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July 3, 2020

Oregon Public Utility Commission
By Email

Re: HB 3065 COLR Investigation – Workshop #4 Comments

Dear Commissioners and Commission Staff:

The carrier of last resort obligation has its early origins in the concept, and ultimately the regulation of, common carriage on the railways and mail carriage. The COLR was originally a common law obligation and was later codified as a utility service obligation for electricity and telephone service providers. The COLR is a component of the regulatory compact:

> Effectively, regulation constitutes an agreement between a utility and the government: the utility accepts an obligation to serve in return for the government's promise to approve and allow rates **that will compensate the utility fully for the costs it incurs to meet that obligation**. This implied agreement is sometimes called the regulatory compact.[1]

Lazar explains that the compact (or "contract" as some call it), and as a consequence the COLR, became necessary because the market does not necessarily operate to the benefit of consumers when the utility is a monopoly: "The need for regulation of utilities arises primarily from the monopoly characteristics of the industry."[2] As demonstrated in the attached data, the Oregon market could not be further from a monopoly.

Competition for telecommunications services in Oregon is robust, with a large majority of exchanges having multiple wireline and wireless providers offering ubiquitous coverage. And while it is true that a few rural exchanges do not have the same level of competition, most rural areas do have at least two alternatives. Although data on some metrics in rural areas is difficult to find, CenturyLink believes, based on the substantial market share loss in nearly every exchange in the state (except for a select few like Crater Lake), that there are indeed competitive providers throughout Oregon. Furthermore, there at least two satellite providers offering voice and broadband internet service throughout Oregon, including Viasat, which the Commission recently designated as an Eligible Telecommunications Carrier.

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[1] Lazar, J. (2016). Electricity Regulation in the US: A Guide. Second Edition. Montpelier, VT: The Regulatory Assistance Project. Retrieved from http://www.raponline.org/knowledge-center/electricityregulation-in-the-us-a-guide-2.

[2] Id.

The lack of a guaranteed monopoly means that the Commission can no longer ensure that the incumbent earns a reasonable rate of return in exchange for the cost of regulation, including the COLR. This outcome was recognized way back in 1996 by Sidak and Spulber when they explained:

> In return for assuming an obligation to serve and charging not more than "just and reasonable" prices on a nondiscriminatory basis, the utility was guaranteed a franchise protected by entry regulation and the opportunity to earn income sufficient to recover, and to earn a competitive rate of return on, its invested capital.
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> When the state maintains regulatory obligations while it simultaneously eases entry restrictions, existing utilities encounter costly competitive disadvantages, known as incumbent burdens. Regulators typically require public utilities to provide universal service at a fixed price, regardless of the true cost of service; to act as the carrier of last resort; or to employ production processes mandated by regulators that do not lead to minimization of cost but serve other social objectives, such as use of renewable but more costly fuels. In addition, regulation denies the public utility the pricing flexibility of the entrant, which places the utility at a competitive disadvantage. New entrants into regulated markets, of course, first target those customers whom regulators require the regulated firm to charge prices exceeding cost so that other customers may be charged prices below cost. Furthermore, new entrants may be allowed to avoid regulations that thwart the use of the least-cost production technology and in that sense may be more efficient producers than the incumbent public utility. As a consequence, when the state removes entry regulation, it will jeopardize the financial solvency of the public utility unless it simultaneously allows the utility to "rebalance" its rate structure to eliminate the implicit subsidies and unless the costs of incumbent burdens are either shared by all firms in the market or explicitly reimbursed by some third party.
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> In short, when the state removes entry regulations, it will jeopardize the financial solvency of the regulated public utility unless it simultaneously allows that utility to "rebalance" its rate structure to eliminate the implicit subsidies and unless the costs of incumbent burdens are either shared by all firms in the market or explicitly reimbursed by some third party. In actuality, however, federal regulatory agencies and state public utility commissions are allowing entry into regulated network industries before rates are rebalanced and special-service obligations borne by the incumbent public utility are financed by some other means.[3]

Unfortunately, rates in Oregon were never rebalanced in order to adequately solve the problem and state USF funding has decreased, all the while competitors have cherry picked the incumbent's most profitable customers – the ones whose rates subsidized uniform state-wide

[3] Deregulatory Takings and Breach of the Regulatory Contract, 71 N.Y.U.L Rev. 851 (https://www.criterioneconomics.com/gregory-sidak.html)

rates, which in high-cost areas are well below cost. CenturyLink believes that left unresolved, this may constitute a taking under the 5th Amendment.

The problems associated with regulating a non-monopoly provider as if it were require a solution. CenturyLink is not suggesting an immediate and wholesale departure from the COLR obligation in Oregon. We do believe revocation of the obligation is certainly justified given the prevalence of competition, the collapse of the regulatory compact, and the diminished Oregon USF. However, CenturyLink would support a transition that reduces the COLR over several years supported by a combination of competition, incentives for broadband (and therefore VoIP) deployment, rebalancing of rates in high cost areas, and subsidies for low-income customers is appropriate. Such a transition would ensure adequate, affordable voice telecommunications service to the very small number of Oregonians who currently only have one choice for voice service. In addition, satellite voice service is ubiquitous, functionally equivalent, and can be provided at fractions of the cost as compared to most of CenturyLink's high-cost customers. It must be deemed as a viable competitive alternative, which would be consistent with the Commission's recent certification of Viasat as an ETC.

