ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 5, 2017

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: November 22, 2017

TO: Public Utility Commission

FROM: Stephen Hayes

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck

SUBJECT: QWEST CORPORATION, UNITED TELEPHONE COMPANY OF THE NORTHWEST, CENTURYTEL OF OREGON, and CENTURYTEL OF EASTERN OREGON: (Docket No. UM 1908) Commission action on petition under Oregon Revised Statute (ORS) 759.058 regarding CenturyLink's petition to deregulate certain telecommunication services pursuant to ORS 759.052.

STAFF RECOMMENDATION:

Staff recommends that the Commission deny the request of Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon (collectively, CenturyLink or the Companies) for deregulation of certain telecommunications services pursuant to ORS 759.052, without prejudice, as filed in the Company's Joint Petition for Approval of Price Plan Pursuant to ORS 759.255 and Partial Exemption Pursuant to ORS 759.052, and direct CenturyLink to file within 30 days a revised version of its petition for a price plan under ORS 759.255, removing the portions that rely on ORS 759.052. In the alternative, Staff recommends that the Commission suspend and further investigate CenturyLink's Petition for Partial Exemption Pursuant to ORS 759.052 for a period not to exceed eight months and order CenturyLink to file within 15 days a revised petition under ORS 759.052 in a separate docket that clarifies the services it wishes to be exempt from regulation.

DISCUSSION:

Issue

Whether CenturyLink's petition for exemption of certain telecommunications services from regulation under ORS 759.052, which is combined as part of a joint petition for a

price plan under ORS 759.255, should be denied, or in the alternative, suspended for further investigation for a period not to exceed eight months.

Applicable Rule or Law

ORS 759.052 provides the Commission with authority to exempt telecommunications services from regulation. Exemption can be permissive or mandatory. Under ORS 759.052(1), the Commission may exempt those telecommunications services from regulation for which it finds that: price or service competition exists, the services are subject to competition, or the public interest no longer requires full regulation of the services. The Commission may attach reasonable conditions to an exemption made under ORS 759.052(1). Under this type of deregulation, ORS 759.052(1)(b) permits the Commission to later amend or revoke its order after notice and a hearing under ORS 756.568.

Under ORS 759.052(2), the Commission shall exempt a telecommunications service from regulation if, in response to a petition by a telecommunications utility, the Commission finds that both price and service competition exist. This type of exemption does not allow for the Commission to attach conditions. Under this type of deregulation, ORS 759.052(4) permits the Commission to later reregulate a service if, after notice and a hearing, it determines that an essential finding on which deregulation was based no longer prevails and reregulation is necessary to protect the public interest.

Petitions for deregulation carry a statutory deadline. Within 60 days of the filing of an ORS 759.052 petition, ORS 759.058 requires the Commission to determine the appropriateness of the petition or determine that further investigation is necessary and suspension of the petition is warranted. The Commission may initially suspend operation of the filing for up to five months beyond the initial 60-day period; this suspension may be extended for an additional three months for good cause.

OAR 860-032-0025 sets forth the requirements for a petition to exempt services from regulation. Both permissive and mandatory exemption generally require notice and a hearing, unless the Commission waives the hearing requirement under OAR 860-032-0035(7).

Analysis

Background
The Companies currently operate in Oregon pursuant to price plans that were approved under ORS 759.255.[1] These price plans initially had three-year terms, and the

[1] Docket No. UM 1354, Order No. 14-346; Docket No. UM 1686, Order No. 14-347.

Companies exercised an option to extend the terms of the plans to a fourth year on the condition that the Companies would petition the Commission for a new form of regulation before the end of the third year of the plans.

On October 23, 2017, after the Commission extended the Companies' deadlines to petition the Commission for a new form of regulation,[2] CenturyLink filed this joint petition for a new price plan under ORS 759.255 and partial exemption from regulation under ORS 759.052.

ORS 759.058 requires the Commission to take action on a petition filed pursuant to ORS 759.052 within 60 days. In this case, the Commission is required to make a determination on the Companies' petition prior to December 22, 2017.

Staff's Concerns Regarding the Joint Petition
Staff has reviewed the joint petition and identified several reasons why the Commission should deny without prejudice, as currently filed in Docket No. UM 1908, CenturyLink's request for partial exemption from regulation pursuant to ORS 759.052. The petition is not consistent with ORS 759.052 and OAR 860-032-0025 and does not make correct use of the statute. Combining the filings in the manner that CenturyLink has done masks a deregulation petition in a petition for a price plan and does not provide adequate and clear notice to the public of the potential scope of deregulation. The petition also does not sufficiently identify the services that CenturyLink seeks to deregulate and is missing information necessary to enable Staff to assess and make a recommendation to the Commission on the statutory criteria. This compounds the notice problem in that the petition does not give the public adequate and clear notice of which specific services may be deregulated and on what basis.

1. Inconsistency with ORS 759.052 and OAR 860-032-0025
ORS 759.052 is the statutory mechanism to exempt specific services from regulation based on an adequate showing (in some cases with reasonable conditions). CenturyLink's petition does not meet the statutory requirements set forth in ORS 759.052, or OAR 860-032-0025, which implements the statute. Rather, CenturyLink appears to be using ORS 759.052 as a device to selectively waive individual statutes that are not waivable when the Commission approves a price plan under ORS 759.255.[3] But CenturyLink asserts that it meets the same criteria as would

[2] Docket No. UM 1354, Order No. 17-380; Docket No. UM 1686, Order No. 17-381.
[3] ORS 759.255 provides that the Commission can waive certain statutes, but does not include a waiver of the requirements for a petition to exempt services from regulation pursuant to ORS 759.052.

apply to full deregulation.[4] This approach misuses the exemption statute and results in a lack of clear notice to the public of the potential scope of deregulation. This problem is especially pronounced because CenturyLink has situated its request for partial exemption from regulation in a petition for a price plan under ORS 759.255, which is a form of price regulation—these are incompatible concepts to combine in one petition.

