

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

IN THE MATTER OF CenturyLink QC's)	REGULATORY DIVISION
Service Quality and Its Response to Notice)	
of Commission Action in Docket N2014.3.38,)	DOCKET NO. D2014.11.91
Including Petition for Waiver of Admin. R.)	
Mont. 38.5.337197)(b))	
)	
IN THE MATTER OF the Request of Staff of)	
the Montana Public Service Commission for)	DOCKET NO. N2014.4.38
CenturyLink Service Quality Information)	

CENTURYLINK QC's BRIEF IN
RESPONSE TO REQUEST FOR HEARING

1.

Qwest Corporation d/b/a CenturyLink QC ("CenturyLink QC"), by and through counsel undersigned, submits this *Response to Request for Hearing* of the Missouri River Residents for Improved Telecommunications Service ("Missouri River") to the Montana Public Service Commission ("Commission").

BACKGROUND

2.

Missouri River filed a Petition to Intervene on December 3, 2014. The Commission granted intervention to Missouri River on December 17, 2014. Missouri River makes a number of unsubstantiated claims in their Petition to Intervene regarding

the service that CenturyLink QC provides to them. The Commission has, to date, taken no evidence regarding those claims and Missouri River has offered none.

3.

On January 21, 2015, Missouri River filed its request for hearing, in which they asked the Commission to set a prehearing conference, "one purpose of that prehearing conference be to establish a hearing date for the purpose of receiving in evidence information already supplied by CTL-QC in this proceeding." *See Request for Hearing*, at ¶ 4. Missouri River alleges that evidence exists that is a "sufficient basis to find CTL-QC in violation of the PSC's service quality rules, and to determine an appropriate monetary penalty for CTL-QC's provision of inadequate service." *Id.*

4.

On February 12, 2015, the Commission held a scheduling conference, which all parties, including Missouri River, attended. On February 23, 2015, the Commission established a schedule for the remainder of the proceeding, including briefing of Missouri River's request, discovery, the filing of CenturyLink QC's *Repair Service Improvement Plan*, testimony and a hearing. *See Procedural Order*, at p. 2.

ARGUMENT

I. Missouri River' Request for Hearing has been mooted by the procedural schedule adopted by the Commission

5.

Missouri River requests for a prehearing conference and a separate hearing to consider penalties is mooted by the schedule the Commission adopted on February 23. The Commission granted in its Procedural Order nearly all the relief that Missouri River seeks, including a schedule for serving discovery and introducing evidence in the form of testimony and exhibits, the scheduling of a prehearing conference and the scheduling of a hearing, which is sufficient to provide Missouri River with an opportunity to introduce evidence of the service issues it alleges in its Petition to Intervene and raise arguments pertinent to that evidence. The remaining relief that Missouri River seeks, assuming it has standing to do so, is whether penalties are appropriate for alleged rule violations. Even assuming Missouri River could seek such relief, and that penalties are assessed, the service issues it raises in its Petition to Intervene are utterly unaffected by whether or not penalties are assessed and, if so, whether they are assessed in May or June rather than in August or September.

II. Holding two hearings would be inefficient and would not result in more expedited resolution of Missouri River's alleged issues

6.

The issues involved in CenturyLink QC's Request for Waiver, plan for remediation, and the application of the rule to determine whether penalties are appropriate are inextricably linked and should be considered in the same hearing. The Commission cannot determine whether penalties should be applied without first deciding whether and to what extent the rule should apply to CenturyLink QC in the first instance; to do so would be an inefficient use of the Commission's and the parties' resources.

7.

Moreover, an initial hearing on penalties without consideration of other issues would not advance the interests expressed by Missouri River – to improve the quality of their service which they allege does not meet service standards. Imposing penalties before the Commission reviews CenturyLink's *Repair Service Improvement Plan* and its request for a waiver of the ARM 38.5.3371(7) would not result in a faster consideration of the service quality allegations that underlie its intervention. As Missouri River must know, penalties are punitive in nature. They are not intended to be remedial and will not serve to accelerate any service remediation. Missouri River is not the only

community in Montana that receives CenturyLink QC service and its interests cannot, and should not, be dealt with in a vacuum.

8.

Missouri River will no doubt claim that the schedule established by the Commission will not provide them with timely relief and that is why the Commission should establish an earlier and separate hearing from the one referenced in the Commission's procedural order. This begs the question, however, of what harm Missouri River has incurred. Missouri River claims in its Request for Hearing that they have "experienced extensive and persistent problems with CTL-QC service." *Id.*, at ¶ 7. But that claim bears no relationship to the relief they request – i.e. that the Commission assess penalties on CenturyLink QC for allegedly violating ARM 38.5.3371(7). And to determine harm, the Commission must have an opportunity to review the facts that purportedly support those claims. However, Missouri River has submitted no evidence whatsoever to support its claims regarding their service.

9.

As a result, the Commission cannot even determine whether Missouri River has suffered any harm or that the rule violations they allege actually affects the service they receive. There must be a nexus between (a) the claims of harm and the relief sought and (b) facts that demonstrate harm has actually occurred. Neither is present at this point in

the case and, therefore, Missouri River's request for a separate hearing should be denied.

III. Missouri River lacks standing to seek penalties based on alleged violations of ARM 38.5.3371(7).

10.

There is no statutory cause of action that would allow Missouri River to seek the imposition of penalties for alleged violations of ARM 38.5.3371(7). Missouri River suggests that a hearing should be conducted to determine an appropriate monetary penalty. Request for Hearing, ¶4. In support of that request Missouri River cites to §§ 69-3-206 and 69-3-209, MCA. However, Missouri River's citation omits the key statutory language stating that "Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction." § 69-3-206(2).

11.

Missouri River lacks standing to pursue the imposition of penalties. The only entity with the power to seek enforcement of violations by penalty is the Commission through the courts. See *Montana Power Co. v. Public Service Com'n*, 206 Mont. 359, 671 P. 2d 604 (1983). Under established rules of prudential standing an entity must be able to show a direct affect. *Williamson v. Public Service Com'n*, 2012 MT 299, 364 Mont. 128, 272 P. 3d 71. As the Court explained a direct affect means "marked by absence of an intervening agency, instrumentality, or influence," or "characterized by close logical,

causal, or consequential relationship." *Id* at ¶37 citing Merriam–Webster's Collegiate Dictionary 328; see also Black's Law Dictionary 525 (Bryan A. Garner ed., 9th ed., Thomson Reuters 2009) ("Free from extraneous influence; immediate .").

12.

ARM 38.5.3371(7) is a statewide regulation imposing service quality requirements on public utilities. Even assuming Missouri River can successfully demonstrate that the regulations have been violated with respect to their service, the statute imposes an intervening agency between that violation and the imposition of any fines. Specifically, the statute confers upon the Commission clear prosecutorial discretion in determining whether or not to seek penalties. Missouri River therefore lacks standing to pursue the requested relief.

CONCLUSION

13.

For reasons set forth above, CenturyLink QC respectfully requests that the Commission deny Missouri River's request for an additional hearing.

DATED this 27th day of February 2015.

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By: Burt Ward for
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served on February 27, 2015, in the manner shown and addressed as follows:

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