The Commission has been asked by the legislature to either provide appropriate relief through the administrative process or to provide a recommendation for legislative changes to the extent the Commission has insufficient statutory authority. CenturyLink believes that Commission currently has insufficient tools to both provide meaningful COLR relief. And while satellite service is clearly a viable voice alternative, additional subsidies for low-income customers may be necessary to deliver that service at current prices offered by CenturyLink and other incumbents. Therefore, CenturyLink urges the Commission to provide a plan to the legislature to advance real COLR reform.

Thank you for the opportunity to comment and for the Commission's time and consideration.

Sincerely,

Tre Hendricks
CenturyLink

RESPONSES TO COMMISSION QUESTIONS

1. If COLR relief were granted, what measures could be employed to protect customers whose individual circumstances and needs may impact their access to and usage of telecommunications services, including low-income customers? For example, what measures could be used to protect new and existing customers in areas where there are no service alternatives, or more costly service alternatives?

   First, the question assumes that providers would abandon services in these areas if COLR relief were granted. As experienced in other states where COLR relief has been provided, that simply is not the case. The question also presumes that no replacement for COLR could be crafted. In Colorado for example, the legislature granted COLR relief in conjunction with broadband funding – the COLR was eliminated in areas where either the incumbent or a competitor took funding and built out broadband. This accomplished the dual goal of reducing burdensome, competitively unjustified, and underfunded regulation, while also ensuring that customers received state of the art services on new, mostly fiber-based networks. Customers have not lost access, instead they have seen significant improvements in their service.

   With respect to cost, broadband funding could be used to defray some of the higher costs associated with broadband vs POTS, which is held well below both actual economic cost and market prices in high cost areas. Because incumbents now have market share in urban areas dipping in some places into the double and possibly even single digits, they cannot charge customers at higher rates that historically provided implicit subsidies to maintain artificially low prices in higher cost areas. And competitors have taken more than half of the market in almost every exchange in Oregon, and in many cases as much or more than two-thirds of the market even in high cost areas. This is unsustainable and has been a significant contributing factor in incumbent providers around the country declaring bankruptcy – Windstream, Frontier, Hawaiian Telecom, Otelco, and Fairpoint, to name a few.

   Moreover, satellite providers now offer voice (and broadband) service throughout Oregon. While the prices for satellite-based services are higher than for wireline services, the prices for those services remain affordable for most without the need to control prices artificially (it is important to note that the Commission has designated a satellite ETC in Oregon). Also, in Oregon subsidies are available to defray the cost of service for low-income customers, including Lifeline and OTAP. Because providers cannot increase prices due to competition without further eroding an already very low market share in their few still profitable areas, there are two ways for ILECs to keep prices low and maintain and increase availability of services that customer really want in high cost areas – provide subsidies to low income customers and where costs are above prices charged, provide subsidies to providers to ensure their solvency. Other options include continuing to facilitate competition by funding broadband (and consequently voice service) deployment and allowing for increases in prices in high cost areas to better reflect the actual cost to provide service.

2. If COLR relief were granted, what measures could be employed to protect customers whose geographic location may impact their access to and need for various telecommunications services? Please include examples of how to ensure that customers living in low population density areas will have access to high quality, reliable telecommunications services, even if those services may differ from those provided in high population density areas.

For purposes of this discussion, we provide an answer based on the fact that the Commission only regulates voice services. In addition, the functionality of services does not differ between rural and urban areas – CenturyLink uses the same technology in rural areas as it does in urban areas. The elimination of the COLR would not change that. As noted above, there are a number of options to ensure high cost areas continue to receive voice service, and get access to what customers really demand – high speed access to the internet.

For the remaining questions, please see attached documentation. The data does not precisely answer all the specific questions, but does provide some answers and is also instructive generally.

3. Provide citations, links, and references to third-party research or data sources and studies indicating the incidence of residential customers with access at their domicile to fewer than two of the following terrestrial-based service alternatives:

    a. Telecommunications services provided by a facilities-based competitive local exchange carrier;
    b. Voice service offered via interconnected Voice over Internet Protocol; or
    c. Voice service offered by a cellular communications service.

4. Provide citations, links, and references to third-party research or data sources and studies indicating the incidence of residential customers with access at their domicile to two or more of the following terrestrial-based service alternatives:

    a. Telecommunications services provided by a facilities-based competitive local exchange carrier;
    b. Voice service offered via interconnected Voice over Internet Protocol; or
    c. Voice service offered by a cellular communications service.

5. Provide citations, links, and references to third-party research or data sources and studies indicating the relative comparability of voice service offered by wireless Internet service providers and satellite providers.

6. Provide citations, links, and references to third-party research or data sources and studies providing information regarding the urban-rural and urban-urban divide and/or documentation of coverage holes in cellular coverage.

7. Provide citations, links, and references to third-party research or data sources and studies relating to landline dependency in low population density areas.

8. Provide citations, links, and references to third-party research or data sources and studies covering drivers for adoption of services other than ILEC wireline telecommunication services.

9. Provide citations, links, and references to third-party research or data sources and studies covering the adoption of services other than ILEC wireline telecommunication services by low income households and senior citizens.