

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

|   |   |                 |
|---|---|-----------------|
| IN THE MATTER OF CenturyLink QC's             | ) | REGULATORY      |
| Service Quality and Its Response to Notice of | ) |                 |
| Commission Action in Docket N2014.3.38,       | ) | DIVISION        |
| Including Petition for Waiver of              | ) |                 |
| Admin. R. Mont. 38.5.337197)(b)               | ) | DOCKETS         |
|   |   |                 |
| IN THE MATTER OF the Request of Staff of      | ) | D2014.11.91 and |
| the Montana Public Service Commission for     | ) |                 |
| CenturyLink Service Quality Information       | ) | N2014.4.38      |

RESIDENTS' REPLY TO CTL-QC BRIEF IN RESPONSE TO REQUEST  
FOR HEARING

1. On November 12, 2014, the Montana Public Service Commission (“PSC” or “Commission”) issued its “Notice of Commission Action and Notice of Filing and Intervention Deadline” in this proceeding, and established December 3, 2014, as the deadline for intervention in this proceeding. The purpose of the case is to examine the adequacy of CenturyLink QC’s (“CTL-QC”) service in Montana.
2. On December 3, 2014, Missouri River Residents for Improved Telecommunications Service (“Residents”) filed a Petition to Intervene in this proceeding. Residents reside in the Missouri River canyon area and experience substantial problems with the telecommunications service for which they pay CTL-QC.
3. On December 17, 2014, the Commission staff granted intervention to the Residents, the Montana Consumer Counsel and the Montana Telecommunications Association.

4. On January 21, 2014, Residents filed a Request for Hearing in this proceeding, asking that CTL-QC be fined for providing inadequate service during the pendency of this proceeding.
5. On February 12, 2015, the Commission conducted a prehearing conference in this proceeding. A procedural schedule was discussed for discovery and prefiled testimony on the issue of CTL-QC's service, with the company being required to submit a plan for service improvement. Separately, the PSC scheduled a briefing schedule on the Residents' proposal for a public hearing to consider assessing fines against CTL-QC during the pendency of the proceeding.
6. A procedural order was established by the Commission on February 12, 2015.
7. On February 27, 2015, CTL-QC filed its Brief in Response to Request for Hearing ("Response").
8. *This document is the Residents' Reply to the CTL-QC Response Brief.*
9. CTL-QC, at page 3 of its Response, argues that the Residents' Request for Hearing has been mooted by the Procedural Order approved by the PSC on February 23. The Procedural Order provides for discovery and the introduction of evidence. CTL-QC suggests that Residents lack standing to request penalties; that the service issues raised by Residents would be unaffected by the assessment of penalties; and that the timing of the assessment of penalties is irrelevant. Residents respectfully disagree.
10. Residents believe, rightly or wrongly, that CTL-QC is far more likely to develop and present a meaningful plan to improve telephone service for Residents and its other Montana customers if it has an on-going, accumulating, growing financial liability that is at stake. As a

result, Residents believe that the issue of penalties is moot only in CTL-QC's rather vivid imagination.

11. CTL-QC also argues that penalties for violation of the out-of service rule would have no bearing on the service issues that Residents have identified. This is not true, since Residents and CTL-QC customers have experienced extended outages. But Residents' question the assumption that there must be a direct relationship between the poor service conditions they have identified and the specific rule violation under discussion. The issue before the Commission is the lack of accountability of a regulated entity, and the power to assess fines is one of the few remaining powers that the Commission possesses over this "nearly unregulated" company. Residents are simply urging the Commission to exercise its authority to seek fines (through the District Court) in order to motivate CTL-QC to take seriously its service obligations to its customers.
12. On page 4, paragraph 6 of the Response, CTL-QC suggests that the PSC should first determine "whether and to what extent" the rule in issue applies to CTL-QC. There seems to be little argument that the Service Requirements of Sec. 38.5.3371, ARM, apply to CTL-QC. Nor is there any question that CTL-QC is in violation of Sec. 38.5.3371(7). Presumably CTL-QC is hoping that the PSC will waive the rule. But waiver itself is a doubtful proposition; a rule, which is a generally applicable requirement, is hardly a rule at all if it can be waived by a majority vote of the PSC, with no reference to the notice and comment procedures of the Montana Administrative Procedures Act which were followed when the rule was adopted. And if waiver is a legitimate process, can past violations be ignored or would waiver apply only prospectively? CTL-QC is asking the PSC to open a *complex can of worms*.
13. On pages 4 and 5, CTL-QC comes close to acknowledging that the Residents are not the only customers in Montana who receive poor service. "Missouri River is not the only community in Montana that

receives CenturyLink QC services and its interests cannot, and should not, be dealt with in a vacuum.” Residents are not aware that they have made any suggestion that could be construed as putting their interests ahead of the many, many locations in Montana that have reported service deficits at the hands of the CTL-QC. But just because CTL-QC has created a large problem doesn’t mean that the PSC should not use the tools that it has to begin to forge a solution. CTL-QC will milk the cash cow until the cow is dead. The PSC has the power and ability to do more than sit idly by and watch.

