

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0197T

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IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION D/B/A CENTURYLINK QC FOR THE 2023 BASIC EMERGENCY SERVICE PROVIDER IMPROVEMENT PLAN

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**RECOMMENDED DECISION GRANTING APPLICATION**

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Issued Date: August 8, 2024

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**I. STATEMENT**

1. On April 24, 2023, Lumen, doing business as, CenturyLink QC (“CenturyLink” or “the Company”) filed its application for 2023 Basic Emergency Service Provider Improvement Plan (“Application”). CenturyLink filed its Application pursuant to the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-1000 *et seq.* and in response to Decision to C23-0125 filed in Proceeding No. 22R-0122T on February 22, 2023 adopting amendments to 4 CCR 723-2-2143 (b) and Decision No. C23-0250-I filed in Proceeding No. 22R-0122T on April 19, 2023, extending the deadline for submission of 2023 improvement plans.

2. On May 15, 2023, the Office of the Utility Consumer Advocate (“UCA”) timely intervened of right.

3. On May 26, 2023, the Colorado Cable Telecommunications Association’s (“CCTA”) Motion to Permissively Intervene was filed.

4. On May 26, 2023, the Boulder Regional Emergency Telephone Service Authority’s, Douglas County Emergency Telephone Service Authority’s, and El Paso Teller County Emergency Telephone Service Authority’s (collectively, “Best 911”) Notice of

Intervention as of Right, or in the Alternative, Motion for Permissive Intervention, and Request for Hearing was filed.

5. On May 26, 2023, the Colorado Council of Authorities, Inc.[‘s] (“CCOA”) Notice of Intervention as of Right, or, in the Alternative, Motion to Permissively Intervene was filed.

6. On May 26, 2023, the Larimer Emergency Telephone Authority (“LETA”) Notice of Intervention as of Right, or, in the Alternative, Motion to Permissively Intervene was filed.

7. By minute entry during the Commission’s weekly meeting held on June 7, 2023, this matter was referred to an Administrative Law Judge (“ALJ”).

8. By Decision No. R23-0412-I, issued June 22, 2023, all interventions were granted and the parties to the proceeding were established.

9. On December 18, 2023, an Unopposed Motion for Late-Filed Intervention by Trial Staff of the Commission (“Staff”) and Waiver of Response Time (“Late Intervention Motion”) was filed by Trial Staff of the Public Utilities Commission.

10. By Decision No. R23-0858-I, issued December 22, 2023, the Late Intervention Motion was granted.

11. On February 15, 2024, CenturyLink filed its Amended Application (“Amended Application”).

12. On March 4, 2024, CenturyLink filed its Second Amended Application (“Second Amended Application”).

13. On March 8, 2024, by Decision No. R 24-0154-I, the Second Amended Application was accepted.

14. On April 19, 2024, CenturyLink filed its Unopposed Motion to Extend Rule 2143(b)(II) Deadline (“Unopposed Motion to Extend”).

15. On May 17, 2024, LETA filed its Motion to Compel Discovery Responses from Qwest Corporation doing business as CenturyLink QC (“Motion to Compel”).

16. On May 21, 2024, CenturyLink filed its Response of Qwest Corporation d/b/a CenturyLink QC to LETA’s Motion to Compel Discovery Responses (“Response”).

17. On May 23, 2024, oral argument was taken on the Motion to Compel and the undersigned ALJ granted the Unopposed Motion to Extend.

18. On June 4, 2024, by Decision No. R24-0384-I, the Motion to Compel was denied.

19. On June 24, 2024, an evidentiary hearing was held on the Application. Testimony was taken from James Carlson<sup>1</sup> for CenturyLink, Kimberly Culp for LETA, Andrew Dameron for Denver and Jennifer Kirkland for Staff. The following exhibits were offered and admitted; 100, 101,102C, 103C, 105C, 106C, 108C, 110, 111, 400, 600, 601, 602, 603, 700, and 900. Administrative Notice was taken of the 24-06 outage filing by Staff in Proceeding No. 24M-002T, 47 C.F.R. § 19.9 (a)(5), and pages 3 and 4 of CenturyLink’s filing of February 12, 2024, in Proceeding No. 23R-0577T.

20. At the conclusion of the hearing the evidentiary record was closed, the date for statements of position (“SOP”) was extended until July 8, 2024, and the matter was taken under advisement.

