

Decision No. R15-0209

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0816T

IN THE MATTER OF ADVICE LETTER NO. 3138 FILED BY QWEST CORPORATION DBA CENTURYLINK QC TO IMPLEMENT AND INTRODUCE THE EXCHANGE AND NETWORK SERVICES TARIFF PURSUANT TO THE PASSAGE OF HB14-1331, TO BECOME EFFECTIVE SEPTEMBER 1, 2014.

PROCEEDING NO. 14AL-0882T

IN THE MATTER OF ADVICE LETTER NO. 113 FILED BY EL PASO COUNTY TELEPHONE COMPANY TO IMPLEMENT THE PASSAGE OF HB14-1331 BY THE WITHDRAWAL OF TARIFF NO. 7 IN ITS ENTIRETY TO BECOME EFFECTIVE OCTOBER 1, 2014.

PROCEEDING NO. 14AL-0887T

IN THE MATTER OF ADVICE LETTER NO. 14-03 FILED BY CENTURYTEL OF EAGLE AND CENTURYTEL OF COLORADO INC., DBA CENTURYLINK TO IMPLEMENT THE PASSAGE OF HB 14-1331 BY THE WITHDRAWAL OF TARIFF NO. 13 (MAPS) AND TARIFF NO. 14 IN THEIR ENTIRETY TO BECOME EFFECTIVE OCTOBER 1, 2014.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
REJECTING ADVICE LETTER FILINGS
AND PERMANENTLY SUSPENDING TARIFFS**

Mailed Date: March 5, 2015

TABLE OF CONTENTS

I. STATEMENT.....2
A. Background.....2
B. CenturyLink QC Advice Letter No. 3138 – Proceeding No. 14AL-0816T2
C. El Paso County Telephone Advice Letter No. 113 – Proceeding No. 14AL-0882T4

D. CenturyTel Advice Letter No. 14-03 – Proceeding No. 14AL-0887T.....5

II. FINDINGS OF FACT8

 A. CenturyLink’ Position8

 B. Staff’s Position10

 C. OCC’s Position.....13

III. ANALYSIS.....15

 A. Statutory Interpretation.....17

 B. Commission’s Tariff Authority19

 C. Intent of Section 40-15-40121

IV. CONCLUSIONS24

V. ORDER.....26

 A. It Is Ordered That:26

I. STATEMENT

A. Background

B. CenturyLink QC Advice Letter No. 3138 – Proceeding No. 14AL-0816T

1. On July 31, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink) filed Advice Letter No. 3138. The proposed effective date of the tariffs filed with Advice Letter No. 3138 is September 1, 2014.

2. According to CenturyLink, Colorado PUC Tariff No. 25 contains only the fully regulated services it will now offer as a result of the enactment of House Bill (HB) 14-1331. CenturyLink further stated that the proposed tariff establishes a “new structure moving forward.” No supporting testimony was attached to Advice Letter No. 3138.

3. With respect to the tariff sheets filed under Advice Letter No. 3138, there are two sections within Colorado PUC Tariff No. 25 titled “Terms, Conditions, Rates and Charges.” In Section 1, CenturyLink identifies Emergency Reporting Service (911) as the sole regulated

and tariffed services it offers in Colorado. The Section 1 sheet further states: “All other Exchange and Network Services can be found in the Exchange and Network Services Catalog or Local Terms of Service.” Colorado PUC Tariff No. 25 also addresses Telecommunications Relay Services. Section 9 contains provisions governing Emergency Reporting Service (911).

4. Advice Letter No. 3138 was assigned Proceeding No. 14AL-0816T.

5. On August 20, 2014, Staff of the Colorado Public Utilities Commission (Staff) filed a protest letter in Proceeding No. 14AL-0816T regarding Advice Letter No. 3138. Staff stated that Colorado PUC Tariff No. 25 is a replacement for CenturyLink’s Exchange and Network Services Tariff Colorado PUC No. 23. Staff argued that the 30-day notice period for the tariff filing would not allow enough time for sufficient evaluation as the existing tariff consists of hundreds of pages. Staff also noted there was no reference to any basic local exchange service in the proposed tariff, its rates, terms, or conditions. While Staff understood that CenturyLink intended for this service to be identified in a catalog, it noted there was neither a filing of the catalog or presently any rules and procedures governing such documents. Staff therefore recommended that the Commission set the matter for hearing and suspend the tariffs to provide it with the opportunity to comprehensively review the filing.

6. By Decision No. C14-1056, issued August 29, 2014, the effective date of the proposed tariffs attached to Advice Letter No. 3138 were suspended pursuant to § 40-6-111(b), C.R.S., for 120 days or through December 30, 2014. The Commission noted that the effective date may be suspended an additional 90 days for a maximum of 210 days, or through March 30, 2015. Decision No. C14-1056 also referred this matter to an Administrative Law Judge (ALJ) for an evidentiary hearing on the proposed tariffs and a Recommended Decision. The matter was subsequently assigned to the undersigned ALJ.

7. The Commission, also by Decision No. C14-1056, set an intervention period in this proceeding for any party to file a pleading seeking to intervene by September 29, 2014.

8. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing. Staff opposed Advice Letter No 3138 and indicated that it intended to raise several issues. Staff sought to address uncertainties pursuant to HB14-1331 and other telecommunications reform legislation regarding whether certain products and services, terms and conditions, and rates may be eliminated by the withdrawal of existing Exchange and Network Services Tariff Colorado PUC No. 23 and replaced with Exchange and Network Services Tariff Colorado PUC No. 25.

9. On September 29, 2014, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right and Entry of Appearance. The OCC stated that it intervened in this proceeding to ensure that the proposed action is compliant with the provisions of HB14-1331; to determine how CenturyLink customers will receive notice of changes in the Local Terms of Service, if approved; and to address any other issues which might arise as a result of the advice letter filing.

10. The intervenors in Proceeding No. 14AL-0816T are OCC and Staff.

C. El Paso County Telephone Advice Letter No. 113 – Proceeding No. 14AL-0882T

11. On August 22, 2014, El Paso County Telephone Company, doing business as CenturyLink (El Paso Telephone) filed Advice Letter No. 113. According to El Paso Telephone, the purpose of the filing was to implement the passage of HB14-1331 by withdrawing

El Paso Telephone's PUC Tariff No. 7 in its entirety. The proposed effective date of the tariff withdrawal was October 1, 2014.

12. Advice Letter No. 113 was assigned Proceeding No. 14AL-0882T.

13. On August 25, 2014, Staff filed a Protest Letter objecting to the proposed tariff revisions. Staff's objections to Advice Letter No. 113 were similar to its objections to Advice Letter No. 3138 in Proceeding No. 14AL-0816T.

14. On September 9, 2014, the Commission issued Decision No. C14-1092 which set a 30-day intervention period and suspended the effective date of the withdrawal of CenturyLink's PUC Tariff No. 7 for 120 days or until January 29, 2015, and referred the matter to an ALJ for hearing and disposition of the matter.

15. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

16. On October 6, 2014, the OCC filed its Notice of Intervention of Right and Entry of Appearance in this proceeding.

D. CenturyTel Advice Letter No. 14-03 – Proceeding No. 14AL-0887T

17. On August 22, 2014, CenturyTel of Eagle and CenturyTel of Colorado, Inc., doing business as CenturyLink (CenturyTel) filed Advice Letter No. 14-03. According to CenturyTel, the purpose of the filing was to implement the passage of HB14-1331 by withdrawing the CenturyTel PUC Tariff No. 13 (Maps) and PUC Tariff No. 14 in their entirety. The proposed effective date of the tariff withdrawal was October 1, 2014.

18. Advice Letter No. 14-03 was assigned Proceeding No. 14AL-0887T.

19. On August 29, 2014, Staff filed a Protest Letter objecting to the proposed tariff revisions. Staff's objections to Advice Letter No. 14-03 were similar to its objections to Advice Letter No. 3138 in Proceeding No. 14AL-0816T.

20. On September 9, 2014, the Commission issued Decision No. C14-1094 which set a 30-day intervention period and suspended the effective date of the withdrawal of CenturyTel's PUC Tariff Nos. 13 and 14 for 120 days or until January 29, 2015, and referred the matter to an ALJ for hearing and disposition of the matter.

21. On September 26, 2014, Staff filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

22. On October 6, 2014, the OCC filed its Notice of Intervention of Right and Entry of Appearance in this proceeding.

23. By Interim Decision No. R14-1200-I issued October 1, 2014 in Proceeding No. 14AL-0816T, a pre-hearing conference was scheduled for October 15, 2014.

24. On October 10, 2014, Staff, OCC, and CenturyLink (consisting of CenturyLink, CenturyTel, and El Paso Telephone) (hereafter collectively referred to as CenturyLink) filed a Joint Motion to: (1) Consolidate Proceedings; (2) Propose Procedural Schedule; and, (3) Request by Staff and OCC to Further Suspend Effective Date of Tariffs an Additional 90 Days.

25. Regarding the motion to consolidate Proceeding Nos. 14AL-0816T, 14AL-0882T, and 14AL-0887T, the Joint Parties argued that consolidation was appropriate because the issues in the three proceedings relate to the effect HB14-1331 will have on CenturyLink's tariffs. The Joint Parties further stated that consolidation was appropriate as it would reduce litigation and expense, and the Joint Parties would be able to prepare for a single consolidated proceeding in order to address all issues simultaneously.

26. The Joint Parties also proposed a procedural schedule which would eliminate the need for an evidentiary hearing. The Joint Parties agreed that since the implementation of HB14-1331 and its effect on the modifications and withdrawals of tariffs as proposed all contain threshold legal questions, it was best to address those matters through the filing of legal briefs. The Joint Parties agree that there are no issues of fact to resolve in the three proceedings. Rather, the Joint Parties put forth two legal questions which they stated are at issue here.

27. Issue 1 addresses the extent of the Commission's jurisdiction over the services, and terms and conditions included in CenturyLink's existing tariffs given the implementation of HB14-1331.

28. Issue 2 addresses what regulatory mechanisms the Commission may exercise over CenturyLink and the services and terms and conditions that CenturyLink provides if the Commission has jurisdiction over certain CenturyLink services, terms, and conditions.