The joint petition also does not include certain elements required by the Commission's rules and that are necessary to the Commission's analysis under ORS 759.052. Specifically, it does not meet the requirements of OAR 860-032-0025(4)(d), the rule that requires a petition for exemption from regulation to include documentation that demonstrates the criteria for deregulation. The joint petition does not include documentation of the availability of specific services by alternative providers in CenturyLink's markets, other than very general slides listing broad categories of technologies and showing the logos of selected providers. And despite CenturyLink's assertion that its petition describes service *and* price competition,[5] the joint petition does not include information about the price of the services that it would have the Commission consider substitutable at comparable rates and under comparable terms and conditions, as would be needed to satisfy ORS 759.052(3) and OAR 860-032-0025(3). The petition also does not include documentation of the extent to which alternative providers' services are functionally equivalent to the services that CenturyLink seeks to deregulate, information about economic or regulatory barriers to entry for those services, revenue and cost information, or information from and regarding joint telecommunications providers. *See* OAR 860-032-0025(4)(d)-(g).

2. Inadequate Specification of Services

In addition to the concerns raised above, Staff finds that the joint petition also lacks sufficient specificity with respect to the services that CenturyLink seeks to deregulate.

A petition filed pursuant to ORS 759.052 typically specifies the telecommunications services that are the subjects of the petition. For instance, prior petitions have sought relief with respect to Voice Mail,[6] Trouble Isolation Charge,[7] and individually identified billing and collection services contained in a specific price list.[8] When Qwest Corporation sought to deregulate its business service offerings in Oregon, it attached a list of the services it sought to exempt from regulation; the subsequent order granted the

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[4] *Compare* Joint Petition at 18 (stating that "both service and price competition exist for [CenturyLink's] voice services"), *with* ORS 759.052(2) (requiring the Commission to exempt a telecommunications service from regulation if it finds that both price and service competition exist).
[5] Joint Petition at 18.
[6] Docket No. UX 32, Order No. 11-420.
[7] Docket No. UX 31, Order No. 07-139.
[8] Docket No. UX 30, Order No. 06-238.

petition in part and denied it in part, addressing services individually based on Qwest's showing.[9]

Specific identification of services is necessary for the Commission to conduct the required analysis. Prior to making the findings required for exemption of a service from regulation, ORS 759.052(3) and OAR 860-032-0025(3) require the Commission to consider: (a) the extent to which services are available from alternative providers in the relevant market; (b) the extent to which the alternative providers' services are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions; (c) existing economic or regulatory barriers to entry; and (d) other factors deemed relevant by the Commission.

CenturyLink's pending joint petition requests exemption with respect to its "voice services."[10] Without a more specific identification of the services to which CenturyLink is referring, its petition does not include information necessary to inform Staff's investigation and review of the above criteria, which is required under the statute and rule. Nor does it give adequate notice to the public of which of CenturyLink's services may be deregulated and on what basis.

Conclusion

For the reasons explained above, Staff recommends that the Commission deny CenturyLink's petition for partial exemption pursuant to ORS 759.052. Staff notes that the denial of the petition under ORS 759.052 would be without prejudice to refiling a complete and compliant petition under the same statute in a separate docket at any point in the future. Therefore, denying the ORS 759.052 portion of this petition now will not prevent CenturyLink from making its case in an appropriate filing with adequate detail and support. To clarify the record going forward, Staff suggests the Commission direct CenturyLink to file a revised version of its petition for a price plan under ORS 759.255, removing the portions that rely on ORS 759.052, within 30 days.

Alternatively, at a minimum, the Commission should suspend and investigate this filing for eight months under ORS 759.058 in order to permit the development of an adequate record to enable the review of the petition against the correct statutory criteria. This process would be substantially complicated by the dearth of information and lack of clarity provided by the Companies in the original filing; CenturyLink would need to revise its filing to clarify which services it seeks to exempt, provide supporting documentation, and separate its petitions to solve the problems identified above. Staff believes that

[9] Docket No. UX 29, Order No. 06-399.
[10] Joint Petition at 18.

these reasons support a finding of good cause under ORS 759.058, and support extension for the full statutory eight months.

PROPOSED COMMISSION MOTION:

Deny CenturyLink's request for deregulation of certain telecommunications services pursuant to ORS 759.052, without prejudice, as filed in the Company's Joint Petition for Approval of Price Plan Pursuant to ORS 759.255 and Partial Exemption Pursuant to ORS 759.052, and direct CenturyLink to file within 30 days a revised version of its petition for a price plan under ORS 759.255, removing the portions that rely on ORS 759.052.

ALTERNATIVE PROPOSED COMMISSION MOTION:

Suspend and further investigate CenturyLink's Petition for Partial Exemption Pursuant to ORS 759.052 for a period not to exceed eight months, and order CenturyLink to file within 15 days a revised petition under ORS 759.052 in a separate docket that clarifies the services it wishes to be exempt from regulation.