21. On July 8, 2024, SOPs were filed by Best 911, CCOA/LETA, Staff and CenturyLink. UCA failed to file an SOP.

22. In reaching this Recommended Decision the ALJ has considered all arguments presented by the parties, including those arguments not specifically addressed in this Decision.

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<sup>1</sup> James Carlson adopted the testimony of Steve DeLoach for CenturyLink.

Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

23. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

**II. UNOPPOSED MOTION TO EXTEND**

24. The Unopposed Motion by CenturyLink requests a waiver of Commission Rule 2143(b)(II) to extend the August 1, 2024 deadline for the approval of an improvement plan. CenturyLink argues that without the waiver the projects that are subject to this proceeding would be delayed by one year.

25. CenturyLink requests a waiver of the Rule and the creation of a new deadline of August 24 for the approval of the improvement plan.

26. No party objects to the Unopposed Motion.

27. The undersigned finds good cause to grant in part the Unopposed Motion. The undersigned ALJ declines to set a new deadline for the approval of the plan.

28. While the Unopposed Motion is granted in part, it does not bind the Commission to considering it under Commission Rule 2148. The waiver only removes the August 1, 2024, deadline contained in Rule 2143 (b)(II). If the improvement plan is approved after August 1, 2024, it may be considered in any proceeding commenced by the Commission under Commission Rule 2148.

**III. FINDINGS OF FACT**

29. On December 22, 2022, by Decision No. R22-0811, the Commission adopted rules that each require basic emergency service provider (“BESP”) file with the Commission an improvement plan by February 15, 2023, and every two years afterward.<sup>2</sup>

30. CenturyLink conducted stakeholder conferences on October 10, October 31, December 5, and December 19, 2023, and on January 2, January 16, January 30, February 6, and February 13, 2024.<sup>3</sup>

31. CenturyLink prepared a working document that identified potential network improvement areas based on CenturyLink’s experience and comments from the Stakeholders. The potential improvement areas included 1) interoffice diversity projects, such as fiber builds, equipment upgrades, and fiber leases; 2) other network improvement projects, such as ethernet upgrades to every Public Safety Answering Point (“PSAP”), border state transfers, back-up power at the PSAPs, deployment of radio/microwave technologies, and PSAP abandonment device activation notices; and 3) additional topics designed for likely future consideration and implementation.

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<sup>2</sup> See 4 CCR 723-2-2143(b)

<sup>3</sup> Hearing Exhibit 100, p. 5.

32. The following projects are contained in the Application:
1. Salida – Howard Fiber Build. Middle Mile Diversity (“Salida”);
  2. Idaho Springs – Central City Fiber Build. Middle Mile Diversity (“Central City”);
  3. Burlington – Lamar Electronics. Middle Mile Diversity (“Burlington”);
  4. Portable Generator / Fuel Trailer (“Generator/Trailer”) and
  5. Ethernet Upgrade w/last-mile diversity (“ethernet project”).

33. The Salida project will place a 144-strand fiber cable with the plan to light 12 strands. It links the wire centers of Howard and Salida together via a fiber connection by constructing a 11.6-mile fiber route.<sup>4</sup>

34. It would improve resiliency and diversity for PSAPs in Salida (“Chaffee County”) and Canon City (“Fremont County”) by supplementing a limited capacity, copper route between Salida and Howard, which increases capacity and reliability for network traffic.<sup>5</sup>

35. The existing Salida-Howard copper facility cannot handle full demand in the event of a fiber cut.<sup>6</sup>

36. The Salida project would take two years to complete after receiving funding even if all funding was received in one year.<sup>7</sup>

37. The CenturyLink estimates the cost of the Salida project as \$1,025,372.62.<sup>8</sup>

38. The Central City project is for a 2-mile span of fiber to create a diverse ring for the area. It would provide diversity for the Central City wire center which contains two PSAPs.<sup>9</sup>

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<sup>4</sup> Id. at 11.

<sup>5</sup> Id at 12.

<sup>6</sup> Id at 12 & 13.

<sup>7</sup> Id. at 13.

<sup>8</sup> Exhibit 101, Attachment SD-4.

<sup>9</sup> Exhibit 100 at 12.