29. The Joint Parties also proposed a briefing schedule and an optional date for an evidentiary hearing. Staff and OCC also requested that the effective date of the tariffs in each proceeding be suspended an additional 90 days pursuant to § 40-6-111(1), C.R.S. CenturyLink did not join in this request.

30. By Interim Decision No. R14-1249-I, issued October 16, 2014, the Joint Motion was granted consolidating Proceeding Nos. 14AL-0816T, 14AL-0882T, and 14AL-0887T. In addition, the Interim Decision adopted the proposed briefing schedule and extended the proposed effective dates of the tariffs, pending a filing from CenturyLink which extended the proposed effective date of the tariffs attached to Advice Letter No. 3138 in Proceeding No. 14AL-0816T to correspond to the other two Advice Letter filings. This would synchronize all three effective dates to April 29, 2015.

31. CenturyLink subsequently agreed to extend the effective date of the proposed tariffs in Proceeding No. 14AL-0816T to October 1, 2014, which resulted in the three proceedings having effective dates of April 29, 2015.

32. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding, this Recommended Decision containing findings of fact and conclusions therefore, as well as a recommended order.

II. FINDINGS OF FACT

A. CenturyLink' Position

33. On October 31, 2014, CenturyLink filed its Opening Brief and Motion to Dismiss. CenturyLink succinctly stated that the Commission “lacks authority to regulate the services CenturyLink has withdrawn from its tariffs, and thus lacks the authority to suspend or deny their removal.”¹ It is CenturyLink’s position that through the enactment of HB14-1331 and HB14-1329 by the Colorado Legislature, all telecommunications and information service were placed into Part 4 deregulation (§ 40-15-401, C.R.S. *et seq.*) with the exception of basic emergency services and switched access service, which exempts those services from regulation under Title 40, Article 15, or under the Public Utilities Law of Colorado.

34. As such, CenturyLink believes that the Public Utilities Laws may no longer be used to regulate its services, with the exception of basic emergency service and switched access service as cited above, which renders its tariffs “null and void as a regulatory matter effective May 9, 2014.”² By CenturyLink’s reckoning, every other service formerly in its tariffs must be therefore removed since the Commission now lacks the authority “to approve, reject, enforce, or

¹ *CenturyLink’s Opening Brief and Motion to Dismiss*, p. 1.

² *Id.* at p. 2.

regulate the terms and conditions of those services.”³ CenturyLink goes on to argue that since its advice letter filings in this consolidated proceeding accomplished the removal, this proceeding should now be considered closed.

35. According to CenturyLink, the Commission’s actions in suspending the advice letter exceeded its authority due to the statutory changes emanating from HB14-1331. CenturyLink explains that the tariffs are a regulatory nullity and have been since May 9, 2014 and its filing of the advice letters should be viewed simply as a “ministerial act” which simply confirms the end of the Commission’s tariff authority over CenturyLink. Consequently, CenturyLink link concludes that even the Commission’s actions suspending the above advice letters exceeds the Commission’s authority.

36. CenturyLink points out that it provided two additional documents to Staff and the OCC which will permit the Commission to carry out the limited authority it retains. These two documents include what CenturyLink characterizes as its “catalog” which it represents contains information sufficient to allow the Commission to determine and enforce any violations of the basic service price caps imposed by HB14-1331, as well general information regarding service areas and territories. CenturyLink also emphasizes that the catalogs are filed for informational purposes only and it does not seek the Commission’s approval of its contents.

37. In addition, CenturyLink provided its Local Terms of Service (LTS) documents as a courtesy to the Commission. According to CenturyLink, it created the LTS documents to ensure that its customers are able to navigate and understand the products and services it provides.

³ *Id.*

38. According to CenturyLink, taking into consideration the exceptions to the deregulatory effects of Part 4 classification provided for basic service in § 40-15-401(b), C.R.S., the only logical interpretation of the law is that the Commission may enforce the price that CenturyLink charges for basic service and enforce Provider of Last Resort (POLR) obligations, but the Commission may not use tariffs to accomplish that task. CenturyLink interprets HB14-1331 to leave the Commission with certain regulatory tools such as audit requests, show cause orders, or the issuance of a complaint against incumbent local exchange carriers (ILECs) who violate statutory restrictions; however, tariffs are excluded from the tools afforded to the Commission. CenturyLink therefore takes the position that the impact of removing tariff authority from the Commission is minimal at best.

39. CenturyLink maintains that it filed an advice letter because there are currently tariffs on file with the Commission and some procedural vehicle was required to accomplish the procedural step of complying with classification of services in Part 4 deregulation. CenturyLink concludes that the Commission's only role here is to simply take note of the filing of the Advice Letters as well as its catalog and LTS, and make a finding that the Commission no longer has authority to require, enforce, interpret, modify, suspend, or reject tariffs and dismiss this proceeding.

B. Staff's Position

40. Staff opposes CenturyLink's motion for dismissal arguing instead that as an ILEC and public utility, CenturyLink is still subject to the jurisdiction, control and regulation of the Commission and the provisions of the Public Utilities Law, even subsequent to the passage of HB14-1331.

