *to the extent it is matched by an* ***increase*** *in service quality and provides for a better maintained system*."[13]

Finally, as stated above, the Company's argument that pricing constraints should be dictated by the market, rather than by the Commission, is inappropriate under ORS

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[11] OPUC Order No. 08-408 at 5.
[12] OPUC Order No. 08-408 at 7 (emphasis added).
[13] UM 1354 – Staff/100/Hellebuyck/29, lines 9-11.

759.255 and unpersuasive given that the very customers that price plan regulation is in place to protect are not part of the competitive marketplace. Competition starts with bundles, not stand-alone phone service. The remaining customers that subscribe to the Company's stand-alone residential phone service haven't entered into the competitive arena. Any relaxation of regulation should not be allowed to harm them.

III. The Company is Still a Participant in the Legacy ILEC Monopoly Market

Notwithstanding what CenturyLink's witness Mr. Felz states:

> "[t]he concept of a monopoly for telecommunications service is no longer valid. . . ."
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> * * * * *
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> "[t]he assertion by CUB that CenturyLink QC operates in a monopoly market and should be subject to monopoly era pricing controls is simply not borne out by the extent and impact of competition that is outlined in my Direct Testimony."[14]
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> * * * * * *
>
> "[t]he fact that there may be some small subset of customers that have few or no competitive alternatives for CenturyLink QC's voice services should not result in the application of restrictive pricing regulation for the company."[15]

The Company's emphasis on competition as a basis for its request to remove price caps, from virtually all of the services that it would provide pursuant to its proposed price plan,

[14] UM 1354 – CTL/200/Felz/16, lines 14-16.
[15] UM 1354 – CTL/200/Felz/16, lines 16-19.

is inappropriate. The basis for approval of a price plan is not competition. And, even if it was, even the Company concedes that there is not competition in all of its service territory.[16] The Company nonetheless continues to advocate for the Commission to ignore a subset of customers that it is legally required to protect and to instead grant the Company unfettered discretion to raise rates on captive customers because competition may exist in the Company's more urban wire centers.

CUB recognizes that the Company may now operate in a more competitive marketplace in a limited number of the geographic areas and with certain demographics of customers. However, the Company is still very much the only provider for traditional, residential voice service in much of its service territory.[17] It would, therefore, be inappropriate for the for the Commission to grant the rate deregulation the Company seeks for services that provide the vast majority of the Company's revenues.[18]

In addition, CUB is perplexed by the Company's argument that price caps on basic, residential voice service (and other related services) would be "restrictive pricing regulation" for the Company. The concept of price caps is not new—they are specifically required by the very statute that the Company *chose* to rely upon in asking the Commission for "pricing flexibility." As discussed in our Opening Testimony and herein, if the Company wants price deregulation, it should request it pursuant to the deregulation statute.

Mr. Felz also argues that "the regulatory rate structures based on implicit subsidies that worked in a monopoly environment are being eroded with continued

[16] CUB notes that this means, that by definition, the Company has a monopoly on its service offerings in those areas.
[17] *See* UM 1354 – CUB/100/Jenks/6-12.
[18] CITE (95% of revenues)

expansion of competitors into CenturyLink QC's markets."[19] First, the Company misunderstands CUB's argument. CUB is not advocating for the same regulatory rate structures that worked in the previous era of monopoly telecommunications. CUB is simply arguing that the assets that customers paid for during the monopoly era—the very assets that are being used to serve customers in the Company's allegedly more competitive landscape—should remain dedicated to legacy customers.[20] Even in this more competitive landscape, the Company still has a share of legacy customers who continue to rely on and support the infrastructure that they paid for as monopoly customers.[21]

IV. The Role of the Competitive Marketplace

The Company over-emphasizes the geographic differences among its customers and does not adequately or appropriately consider consumer market segments based on age demographics.[22] While CUB agrees that important *geographical* differences are found among the Company's customers, the *demographic* differences among CenturyLink's customers are equally, if not more, important. It is true that younger generations are "cutting the cord" and may be more willing to view cellular and/or VoIP service as viable alternatives to traditional phone service, but this is not equally true of the Company's elderly customers - CenturyLink itself concedes this point.[23] Elderly customers tend to be price takers, meaning that they will pay the increased prices without vetting other voice service options—they are captive to CenturyLink. Many of these customers signed up for phone service in the days of fully regulated telephone

[19] UM 1354 – CUB/200/Felz/16, lines 10-12.
[20] UM 1354 – CUB/100/Jenks/4-6.
[21] *See* UM 1354 – Staff/400/Moore/9-14.
[22] UM 1354 – CTL/200/Felz/14-15.
[23] UM 1354 – CTL/200/Felz/15, lines2-3.

monopolies and have never considered the alternatives that seem "*ubiquitous*" for younger people.