39. The Central City project will take approximately two years to complete after the project begins receiving funding.<sup>10</sup>

40. CenturyLink estimates the cost of the Central City project \$406,401.44.<sup>11</sup>

41. The Burlington project will expand the capacity and capability of fiber that is available and connected to the Burlington and Lamar wire centers.<sup>12</sup>

42. The route between Burlington and Lamar wire centers includes the Kit Carson and Wiley wire centers. There are PSAPs located in Burlington and Lamar. Additional equipment is needed to utilize the fiber connections that exist between Cheyenne Wells and Kit Carson. By installing additional electronics, a fully diverse ring would be created.<sup>13</sup>

43. CenturyLink estimates the cost of the Burlington project as \$350,451.26.<sup>14</sup>

44. The fourth project is the purchase of a generator to be stored in Central City and a fuel trailer that could be towed by company vehicles and would service company generators including the Central City generator.<sup>15</sup>

45. CenturyLink estimates the cost of the generator as \$190,709.71 and the cost of the trailer as \$52,646.76.<sup>16</sup>

46. The ethernet project migrates the legacy PSAP's time division multiplexing ("TDM") network to ethernet services. Moving to ethernet will standardize services, scalability, and reliability.<sup>17</sup>

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<sup>10</sup> Id.

<sup>11</sup> Exhibit 101, Attachment SD-4.

<sup>12</sup> Exhibit 100 at 13.

<sup>13</sup> Id.

<sup>14</sup> Exhibit 101, Attachment SD-4.

<sup>15</sup> Exhibit 100 at 14

<sup>16</sup> Exhibit 101, Attachment SD-4

<sup>17</sup> Exhibit 100 at 15.

47. Migration from the TDM to ethernet will allow for agility to rapidly manage and expand bandwidth to meet the business needs that arise.<sup>18</sup>

48. CenturyLink estimates the cost of the ethernet project as \$2,622,469.26.

**IV. ISSUES**

49. Has CenturyLink met its burden for approval of the (5) projects proposed by CenturyLink for its BESP improvement plan under Commission Rule 2143(b)?

50. Has CenturyLink met its burden for approval of the cost recovery for the five projects proposed by CenturyLink in its BESP improvement plan under Commission Rule 2143(b)?

**V. APPLICABLE LAW**

51. On or before February 15, 2023, and every two years thereafter, each BESP shall file an improvement plan application or amendment. 4 CCR 723-2-2143(b).

52. Under 4 CCR 723-2-2143(b), the improvement plan shall consist of the following, at a minimum:

(A) a list of service reliability items including, but not limited to, items reported to the FCC in its annual 9-1-1 reliability submission;

(B) a list of projects to improve the reliability of the BES network that the BESP proposes to implement over the course of a twenty-four month period. For each proposed project listed, the BESP shall include the following information:

(i) the proposed beginning and completion date of the project, along with any proposed intermediate milestones for phases of the project;

(ii) firm estimated costs for the project(s) or, for multi-phase projects, for the individual phases of the project to be completed within the improvement plan term, including a proposed profit margin of no more than 10.5 percent;

(iii) the portion of the cost of the project or project phase the BESP requests to be funded through the improvement plan;

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<sup>18</sup> Id.

(iv) an explanation of different technological options and contractual arrangements considered by the BESP for this project, including, as appropriate, fiber, microwave, satellite, and third party facilities, and the reasons the BESP has selected the options included in its improvement plan for this project, including considerations of cost effectiveness and effectiveness at improving reliability;

(v) a statement describing whether the benefit of the improvement will be exclusive to BES, and, if not, the estimated percentage of the benefit to BES versus other uses of the improvement, such as commercial uses; and

(vi) a statement describing the expected impact of each proposed project, including what benefit the project may have for BES network reliability and which PSAP(s) may be expected to benefit from the project, and the reasons the BESP chose this project over other potential projects. Projects to be included in the application should be proposed based on the following categories, following informal consultation with stakeholders:

(1) projects that have the potential to reduce the likelihood of outages based on past patterns of outages in the BES network and based on the existence of points in the network, equipment, or software that represent a lack of redundancy or diversity;

(2) projects that have the potential to reduce the duration or scope of outages;

(3) projects that have the potential to improve reliability for more than one PSAP;

(4) projects that, when implemented with other projects proposed in the improvement plan application, balance improvements to portions of the network serving both urban and rural communities; and

(5) other projects that the BESP determines would be beneficial to the overall reliability and resiliency of the BES network.

(C) Other changes that the BESP anticipates occurring in Colorado in the next two years that may impact BES.