41. Staff argues that dismissal of the consolidated proceedings is improper since the Commission does have jurisdiction over CenturyLink's request to modify and remove its tariffs. It is Staff's contention that pursuant to Commission regulations at 4 *Code of Colorado Regulations* (CCR) 723-2-2000 *et seq.* of the Rules Regulating Telecommunications Providers, Services, and Products, CenturyLink must seek approval from the Commission in order to replace its existing tariffs and no tariff change is effective unless the Commission orders the change be made to the tariff.

42. Staff disagrees with CenturyLink's claim that the Commission exceeded its authority by suspending the filed advice letters and notes the contradiction of CenturyLink's position and the fact that it filed the advice letters in order to effectuate the modification or elimination of the subject tariffs. In doing so, it is Staff's position that CenturyLink voluntarily subjected itself to Commission jurisdiction, including the Commission's rules regulating tariff modifications. Staff views CenturyLink's contradictory positions as irreconcilable.

43. As for what particular services, terms and conditions the Commission retains jurisdiction over, Staff's position is that the Commission retains such jurisdiction over those services, terms and conditions reasonably related to Part 1, Part 2, Part 4 and the newly enumerated exceptions to basic service under Part 4.

44. Staff acknowledges that certain services may be eliminated from CenturyLink's tariffs pursuant to § 40-15-401(1), C.R.S., and enumerates those items which include directory services and hunting services. However, it is Staff's position that several of those services CenturyLink claims are no longer regulated in fact remain subject to the Commission's jurisdiction.

45. In particular, Staff argues that the exceptions to basic service deregulation detailed in § 40-15-401(1)(b), C.R.S., pursuant to HB14-1331 remain subject to Commission regulation, at least until July 1, 2016. It is Staff's contention that the legislature, while deregulating basic local exchange service, retained several obligations for ILECs regarding the price of basic service and POLR obligations, in addition to provisions relating to Colorado High Cost Support Mechanism (CHCSM). Staff argues that by definition, the exceptions to basic service as set forth in Part 4 are subject to regulation, which is why the legislature placed them under the category of exceptions to the deregulated services of Part 4. Staff also notes that CenturyLink argued in a previous proceeding (Proceeding No. 14A-0861T) that the exception under § 40-15-401(b)(III), C.R.S., allows the Commission to regulate POLR obligations.

46. According to Staff, § 40-15-401(1)(b)(II)(A), C.R.S., requires CenturyLink, as an ILEC to charge a uniform rate for basic service until July 16, 2016. Consequently, the legislature meant to allow Commission jurisdiction over CenturyLink's rates related to basic service to ensure compliance with this statutory provision through July 1, 2016. Staff concludes that CenturyLink's attempted removal of tariff items related to those obligations to its catalog were therefore improper. Staff goes on to argue that while Part 4 deregulates basic service, certain exceptions exist which require ILECs such as CenturyLink to charge a uniform price for basic service and require CenturyLink to retain certain descriptions of services, terms, and conditions in its tariffs in order for the Commission to continue to determine whether CenturyLink is in compliance with § 40-15-401(1)(b)(II)(A).

47. Staff also notes that CenturyLink's POLR obligations, except in the 56 wire centers the Commission previously found to be effectively competitive (Proceeding No. 13M-0422T), also remain under Commission jurisdiction until July 1, 2016 pursuant to

§ 40-15-401(1)(b)(III). As a result, CenturyLink's terms and conditions relating to its POLR obligations to furnish service or continue to furnish service must remain in its tariffs until the Commission relinquishes CenturyLink's POLR obligations, or until July 1, 2016.

48. Staff suggests that the newly enumerated exceptions detailed in § 40-15-401(1)(b) should be treated as Part 3 pursuant to § 40-15-305(2), C.R.S., and subject to tariff regulation. In the alternative, Staff recommends that the exceptions be treated as **not** subject to classification under any part of Article 15, and instead, remain subject to the Commission's regulatory discretion. However, at least for the near term, Staff takes the position that the Commission should maintain tariff regulation over the exceptions to basic service deregulation.

C. OCC's Position

49. OCC as well argues that the Commission has jurisdiction over the service and products CenturyLink claims are no longer subject to that jurisdiction. The OCC points to the exceptions to the exemption from regulation contained in § 40-15-401(1)(b)(II)-(V) over which the Commission retains jurisdiction as a result of HB14-1331. For example, the OCC argues that the Commission has authority to enforce a statutory rate cap imposed on basic service and to enforce the obligation of ILECs to remain subject to any obligation as a POLR. According to the OCC, the language in the exceptions does not limit the means, extent, or level of regulation that the Commission may use to enforce the statutory requirements. The OCC determines that enforcing the rate cap is permitted rate regulation and enforcing the POLR obligation is permitted regulation or terms and conditions.

50. As for the other services and products previously contained in Parts 2 and 3 that are now classified as Part 4 services and which cannot be regulated under Public Utilities Law or

Part 2 or Part 3 under Article 15, the OCC concludes that CenturyLink may withdraw the rates, terms and conditions for those services and products, and include them in its proposed local terms of service.