14. At page 4, CTL-QC makes several additional contentions that warrant comment. “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.” Why? Other than preserving CTL-QC’s cash flow, it’s not clear why each aspect must go hand in hand. Is it possible that imposition of penalties might serve to improve the quality of the “plan for remediation”? Residents submit that this possibility is worth serious consideration. And then, this gem: “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.” Residents concede that CTL-QC may be determined to weigh the cost of fixing its service against the cost of any penalties that this Commission may impose. Certainly, there is no indication that CTL-QC cares much about its reputation as a service provider. But if this is all about comparing sums to see which is bigger, the argument for starting the clock running on penalties could not be more strongly expressed.

15. At page 5, CTL-QC notes that Residents have submitted no evidence of service impairment. While an evidentiary record has not yet been created, Residents have carefully reported the recurring service problems that they are experiencing. And CTL-QC has self-reported its woeful failure to meet the Commission’s out of service rules.

16. At page 6, CTL-QC argues that Residents lack standing to seek penalties. CTL-QC should be familiar with Sec. 69-3-321, MCA, which allows “a person” to complain that “(c) any service is inadequate”. Residents have presented such a complaint, and CTL-QC has graciously provided documentation of precisely that condition. Further, in the very recent case of *Shockley v. Cascade County*, 2014 MT 281, the Montana Supreme Court stated in paragraph 22 that

The inquiry to determine standing in an action premised on the violation of constitutional or statutory rights is only ‘whether the constitutional or statutory provision can be understood as granting persons in the plaintiff’s position a right to judicial relief.’ (citation omitted)

Residents have a right to complain to this Commission about inadequate service. And it is clear that the right of Residents and other customers statewide to adequate telecommunications service is being ignored. This Commission is being asked to petition the District Court to impose fines on CTL-QC until service is brought to the standards established by this Commission.

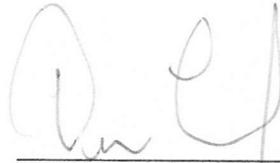
## CONCLUSION

As is plain to all, CTL-QC wants to delay any decision by this Commission on the adequacy of its service. Residents urge this Commission not to hold its breath in the expectation of a meaningful plan to improve service. There is a far greater likelihood of something meaningful, Residents submit, if this Commission acts sooner rather than later to enforce its rules.

Residents again ask that a hearing be scheduled on an expedited basis to begin a meaningful process of service improvement by holding CTL-QC accountable for its failure to provide customers with the quality of service that they are paying for.

Dated: March 5, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Lopach", written over a horizontal line.

Dennis Lopach  
Dennis R. Lopach, PC  
4 Carriage Lane  
Helena MT 59691

Dennis.lopach@gmail.com  
406 459-0211

## CERTIFICATE OF SERVICE

The foregoing RESIDENTS' REPLY TO CTL-QC BRIEF IN RESPONSE TO REQUEST FOR HEARING was today served by conventional mail and email on:

Peter G. Scott, Esq.  
Gough, Shanahan, Johnson and Waterman  
682 Ferguson, Suite 4  
Bozeman MT 59718

[pgs@gsjw.com](mailto:pgs@gsjw.com)

Phil Grate, Director Montana  
Regulatory and Legislative Affairs  
1600 7<sup>th</sup> Avenue, 15<sup>th</sup> Floor  
Seattle WA 98191

[Phil.grate@centurylink.com](mailto:Phil.grate@centurylink.com)

Monica Tranel, Esq.  
Montana Consumer Counsel  
PO Box 201703  
111 North Last Chance Gulch, Suite 1B  
Helena MT 59620-1703

[mtranel@mt.gov](mailto:mtranel@mt.gov)

Jason Williams, Esq.  
Sr. Vice President and General Counsel  
Blackfoot Telephone Cooperative  
1221 North Russell Street  
Missoula MT 58808

jwilliams@blackfoot.com

Geoff Feiss, General Manager  
Montana Telecommunications Association  
208 North Montana Avenue, Suite 105  
Helena MT 50601

gfeiss@telecommassn.org

DATED this 5th day of March, 2015



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Dennis Lopach  
Dennis R. Lopach, PC  
4 Carriage Lane  
Helena MT 59691