- (D) A statement attesting that the BESP understands that it is responsible for the ongoing maintenance and operations of any improvement made in accordance with an approved improvement plan and funded through an approved improvement amount, unless otherwise approved by the Commission, and that the BESP understands that it may not discontinue the maintenance and operation of any approved and funded improvement without express permission of the Commission.
- (E) A proposed improvement amount, as described in subparagraph 2137(e)(II). This improvement amount shall be calculated to reimburse the BESP for its costs, including its proposed profit margin, for all proposed projects in the two-year improvement plan. The BESP may propose different improvement amounts for each of the two years.

53. In the normal course of the proceeding the party that seeks Commission approval or authorization, CenturyLink, bears the burden of proof with respect to the relief sought; and the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. The evidence must be "substantial evidence," which the Colorado Supreme Court has defined as:

such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.<sup>19</sup>

54. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence<sup>20</sup>. A party has met this burden of proof when the evidence, overall, and however slightly, tips in favor of that party.

## **VI. ARGUMENTS OF THE PARTIES**

### **A. CenturyLink**

55. CenturyLink argues that it has met the factors contained 4 CCR 723-2-2143(b) for each of the Projects.

56. CenturyLink lists the required stakeholder outreach conducted between October 10, 2023, and February 13, 2024. The Company states that it met with counsel and representatives of the intervenors and other parties and entities with interests in the network improvement plan.<sup>21</sup>

57. CenturyLink also cites to testimony showing that each project contained a beginning and completion date; a firm cost estimate; the amount of funding requested;

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<sup>19</sup> *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)).

<sup>20</sup> *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985).

<sup>21</sup> Statement of Position of Qwest Corporation b/b/a CenturyLink QC at p. 3

technological options and contractual arrangements for the projects; a statement that the projects have not been targeted for commercial use; the impact of each project; other anticipated changes in the next two years; and a statement attesting that CenturyLink understands it is responsible for ongoing maintenance and operations in accordance with the plan.

58. CenturyLink believes that it has met all requirements for the projects to be approved and that this is all that is required for Commission approval of the projects.

59. CenturyLink believes that most of the arguments made by Intervenors are either incorrect or are beyond the scope of this proceeding.

60. CenturyLink states that Rule 2143(b) requires CenturyLink to aver that it made efforts to identify appropriate improvement projects for funding, and to demonstrate the cost effectiveness and reliability of the projects chosen. CenturyLink argues that it not required to show that it was the best conceivable project.<sup>22</sup>

61. CenturyLink believes that it adequately supported the costs of its projects and considers the costs to be a firm estimate. CenturyLink points out that no Intervenor pointed to any cost associated with any of the projects which was unbelievable or out of line or that there are not overhead or carrying costs.

62. In addition, CenturyLink argues that if the estimated costs exceed the actual cost, the Commission can make adjustments to prevent overcollection.

63. Finally, CenturyLink believes that the tariff change for the recurring charge to fund the last-mile diversity portion of the ethernet project is allowed to be approved in this proceeding. CenturyLink bases this belief due to Rule 2143(b)(1)(B)(IV) specifically requiring the BESP to examine leased facilities from third parties for network improvement solutions. Leases necessarily

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<sup>22</sup> Id. at page 16.

would extend beyond two years, and it would defeat the purpose of Rule 2143 requiring BESPs to explore third-party relationships if all costs needed to be recovered within two years.

64. CenturyLink also notes that Rule 2143(b)(1)(C)(IV) states that CenturyLink has 30 days from approval of the Application to accept the Commission's cost determination. CenturyLink would not be in a position to make an informed decision unless—as part of its approval process—the Commission indicated it would approve a tariff filing that implements the costs approved.

#### **B. CCOA and LETA**

65. CCOA and LETA request that all projects be denied.

66. CCOA and LETA first argue that CenturyLink failed to meet its burden on all projects due to a failure to provide a firm cost estimate for the improvements.

67. CCOA and LETA argue that the testimony of CenturyLink witness Carlson described the ethernet upgrade costs as “our best estimate” or “solid estimates” and that as construction work neared that further information may be identified.<sup>23</sup> CCOA and LETA argue that this uncertainty fails to meet the requirements of “firm estimated costs.”

68. Next CCOA and LETA argue that the six percent charge for overhead on each project is not supported, cost-based, just, reasonable, or in the public interest. CCOA and LETA contend that CenturyLink did not sufficiently articulate why a six percent overhead charge is appropriate for all projects and why there is not any variance in this charge between projects.<sup>24</sup>

69. CCOA and LETA then compare the 15 percent capital cost charge to an unreasonably high interest rate on a loan. They state CenturyLink did not explain if and how

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<sup>23</sup> Joint Statement of Position of Colorado Council of Authorities, Inc. and Larimer Emergency Telephone Authority, at p. 4.