51. The OCC argues that in order to exercise its authority, the Commission may rely on the provisions contained in Public Utilities Laws in addition to all the provisions contained in Article 15. As a result, the Commission may suspend CenturyLink's withdrawal of tariff sheets pursuant to § 40-6-111, C.R.S., and deny CenturyLink's proposed withdrawal of its tariff sheets which contain its rates for basic service. The OCC goes on to claim that the Commission has the authority to require CenturyLink's rates for basic service to continue to be included in tariffs to ensure the rates for basic service comply with the requirements of § 40-15-401(1)(b)(II)(A). Any proposed rate changes by CenturyLink must be submitted to the Commission as an advice letter filing along with the proposed tariffs sheets pursuant to § 40-3-103, C.R.S.

52. Should CenturyLink fail to comply with the enumerated exceptions of § 40-15-401(1)(b) the OCC asserts that the Commission may use its suspension powers under § 40-6-111, as well as its complaint jurisdiction pursuant to § 40-6-108, C.R.S., and hold hearings pursuant to § 40-6-109, C.R.S., in order to enforce the requirements contained in those exceptions.

53. The OCC maintains that the Commission retains regulation authority under Part 1 in accordance with § 40-1-103, C.R.S., which provides that all of the terms contained in Part 1 will apply throughout Article 15, unless specifically stated otherwise. The OCC explains that the definitions in § 40-15-102, C.R.S.; the prohibition against cross-subsidization found in § 40-15-106, C.R.S.; the Commission's audit powers pursuant to § 40-15-107, C.R.S.; the cost methodologies set forth in § 40-15-108, C.R.S.; and, the provisions addressing "slamming" and

“cramming” contained in §§ 40-15-112 and 113, C.R.S., all continue to apply as HB 14-1331 did not repeal or limit those provisions.

54. Under Part 5, the OCC reiterates that HB14-1331 left many provisions intact. The OCC points to universal basic service, affordability of basic service, universal access to advanced services, and universal service support mechanisms as remaining relevant to the regulation of basic service by the Commission. *See*, § 40-15-502, C.R.S. Further, the OCC asserts that CenturyLink’s POLR obligations were not modified pursuant to HB14-1331, which has been previously acknowledged by CenturyLink in Proceeding No. 14A-0861T.

III. ANALYSIS

55. The parties’ positions on the issue of whether the Commission possesses jurisdiction over basic service and price are not as antithetical as first appears. For example, CenturyLink states in its Reply Brief filed December 5, 2014, that it agrees that “the Commission retains the authority to impose and enforce price caps and POLR obligations throughout the state until July 1, 2016, and in areas of the state where ... [CHCSM] support is provided thereafter.” The divergence of opinions occurs regarding whether the Commission retains tariffs as a tool to exercise the jurisdiction it does possess.

56. The crux of the issue is the extent of the Commission’s jurisdiction to require CenturyLink (and other similarly situated ILECs) to comport with the obligations contained in the amendments to § 40-15-401 through tariff changes subsequent to the implementation of HB14-1331

57. Staff’s position is that the Commission retains tariffing jurisdiction over services, terms, and conditions reasonably related to Part 1, Part 2, Part 3, and the enumerated exceptions

to basic service under § 40-15-401, including the price of basic service and POLR obligations, as well as provisions relating to CHCSM funding.

58. Likewise, the OCC contends that the Commission retains its regulatory mechanisms, including tariffing jurisdiction over the services and products CenturyLink intends to withdraw from its existing tariffs including enforcement of the statutory rate cap on basic service and an ILEC's POLR obligations, which are contained in the exceptions specified in § 40-15-401. The OCC argues that the Commission continues to possess full tariff regulatory authority to suspend the tariff sheets at issue, as well as to deny their proposed withdrawal of basic service rates.

59. CenturyLink, on the other hand posits that because § 40-15-401(1) expresses that the Public Utilities Laws no longer applies to basic service and may not be used to regulate basic service, while the Commission no longer has authority to use tariffs as a tool to exercise jurisdiction, it nonetheless possesses other limited regulatory tools to enforce the rates and services set forth in the exceptions listed in § 40-15-401.

60. HB14-1331 was signed into law on May 9, 2014. Generally, HB14-1331 modifies the statutory framework for the remaining limited regulation of basic service and allows the Commission to reregulate basic service again under certain circumstances.

61. At issue here is § 40-15-401(1)(b) which sets out the exceptions to the deregulation of basic service. Section 40-15-401(1)(b)(II)(A) provides as follows:

Until July 1, 2016, each incumbent local exchange carrier shall charge a uniform price for basic service throughout its service territory; except that an incumbent local exchange carrier shall not charge a price for basic service that is more than the price that the carrier charged on December 31, 2013, unless the price charged is lower than the urban rate floor prescribed by the federal communications commission. If a carrier charges less than the urban rate floor, the carrier may increase the price to equal but not exceed the urban rate floor; except that, if the

commission orders reductions in intercarrier compensation rates, an incumbent local exchange carrier may increase local rates to recover some or all of the lost revenues associated with the commission's action.

Section 40-15-401(1)(b)(III) provides as follows:

Until July 1, 2016, each incumbent local exchange carrier remains subject to any obligations as provider of last resort, as established by the commission under section 40-15-502(6), throughout its service territory ...

62. Staff and the OCC have each ascribed a different meaning than CenturyLink to the statutory language in relation to the Commission's tariff authority. Consequently, an analysis of the construction and intent of § 40-15-401 is necessary to determine its meaning and intent.