The Company also argues "the percentage of customers who have chosen to [cut the cord] is so significant that it cannot be ignored."[24] But no party has advocated that the Commission simply ignore the fact that the Company's line counts are diminishing. CUB, Staff and other parties have been receptive to the Company's argument that it requires some ability to raise prices. CUB agrees with Staff's statement that "it may be appropriate to allow the Company increased pricing flexibility to some extent to address financial challenges the Company is currently facing including the requirement to make investments to maintain its infrastructure despite significant losses in line counts."[25] This does not mean, however, that unfettered discretion to raise prices on services that provide [redacted]% of the Company's revenues,[26] is the appropriate answer.

Explicit pricing safeguards should not be eliminated for CenturyLink's customers who have not entered the competitive landscape—the very customers who take service pursuant to the Company's price plan. The starting point for any change in the amount of regulation needed (or not needed) due to an evolving competitive landscape should be based on the existence of people that rely and deserve the pricing protections afforded by price cap regulation—not the mere existence of a market segment of customers that are largely integrated with the competitive marketplace. CenturyLink has deregulated service offerings to which these customers may choose to subscribe; the purpose of a price plan is to serve as an alternative form of price regulation that does not take into account the return on investment of the utility. If the Company wishes to rid itself of all

[24] UM 1354 – CTL/200/Felz/15, lines 4-5.
[25] UM 1354 – Staff/100/Hellebuyck/28, lines 2-6.
[26] UM 1354 – Staff/100/Hellebuyck/36.

pricing regulation, it could request to do so under ORS 759.052, which sets forth the criteria that the Commission would use to examine a request for deregulation. While CUB does not believe that the criteria for deregulation have been met, a filing under that statute would be the appropriate place to evaluate whether price deregulation is appropriate for basic residential phone service and related services. In short, it's not that less regulation is needed over time as the voice service landscape becomes more competitive, it's that over time, fewer people will rely on the safeguards of price plan regulation because more customers will have entered the competitive market. But that regulation is still important and necessary for the customers that remain.

Although Staff argues at this time, that the Commission should adopt a price plan for the Company that contains safeguards, such as price caps, to ensure that the plan is in the public interest, Staff also states that "[t]he Commission should take appropriate, measured steps to modify or even eliminate those mechanisms altogether should competition eventually prove to be robust and complete enough to provide adequate pricing safeguards for all Oregonians."[27] This concerns CUB. CUB agrees that the Commission should adopt a price plan that contains price caps for basic residential voice service and related services consistent with the Oregon Plan proffered by Staff. CUB does not agree that the Commission should move in the future toward eliminating explicit pricing safeguards for customers and rely solely on competition to provide adequate pricing safeguards as competition becomes more robust. CUB firmly believes that such a movement would not be in the public interest.

To support its arguments the Company argues that the consequences of price deregulation for basic residential voice service in California are an anomaly, and that

[27] UM 1354 – Staff/100/Hellebuyck/8.

what is being seen in California is not consistent with the effects seen in two other states one in the Midwest and the other on the East Coast.[28] What CenturyLink has failed to provide, however, is evidence that what happened in California will not also happen in Oregon. California, of all states, should have had the vigorous competition necessary to protect customers. Furthermore, Verizon did not abandon its FiOS there, as it did in Oregon. If California's residential voice service customers were harmed because the competitive marketplace was not keeping rates in check, there is no reason to think that Oregon's residential service customers would not suffer a similar fate.

V. CUB's Proposal

CUB is supportive of the Oregon Plan as proposed by Staff, with the exception that CUB further advocates for a specific commitment in the form of a public benefit offset. Specifically, CUB proposes that the Company be required to invest $1 million, which is approximately equivalent to $2 per access line based on 2012 numbers.[29] CUB is open to different ideas about how the $1 million would best benefit CenturyLink's customers, and does not have a specific proposal at this time. CUB believes that the Company is better positioned to make specific recommendations in this regard, but notes that examples from the Company's previous price plan include incremental improvements to the network and funding for a consumer information center (which later became CUB Connects). Frontier's stipulated proposed price plan also provides examples of specific public benefit offsets, benefit offsets through which Frontier has agreed to network and project investments that include completion of the South Coast Diversity project, replacement of the existing DCM-24 equipment at Swedetown,

[28] UM 1354 – CTL/200/Felz/22.
[29] UM 1354 – CTL/100/Felz/5, line 16.

Clatskanie, and a contribution to CUB Connects.[30] CUB notes that Frontier's ability to complete the South Coast Diversity project is dependent on CenturyLink's completion of a new meet point in Eugene, OR.[31] CUB's proposal is a reduction to the specific public benefits required of the Company in its current price plan, but still provides customers with a significant and appropriate benefit in light of reduced line counts and the more competitive marketplace. CUB additionally advocates that the Company be required to file proposals with the Commission stating how its $1 million investment would be made. These proposals would then be vetted and approved by the Commission, or its designees, after input from stakeholders including CUB.

[30] UM 1677 – Joint Parties Stipulation with Exhibit A, Exhibit A at 7.
[31] UM 1677 – Joint Parties Stipulation with Exhibit A, Exhibit A at 7.

UM 1354 – CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of June, 2014, I served the foregoing **REBUTTAL TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1354 upon each party listed in the UM 1354 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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