<sup>24</sup> Id.

depreciation in its financial statements will differ between assets CenturyLink acquires through an approved improvement plan versus outside of an improvement plan.

70. CCOA and LETA express concern that the benefits of these projects extend beyond the BES and therefore CenturyLink should be responsible for a portion<sup>25</sup> of the costs.<sup>26</sup>

**C. STAFF**

71. Staff opposes all of the proposed projects, arguing CenturyLink failed to provide “firm estimated costs” of the projects as required by Rule 2143(B).

72. For each of the projects and for each part of the cost of each project, Staff argues the failure to provide a firm estimated cost is fatal to the application.

73. In the alternative, Staff proposes that if the Commission finds that CenturyLink has provided firm estimated costs that the new monthly recurring charges related to last-mile diversity for the ethernet upgrade should be rejected.<sup>27</sup>

74. Staff argues that any projects approved under Rule 2143 allow for recovery for only two years under a plain reading of the rule.<sup>28</sup>

75. Staff also urges the Commission to reject the Salida project for the failure to explore less expensive alternatives to building new fiber.<sup>29</sup>

**D. BEST 911**

76. Best 911 takes issue with CenturyLink’s cooperation in the stakeholder engagement process while admitting that some discovery has been overly broad and burdensome.<sup>30</sup>

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<sup>25</sup> The actual portion is not stated.

<sup>26</sup> Joint Statement of Position of Colorado Council of Authorities, Inc. and Larimer Emergency Telephone Authority, at p. 5-6.

<sup>27</sup> Staff’s Statement of Position at p. 11.

<sup>28</sup> Id at 12.

<sup>29</sup> Id at 13.

<sup>30</sup> Best 9-1-1 Authorities’ Statement of Position, at p.1.

77. Best 911 also acknowledges that these projects will eliminate single points of failure and improve the reliability of 911 services and that it is better to move forward with them sooner than later given the pace of inflation.<sup>31</sup>

78. Best 911 conditionally supports the Central City project but believes that CenturyLink should be required to place the proposed fiber on existing utility poles. Best 911 believes this would provide a cost savings.<sup>32</sup>

79. In addition, Best 911 believes that CenturyLink should be responsible for the cost of splicing any fibers in excess of 24 fibers.<sup>33</sup>

80. Best 911 supports the Salida and Burlington projects with the same restriction as regarding the Central City project regarding the splicing any fibers in excess of 24 fibers.<sup>34</sup>

81. Best 911 supports the ethernet upgrade project, but opposes the last-mile diversity aspect of the project. Best 911 believes this project is not as necessary as other projects and was introduced into the proceeding to allow full vetting by stakeholders.

82. Best 911 supports the generator and fuel truck projects conditioned upon CenturyLink agreeing to fund 50 percent of the cost.

83. Finally, Best 911 believes that the rules may require the filing of an Advice Letter if the recurring charges for the ethernet project are approved, but the proceeding would be perfunctory. Best 911 relies on the uncertainty and fears of expanding the ability of CenturyLink to impose a tariff in this proceeding to bolster its opposition to the last-mile diversity aspect of the ethernet project<sup>35</sup>

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<sup>31</sup> Id at p. 2.

<sup>32</sup> Id at p.3-4.

<sup>33</sup> Id at p.5.

<sup>34</sup> Id. at p. 11-12

<sup>35</sup> Id at p. 15-16.

**E. CCTA**

84. CCTA takes no position on the projects or their cost. CCTA only requests that if any projects are approved that recovery be spread over two years.<sup>36</sup>

**VII. DISCUSSION****A. Approval of the Projects**

85. There was no evidence presented that any of these projects would not improve the 911 system. Any objection to the projects relates to questions about the costs and cost allocations or if there are better alternatives or better means to achieve completion of the projects.