A. Statutory Interpretation

63. The canons of statutory construction have been cited and recited so often as to be nearly axiomatic. In construing a statute, the court must ascertain and give effect to the intent of the General Assembly. *Copeland v. People*, 2 P.3d 1283, 1286 (Colo.2000), and must refrain from rendering judgments that are inconsistent with that intent. *Farmers Ins. Exchange v. Bill Boom, Inc.*, 961 P.2d 465, 469 (Colo.1998). A statute must be construed to further the legislative intent evidenced by the entire statutory scheme. *Martinez v. Cont'l. Enters.*, 730 P.2d 308 (Colo. 1986). When construing statutes, determination and effect must be given to the intent of the legislature, and a statutory construction must be adopted that best effectuates the purposes of the legislative scheme. *City and County of Denver v. Gonzales*, 17 P.3d 137 (Colo. 2001).

64. To determine legislative intent, the tribunal must look first to the plain language of the statute. *Vaughn v. McMinn*, 945 P.2d 404, 408 (Colo.1997); *City of Westminster v. Dogan Construction Co.*, 930 P.2d 585, 590 (Colo. 1997). If the tribunal can give effect to the ordinary meaning of words used by the legislature, the statute should be construed as written, giving full effect to the words chose, as it is presumed that the General Assembly meant what it clearly said.

Askew v. Industrial Claim Appeals Office, 927 P.2d 1333, 1337 (Colo.1996); *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542, 545 (Colo.1995); *see also* § 2-4-101, C.R.S. (“Words and phrases shall be read in context and construed according to ... common usage. Words and phrases that have acquired a technical or particular meaning whether by legislative definition or otherwise, shall be construed accordingly.”). If the statutory language is clear and unambiguous, courts need not look further. *Town of Superior v. Midcities Co.*, 933 P.2d 596, 600 (Colo.1997); *Boulder County Bd. of Equalization v. M.D.C. Construction Co.*, 830 P.2d 975, 980 (Colo. 1992).

65. In order to reasonably effectuate the legislative intent, a statute must be read and considered as a whole and “should be interpreted so as to give consistent, harmonious, and sensible effect to all its parts.” *People v. District Court*, 713 P.2d 918, 921 (Colo.1986); *see also* *Martinez v. Continental Enters.*, 730 P.2d 308, 315 (Colo.1986); *Colorado Dep’t of Soc. Servs. v. Board of County Comm’rs*, 697 P.2d 1, 23 (Colo.1985).

66. A statute must also be construed to further the legislative intent represented by the entire statutory scheme. *Allen v. Charnes*, 674 P.2d 378, 381 (Colo.1984); *Public Employees Retirement Ass’n v. Green*, 580 P.2d 385, 387 (1978). It is presumed that “[t]he entire statute is intended to be effective” and “[a] just and reasonable result is intended.” §§ 2-4-201(1)(b) and (c), C.R.S.

67. Applying these principles to CenturyLink’s interpretation of the statutory changes effectuated by HB14-1331 it is found that CenturyLink’s position is unavailing. This determination finds support in the plain language of § 40-15-401.

B. Commission's Tariff Authority

68. The statutory language at issue should be placed in context with the established jurisdiction of this Commission. A discussion of the Commission's jurisdictional sphere necessarily begins with Article XXV of the Colorado Constitution which states in relevant part:

... all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

69. Pursuant to § 40-3-102, C.R.S., the legislature has vested the authority contained in Article XXV to the Commission. That statute provided in relevant part as follows:

The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility in this state ... to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power ...

The General Assembly intended to place the primary duty and responsibility for the determination of just and reasonable utility rates with the Commission, and provided a complete statutory regime for the Commission to follow in discharging its functions. *Pub. Utils. Comm'n v. Northwestern Water Corp.*, 451 P.2d 266 (1969).

70. One of the primary purposes of utility regulation is to ensure that the rates charged by utilities are not excessive or unjustly discriminatory. *Cottrell v. City and County of Denver*, 636 P.2d 703 (Colo. 1981). As such, the Commission has been charged with the general responsibility to protect the public interest regarding utility rates and practices. *Consolidated Freightways Corp. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

This public interest charge has been defined as protecting the interests of the general public from excessive or burdensome rates. *Pub. Utils. Comm'n. v. District Court*, 572 P.2d 233 (1974).⁴ Unquestionably, the Commission is endowed with broad regulatory and ratemaking authority and is required to unfailingly discharge those duties when required to do so.

The Commission has a general responsibility to protect the public interest regarding utility rates and practices. *City of Montrose v. Pub. Utils. Comm'n.*, 629 P.2d 619 (Colo.1981). In addition, it has long been held that the power of the Commission under this statutory section is not merely confined to determining whether rates are discriminatory or preferential, but extends to a determination of whether rates which are unreasonable. *Consumers' League v. Colo. & S. Railroad*, 53 Colo. 54, 125 P. 577, (1912).

71. Under § 40-3-103, C.R.S., every public utility is required to file with the Commission, under the rules prescribed by the Commission, and within such time and such form as the Commission designates, its schedules showing all rates, charges, and classifications, in addition to all rules, regulations, contracts, privileges and facilities which in any manner, affect or relate to rates, tolls, classifications, or service. This is required in order that rates appear in the public record, and if any person is aggrieved by those rates, that person may file a complaint with the Commission for relief. *Intermountain Rural Electric Association v. Colo. Central Power Co.*, 322 F.2d 516 (10th Cir.1963).

