

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 04M-388T

IN THE MATTER OF THE ADMINISTRATION OF THE COLORADO HIGH COST
SUPPORT MECHANISM (CHCSM) AND THE FURTHER DEVELOPMENT OF A
PROXY COST MODEL.

**COMMISSION DECISION DENYING REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: December 4, 2014
Adopted Date: November 12, 2014

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I. BY THE COMMISSION**A. Introduction**

1. In our Decision issued October 16, 2014,¹ we applied provisions of newly-enacted House Bills 14-1328 and 14-1331 by ordering the transfer of moneys from the Colorado High Cost Support Mechanism to the Broadband Deployment Board (Board). These new statutes prohibit high cost funding in areas where effective competition exists for basic service, and in turn authorize the Commission to transfer to the Board the amount of money attributable to the areas with effective competition. Our prior decisions found 56 wire centers served by Qwest Corporation, doing business as CenturyLink QC (CenturyLink), to be subject to effective competition. The Commission's findings authorize the elimination of funding for those wire centers and a transfer of those funds to the Board. Our Decision of October 16, 2014, provides instructions to the Staff of the Colorado Public Utilities Commission (Staff) of how to calculate the amounts attributable to those 56 wire centers. We derived our instructions from language and examples contained in a 2014 Stipulation that CenturyLink and Staff executed and that the Commission approved.

2. Staff and CenturyLink filed applications for rehearing, reargument, or reconsideration (RRR), in which they object to our Decision and propose alternative methods of computing the amount to be transferred to the Board. We deny Staff's and CenturyLink's RRR, because their objections and proposed, alternative methods do not comply with the Commission-approved Stipulation or the legal principles underlying House Bills 14-1328 and 14-1331.

¹ Proceeding No. 04M-388T, Decision No. C14-1251, issued October 16, 2014.

B. Background

3. To address the theories and calculations underlying the applications for RRR, we begin with a review of the legislation, stipulations, and Commission decisions that govern the distribution of high cost funds and the transfer of moneys from the high cost fund to the Board.

1. 2014 Legislation Authorizing Transfers of Moneys to Broadband Fund upon Determination of Effective Competition

4. Section 208 of the telecommunications statutes authorizes the Commission to establish a funding mechanism to support basic services. § 40-15-208(2)(a)(I), C.R.S. A long-standing purpose of this mechanism is to provide financial assistance to local exchange providers “to help make basic local exchange service affordable.” § 40-15-208(2)(a)(I)(A), C.R.S. A recent amendment to section 208 created a second objective to the mechanism. House Bill 14-1328, signed into law on May 9, 2014, added the following as a primary purpose of the fund: “to provide financial assistance as a support mechanism to: ... Provide access to broadband service through broadband networks in unserved areas pursuant to section 40-15-509.5, only.” § 40-15-208(2)(a)(I)(B), C.R.S. (2014).

5. Two recent statutory amendments work in tandem to authorize the reduction of the amount of funding to support basic services, and then to transfer that amount to the Board.

6. House Bill 14-1331, also effective on May 9, 2014, amended sections 208 and 502 by allowing high cost funding to support voice services only in areas “without effective competition” for basic service. §§ 40-15-208(2)(a)(I)(A), and 502(5)(a), C.R.S. (2014). Under this bill, the Commission determines whether an area is subject to effective competition, and thus ineligible to receive high cost support for basic service, by applying § 40-15-207, C.R.S., and the factors listed in that section. *See* § 40-15-502(5)(a), C.R.S. (2014). These factors include barriers to market entry, number of providers of similar services, the ability

of consumers to obtain services at reasonable and comparable rates and terms, and the ability of any provider to affect prices or deter competition. *See* § 40-15-207(1)(b), C.R.S.

7. This new process to allow a decrease of funding for voice services is tied to a legislative intent to transfer moneys from voice services to broadband projects. House Bill 14-1328 says:

The commission may fund the deployment of broadband service in unserved areas of the state through use of the HCSM surcharge and surcharge rate in effect on May 10, 2014. Pursuant to subsection (4) of this section and consistent with section 40-15-208 (2) (a) (III), *the commission may transfer to the broadband deployment board only the moneys that it determines are no longer required by the HCSM to support universal basic service through an effective competition determination.* After each transfer to the broadband deployment board, the commission shall use the moneys remaining in the HCSM to support basic service.