86. Ms. Culp testified for LETA that backup power is a critical need of Colorado's 911 system.<sup>37</sup> However, she testified that the Commission should reject all projects in the Application and that Colorado would be "better off" if none of the projects was approved.<sup>38</sup>

87. LETA failed to provide any alternative projects in the nine meetings held with CenturyLink as part of the stakeholder process.<sup>39</sup> LETA provides no evidence that the projects in question are unnecessary. The only basis given by LETA to deny the projects it describes as "critical" is a desire for additional vetting and for CenturyLink to fund all or part of the project and not assess costs on the 911 community.<sup>40</sup>

88. Staff provided the only objection to a project that was not based on cost or proportion of cost borne by CenturyLink. Staff argued that the Salida project should be rejected for CenturyLink's failure to provide a sufficient explanation or why existing fiber was not leased for the project under Rule 2143(b)(I)(B)(iv).<sup>41</sup>

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<sup>36</sup> Statement of Position of the Colorado Cable Communications Association, at p. 1.

<sup>37</sup> Hr. Tr. June 24, 2024, p. 244:20-21.

<sup>38</sup> Id. at p.243:16- 244:16.

<sup>39</sup> Id. at p.241:10- 242:4..

<sup>40</sup> Id. at p.244:11-245:9.

<sup>41</sup> Staff's Statement of Position at p. 13-14.

89. Rule 2143(b)(I)(B)(iv) requires an “explanation of different technological options ... and the reasons the BESP has selected the options included in its improvement plan for this project, including considerations of cost effectiveness and effectiveness at improving reliability.”

90. CenturyLink presented testimony that consideration was given to leasing fiber but “none of the routes had a sufficient connection for the length of the route needed” and [l]easing would require some fiber to still be built while exposing the new route to oversight and repair delays that would be out of the control of CenturyLink.”<sup>42</sup>

91. The undersigned ALJ finds that this explanation is sufficient to meet requirements under Rule 2143(b)(I)(B)(iv).

92. Arguments such as Staff’s and Best 911’s opposition to the Central City project relate to aspects of how the project should be completed, not to the necessity of the project. As argued by CenturyLink, this proceeding is not for determination if these projects are the best overall, or if there is an alternative method, it is only to find that they are necessary and approval of the estimated costs.

93. No Intervenor has provided any evidence that these projects are not necessary or that they would not provide a more efficient and reliable 911 system. CenturyLink has met its burden as to the requirements in Rule 2143 (b) therefore the projects shall be approved.

## **B. Project Costs**

94. There are two separate arguments that have been presented by the Intervenors to deny the Application based on cost. The first argument is that CenturyLink has failed to provide “firm estimates” as required under Rule 2143(b)(I)(B); the second is that CenturyLink should be responsible for some percentage of the cost of each project.

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<sup>42</sup> Hr. Exhibit 100, DeLoach Direct Testimony . p. 21 :

### 1. 100 Percent Recovery

95. Many of the Intervenors take issue with CenturyLink requesting 100 percent recovery for the proposed projects. The Intervenors argue that none of the proposed projects will be exclusively to BES, and that CenturyLink will reap benefits unrelated to 911 service.<sup>43</sup>

96. At no time did any Intervenor attempt to quantify the percentage of any project that would be used for “commercial opportunities.” At no time did any Intervenor argue that the primary purpose for any of these projects was anything other than improvements for the 911 system. At no time did any Intervenor propose a formula to determine what percentage of the costs should be borne by CenturyLink. Intervenors argue that due to **any** (*emphasis added*) collateral benefit to CenturyLink that all projects should be denied.

97. CenturyLink admits that there may be collateral benefits but those cannot be measured and but for the Commission funding these projects may not be completed.

98. The undersigned agrees with CenturyLink that it would be impossible to make an accurate determination of what percentage of each project will provide a collateral benefit. There are many factors that would be necessary to contemplate, and the intervenors have provided none.<sup>44</sup>

99. While these projects may provide an additional benefit to CenturyLink there will be a benefit to the 911 system and to the citizens of Colorado. To deny these projects because there may be some benefit to CenturyLink that cannot be measured at this time would be a reckless act that weakens the 911 system for all and could have catastrophic consequences.

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<sup>43</sup> Joint Statement of Position of Colorado Council of Authorities, Inc. and Larimer Emergency Telephone Authority, at p. 7.

<sup>44</sup> These factors would include the number of customers that would use the project, what percentage of those users would also use the 911 system, how much of the project is used for 911 versus how much of the project is used for another purpose, fluctuation of customers among other factors. Again, no Intervenor presented a potential split, only requested that all projects be rejected.

## 2. Firm Estimates

100. Staff urges the Commission to reject all projects proposed by CenturyLink for the failure to provide firm estimates.