72. The Commission's tariffing authority, and most importantly, its constitutional and legislatively mandated duty is clearly established and unquestioned. While HB14-1331 undoubtedly deregulates basic service, POLR obligations and other terms and services, it notably

⁴ Section 40-3-101(1), C.R.S., prohibits and finds unlawful "[e]very unjust and unreasonable charge made, demanded, or received for such rate, fare, product or commodity or service ..."

does so in a measured way which requires the Commission to continue to assert its full tariffing authority until July 1, 2016.

C. Intent of Section 40-15-401

73. CenturyLink argues that the only logical interpretation of § 40-15-401(1)(b) is that “the Commission may enforce the price that CenturyLink charges for basic service and enforce POLR obligations, but it cannot use tariffs to accomplish that task” Rather, CenturyLink points to the language of § 40-15-401(1)(b)(IV)(D) for the proposition that the authority now possessed by the Commission to enforce the price CenturyLink (and other ILECs) charge for basic service, and to enforce POLR obligations is derived through the Commission’s audit and investigative powers to enforce compliance with regulation permitted under §§ 40-15-208, 401, and 502(5). Additionally, CenturyLink maintains that while that section is applicable “‘on or after’ July 1, 2016, the context of the law indicates that this authority does not lie dormant before that time.”

74. According to CenturyLink, the legislature expressly left those “tools” to the Commission pursuant to subsection 401(1)(b)(IV)(D) but excluded any tariffing authority. However, that interpretation cannot be reasonably discerned from the plain language of the statute. It is reasonable to presume that any statutory amendments by the legislature proscribing the constitutional powers of the Commission prior to July 1, 2016 would be articulated in clear and unequivocal terms, rather than left to implication.

75. As instructed by the canons of statutory construction, in order to discern legislative intent, the plain language of the statute must be reviewed, giving effect to the ordinary meaning of the words of the legislature and presuming that the entire statute is intended to be effective.

76. Section 40-15-401(1) provides that several products, services, and providers are exempt from regulation under article 15 or under the “Public Utilities Law” of the State of Colorado, including basic service – “except that” the CHCSM remains effective “to support basic service regardless of the classification of basic service or voice-over-internet protocol service in this part 4.” As such, CHCSM remains tariff regulated with no expiration date as denoted in the other subsections.

77. The second enumerated exception at subsection (b)(II)(A) provides that “[u]ntil July 1, 2016” ILECs are to charge a uniform price for basic service which is not more than the price the carrier charged on December 31, 2013, unless that price for basic service is lower than the urban rate floor prescribed by the Federal Communications Commission. ILECs may, pursuant to subsection (b)(II)(A), increase the price of basic service (if it is below the urban floor rate) to equal but not exceed the urban floor rate. Finally, subsection (b)(II)(A) provides that in the event the Commission orders reductions in intercarrier compensation rates, an ILEC may increase its local rates to recover some or all of the lost revenues associated with the Commission’s orders.

78. Next, subsection (b)(III) provides that “[u]ntil July 1, 2016” each ILEC remains subject to any of its POLR obligations established by the Commission pursuant to § 40-15-502(6) throughout its service territory.

79. Notably, the language of subsections (b)(I), (II), and (III) does not impinge on the Commission’s authority; rather, those subsections, when ascribed their ordinary meaning, clearly and unambiguously impose restrictions on ILECs such as CenturyLink. Subsection (b)(I) preserves the CHCSM, while subsection (b)(II) sets the pricing parameters an ILEC may charge

for basic service through July 1, 2016. Subsection (b)(III) maintains an ILEC's POLR obligations through July 1, 2016.

80. Reading § 40-15-401 as a whole, as is required it is clear that the CHCSM, the price of basic service as set forth in subsection (b)(II)(A), and compliance with POLR obligations remain under the Commission's full jurisdiction, including its tariffing authority. Under subsection (b)(IV) the legislature established a bright-line date of July 1, 2016 at which time the Commission's tariffing authority will be proscribed and the specified powers listed in subsection (b)(IV) will become effective. Until then, the Commission has at its disposal its full constitutional and legislatively delegated powers.

81. Subsection (b)(IV), establishes that “[o]n and after July 1, 2016” throughout each geographic area in which the Commission provides CHCSM funding for basic service, “the commission retains the authority to:” (A) designate POLRs under § 40-15-502(6); (B) determine a maximum price for basic service under § 40-15-502(3)(b); and, (C) prohibit providers from discontinuing basic service. The legislature unmistakably intended to limit the authority of the Commission at that time by providing the Commission with the limited power to determine the maximum price for basic service, designate POLRS, and prohibit providers from discontinuing basic service. In addition, the legislature provided the Commission the specific means in which to enforce those provisions. Subsection (b)(IV)(D) provides that the Commission retains its audit and investigative authority to enforce compliance with the remaining regulation permitted in §§ 40-15-208, 40-15-401, and 40-15-502(5) in areas in which the Commission provides CHCSM distributions for basic service.