101. Staff begins this argument by accurately stating that the Commission rules do not provide a definition of the term “firm estimate.” Staff then proceeds to provide a Merriam-Webster dictionary definition of the word “firm” as “securely or solidly fixed in place,” “not weak or uncertain,” “not subject to change or revision,” “well-founded,” or “indicating firmness or resolution” but then Staff inexplicably fails to define the word “estimate”.<sup>45</sup>

102. The undersigned will not question the Merriam brothers or Mr. Webster on the meaning of the word firm, but in order to get a full meaning of the term, “estimated” also needs to be defined. Estimated is defined as “a value or rating by the mind, without actually measuring or weighing or the like. A rough or an approximate calculation only.”<sup>46</sup>

103. Neither of these definitions is proper since the phrase “firm estimated costs” is an oxymoron<sup>47</sup> defined by the Merriam brothers and Mr. Webster as a combination of contradictory or incongruous words.<sup>48</sup>

104. If the term “firm estimated costs” was intended to be the actual cost, the rule would not include the word “estimate” and if the term was intended to be rough or approximate calculation the word “firm” would not be included. So, the term “firm estimated costs” falls somewhere between “well-founded” and an “approximate calculation.”

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<sup>45</sup> Staff’s Statement of Position at p. 5-6.

<sup>46</sup> Black’s Law Dictionary (6th ed. 1990).

<sup>47</sup> Oxymoron, Merriam-Webster.com, <https://merriam-webster.com/dictionary/oxymoron>.

<sup>48</sup> A google search of “examples of oxymorons” provides 15 examples including the very similar “exact estimate.”

105. In examining the cost estimates provided by CenturyLink, they have not provided ranges but actual numbers. The undersigned believes that an actual number is closer to a “firm cost estimate” than a range would be. During the process CenturyLink has updated these numbers as additional information became available. Each time a new number has been presented, not a range.

106. As far as the costs for each project, none of the Intervenors presented any evidence or even claimed that the estimate was out of line for the cost of material or labor for any projects.<sup>49</sup> Intervenors’ main argument is that the numbers for carrying costs and overhead costs were vague and could not be justified. But all intervenors admitted that CenturyLink would have carrying costs and overhead costs. While there could be questions or concerns about the effort that CenturyLink put into the calculation of the carrying and overhead costs<sup>50</sup>, no Intervenor claimed that these costs did not exist or that they were out of line.

107. While it would be beneficial to have a more detailed listing of these costs in the future, this is the first time this process is being implemented and has been beset with delays. The Parties and the Commission are both learning how to make this process efficient and complete. The citizens of Colorado need the 911 system to be fully functional with sufficient redundancy and diversity to reduce the likelihood of outages and failure. Additional delays to improving the 911 system are not warranted for this reason.

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<sup>49</sup> Hr. Tr. June 24, 2024, p. 256:5-17 and Id. at p. 282: 19-283:7.

<sup>50</sup> The ALJ was especially concerned about the testimony of Mr. Carlson stating that previous applications have used a higher percentage rate for overhead costs but could not explain why the rate in this proceeding was lower, or why if it was lower than previous proceedings that the rate couldn’t be even lower than what is proposed. Hr. Tr. June 24, 2024, p. 206:2 207:3. CenturyLink should work to provide a better explanation for the overhead and carrying costs in future proceedings that fall under this rule. Some of the difficulty experienced by Mr. Carlson could be due to his adopting the testimony of Mr. DeLoach. In future hearings CenturyLink would be wise to ensure that its witnesses are available on the hearing date or, if the testimony is adopted, that the new witness is better able to explain these costs.

108. Finally, and potentially most importantly, the Commission has provided guardrails in Rule 2143(b)(I)(B)(VI) to prevent overcollection. CenturyLink will be required to provide quarterly reports and if revenues significantly exceed expenditures, the Commission has a procedure to suspend collection of the recovery for a project.

109. The undersigned finds that CenturyLink has met its burden to provide “firm estimated costs” and meet the requirements under Rule 2143(b)(I)(B)(ii).

**C. Recovery Period**

110. All intervenors request that the recovery for any projects approved be spread over two years. The Intervenors argue that this will lessen the bill impacts of the ratepayers.

111. CenturyLink has provided the breakdown for recovery over a one-year period and two-year period, but would prefer recovery over one year.

112. The undersigned ALJ agrees with the Intervenors and shall order recovery over two years to lessen bill impacts.

**D. Last-Mile Diversity**

113. CenturyLink requested that the Commission approve recurring a tariff charge to fund the last-mile diversity project. At the evidentiary hearing, the undersigned ALJ requested that the parties address whether under Commission Rule 2143 a recurring tariff charge could be approved.

114. CenturyLink argues that under Rule 2143 the Commission could approve a project that requires the utilization of a third parties which would require ongoing costs beyond a two-year period.

115. Staff argues that a plain reading of Rule 2143 (b)(I)(E) allows CenturyLink to “propose different improvement amounts for each of the two years.” To allow CenturyLink to extend recovery beyond two years would be inconsistent with this language.

116. Staff continues that the other projects proposed by CenturyLink in this proceeding will require maintenance beyond the two years of recovery, yet no costs for these projects are for beyond the two-year period.

117. The undersigned ALJ agrees with Staff. The plain language of Rule 2143 in no way contemplates recovery beyond the two-year period. The provision cited by Staff is persuasive that recovery, to be approved in a proceeding pursuant to Rule 2143, is limited to two years.

118. CenturyLink shall be required to file a tariff amendment to recover the ongoing monthly recurring charges approved with the last-mile diversity project.

#### **E. Concurrent Sessions**

119. CenturyLink proposes using 600 concurrent sessions for the recurring charge for the last-mile diversity but 623 concurrent sessions for the nonrecurring charges. The principal reasoning provided by CenturyLink is that the charge for the last-mile diversity will last indefinitely and be subject to recalculation and should align with the other recurring charges in the tariff that are subject to possible future recalculations.<sup>51</sup>

120. CenturyLink does not dispute that 623 concurrent sessions is the more accurate number.

121. CCOA and LETA state that the use of 623 concurrent session will lower the already significant cost impact to the consumer.<sup>52</sup>

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<sup>51</sup> Statement of Position of Qwest Corporation b/b/a CenturyLink QC at p. 23-24.

<sup>52</sup> Joint Statement of Position of Colorado Council of Authorities, Inc. and Larimer Emergency Telephone Authority, at p. 13.

122. The undersigned ALJ agrees with CCOA and LETA and finds that the concurrent sessions should be 623 for the last-mile diversity project. The most accurate number of concurrent sessions is 623 and there is no compelling reason to not use the more accurate number. In addition, using 623 concurrent sessions versus 600 concurrent sessions will lessen the impact of the bill increases.

### **VIII. CONCLUSION**

123. CenturyLink has met its burden and the requirements for approval of the five projects proposed by CenturyLink for its BESP improvement plan under Commission Rule 2143(b).<sup>53</sup>

124. CenturyLink has met its burden for approval of the cost recovery for the five projects proposed by CenturyLink in its BESP improvement plan under Commission Rule 2143(b).

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<sup>53</sup> The importance of robust modern 911 system cannot be overstated. Very few decisions made by the Commission can have a direct life or death consequence; this proceeding can have that type of consequence. The Commission plays an important role in assuring the citizens of Colorado can rely on a 911 system. The undersigned ALJ views the application as a means for the Commission to secure the best 911 system for Colorado in a cost-effective manner.

Since this was the first time this process has been used there was some confusion and possible missteps along the way. A common thread throughout many SOPs, the hearing and hearing process was frustration with the stakeholder participation process from both sides. As these proceedings occur in the future, the Parties are encouraged to work collaboratively to reach a consensus. Parties are urged to keep their animosity in check. We all have an important duty to keep Colorado's 911 system reliable and the citizens of Colorado safe. That should be at the forefront of decisions made by the parties in future proceedings.

**IX. ORDER****It is Ordered That:**

1. The Second Amended Application filed by Lumen, doing business as, CenturyLink QC (“CenturyLink”) on March 8, 2024, is granted consistent with the discussion above.

2. The deadline contained in Commission Rule 2143 (b)(II) is waived. Waiving of this rule does not assure that this application will be accepted into any Commission proceeding for Commission Rule 2148.

3. CenturyLink shall be required to file a tariff amendment within 45 days to recover the estimated costs over a 24-month recovery period. The amounts to be collected shall be those listed on page 4 of Exhibit 101, the Supplemental Testimony of Steve Deloach (“\$323.59 per concurrent session”).

4. CenturyLink may file a tariff amendment to recover the additional, ongoing monthly recurring charges requested for the last-mile diversity project.

5. Both tariff amendments may be made in the same filing.

6. Proceeding No. 23A-0197T is closed.

7. 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.

8. 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.

9. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

10. 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.

11. 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 procedure 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.

12. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,  
Director