82. It is abundantly clear that the legislature's intent, when § 40-15-401 is considered in its entirety, was to proscribe the Commission's previously broad enforcement authority, and

limit that authority to the enforcement devices set out in subsection (b)(IV)(D), but not until July 1, 2016. It is at this point-in-time when the Commission's tariffing authority over CenturyLink with regard to these elements will be replaced with the specific authority set forth in subsection (b)(IV)(D). While CenturyLink is correct that the language of § 40-15-401 proscribes the Commission's tariffing authority, its assertion is premature as to when that proscription is applicable. Had the legislature intended to limit the Commission's tariffing authority regarding the elements contained in § 40-15-401(1)(b)(I), (II), and (III) prior to July 1, 2016, it would have expressly done so, as it did in subsection (b)(IV)(D).

IV. CONCLUSIONS

83. Based on the above analysis, it is found that in addition to its audit, investigatory, and complaint authority, the Commission retains its full tariffing authority under the Public Utilities Laws, over an ILEC's services, products and pricing, including the CHCSM, basic service and enforcement of an ILEC's POLR obligations through July 1, 2016. This includes CenturyLink, CenturyTel, and El Paso Telephone.

84. The Commission retains full tariffing authority over the CHCSM as set forth in §§ 40-15-208 and 40-15-502 regardless of the classification of basic service or VoIP services. The Commission retains full tariffing authority over the price for basic service throughout an ILEC's service territory based on the formula established in § 40-15-401(1)(b)(II)(A) and (B) through July 1, 2016. The Commission retains full tariffing authority over an ILEC's POLR obligations as set forth in Commission Rules 4 CCR 723-2-2183 through 2186 through July 1, 2016 pursuant to § 40-15-401(1)(b)(III).

85. As a result, it is found that the tariff sheets identified as Colorado PUC No. 25 filed with Advice Letter No. 3138 by CenturyLink, which provide that Emergency Reporting Service (911) is now the sole regulated and tariffed service it offers in Colorado, as well as the statement that “[a]ll Other Exchange and Network Services can be found in the Exchange and Network Services Catalog or Local Terms of Service,”⁵ are improper.

86. It is found that the statements contained in Advice Letter No. 3138 indicating that the products, along with the terms and conditions that are no longer regulated by the Commission were proposed to be placed in a new document entitled “Local Terms of Service,” and establishing a new structure regarding its Colorado PUC No. 25 tariff, are not consistent with HB14-1331 as claimed by CenturyLink, and are therefore found to be improper. Consequently, the tariff sheets attached to Advice Letter No. 3138 are hereby rejected and permanently suspended.

87. It is also found that Advice Letter No. 113 filed by El Paso Telephone which proposes to withdraw its Colorado PUC No. 7 tariff in its entirety is improper. The statement contained in Advice letter No. 113 that El Paso Telephone’s Colorado PUC No. 7 is proposed to be withdrawn in its entirety and replaced with a new document entitled “Local Terms of Service” to which El Paso Telephone moved the products and service it claims are no longer regulated by the Commission is not consistent with HB14-1331 and is therefore found to be improper. As a result, the proposal to withdraw tariff Colorado PUC No. 7 in its entirety through Advice Letter No. 113 will be rejected and the tariffs permanently suspended.

⁵ Colorado PUC Tariff No. 25 also addresses Telecommunications Relay Services. Section 9 contains provisions governing Emergency Reporting Service (911).

88. Finally, it is found that Advice Letter No. 14-03 filed by CenturyTel, which proposes to withdraw CenturyTel PUC Tariff No. 13 (Maps) and PUC Tariff No. 14 in their entirety is improper. The statement contained in Advice Letter No. 14-03 that CenturyTel's Colorado PUC Nos. 13 and 14 tariffs are proposed to be withdrawn in their entirety and replaced with a new document entitled "Local Terms of Service" to which CenturyTel moved the products and service it claims are no longer regulated by the Commission is not consistent with HB14-1331 and is found to be improper. As a result, the proposal to withdraw Colorado PUC No. 13 and Colorado PUC No. 14 tariffs in their entirety through Advice Letter No. 14-03 will be rejected and the tariffs permanently suspended.

89. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

V. ORDER

A. It Is Ordered That:

1. Advice Letter No. 3138 filed on July 31, 2014 by Qwest Corporation, doing business as CenturyLink QC (CenturyLink) with attached tariff sheets contained within its Colorado PUC Tariff No. 25 are rejected.

2. The tariffs attached to Advice Letter No. 3138 filed by CenturyLink are permanently suspended.

3. Advice Letter No. 113 filed on August 22, 2014 by El Paso County Telephone Company with attached tariff sheets contained within its PUC Tariff No. 7 are rejected.

4. The tariffs attached to Advice Letter No. 113 filed by El Paso County Telephone Company are permanently suspended.

5. Advice Letter No. 14-03 filed on August 22, 2014 by CenturyTel of Eagle and CenturyTel of Colorado, Inc., doing business as CenturyLink (CenturyTel) with attached tariff sheets contained within its PUC Tariff No. 14 are rejected.

6. The tariffs attached to Advice Letter No. 14-03 filed by CenturyTel are permanently suspended.

7. Response time to exceptions shall be shortened to seven days.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedures stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director