§ 40-15-509.5(3), C.R.S. (2014) (emphasis added).

8. In sum, the new legislation imposes a new restriction upon high cost funding by allowing disbursements to only those areas without effective competition. If the Commission finds the existence of effective competition in an area, then that area is ineligible to receive funding for basic voice services. The new statute also authorizes the Commission to transfer to the Board an amount of money that is no longer required to support basic service in areas with effective competition.

2. The 2014 Stipulation and its Mechanism to Reduce Distributions Proportionately to Fit within the \$54 Million Cap

9. On March 14, 2014, CenturyLink filed a motion for approval of its Stipulation with Staff and the Office of Consumer Counsel.² The Stipulation calculates the support to be

² Motion for Approval of 2014 Agreement and Waiver of Response Time, filed March 14, 2014, in Proceeding No. 13M-388T.

distributed to CenturyLink for the 2014 calendar year.³ CenturyLink and Staff agreed to use a proxy cost model that generates an average cost to provide basic service in each of CenturyLink's specific wire centers.⁴ The parties agreed to a variation of the model that produced an estimated annual distribution to CenturyLink in 2014 of \$60,888,860.⁵

10. This projected amount for CenturyLink under the proxy cost model exceeds the total annual cap of \$54 million imposed by Commission rules. Several providers in addition to CenturyLink are eligible for high cost funding within the \$54 million cap. The 2014 Stipulation resolves this problem by guaranteeing an amount of distributions to rural providers and then using a mathematical formula to adjust distributions to CenturyLink and other non-rural providers to fit under the cap.⁶ Thus, disbursements to rural carriers are subtracted from the \$54 million cap, and then a "sizing factor" adjusts CenturyLink's and other non-rural distributions downward within the cap.

11. The sizing factor is at the heart of the dispute in Staff's and CenturyLink's applications for RRR. Under the Stipulation, the sizing factor is a fraction, calculated as follows:

\$54 million (the amount of the cap) minus the amount disbursed to the rural carriers;

divided by,

the amount that otherwise would be distributed to CenturyLink and all other non-rural carriers under the model as if no cap existed.

The sizing factor is then multiplied to the amount that would be distributed to CenturyLink and other non-rural providers as determined by the proxy cost model as if no cap existed, and the

³ Stipulation and Settlement Agreement, filed March 14, 2014, in Proceeding No. 13M-388T (Stipulation), at ¶ B.

⁴ *Id.*

⁵ *Id.*, at ¶¶ C through F.

⁶ *Id.*, at ¶¶ E, G.

resulting product is the annual amount to be distributed to CenturyLink and other non-rural providers for the year.⁷

12. The Stipulation attached an example of these calculations as Exhibit C. In the example, the numerator for the sizing factor is calculated by subtracting \$1,728,431 (the annual amount disbursed to rural carriers) from the cap of \$54 million, resulting in a numerator of \$52,271,569. The amount of annual distributions under the model to CenturyLink and other non-rural carriers is \$61,097, 268, which serves as the denominator. The fraction results in a sizing factor of 85.55 percent. This percentage is then applied to the projected amounts produced by the proxy cost model, and thus for CenturyLink, 85.55 percent of the amount projected under the model, which is \$56,332,353, results in a total annual distribution of \$48,194,961. Adding CenturyLink's and other non-rural carriers' annual totals to the rural carriers' disbursements results in a sum equaling the annual \$54 million cap.

13. Though the Stipulation calculates distributions on an annual basis, the fund distributes moneys to CenturyLink and other providers quarterly. The Stipulation says that, for ease of administration, distributions in the first three quarters are calculated as if no cap or sizing factor is applied, then the amount of the fourth quarter payment is computed so that CenturyLink and other non-rural carriers receive their total annual distribution as calculated using the sizing factor.⁸

14. The timing and amounts of the quarterly payments benefit CenturyLink and the other non-rural carriers, because they receive more up front in the first three quarters than they would if the distributions were adjusted each quarter to account for the cap.

⁷ *Id.*, at ¶ G.

⁸ *Id.*, at ¶ G(6).

Though CenturyLink and the other non-rural providers receive the benefit of higher payments in the first three quarters, the fourth quarter payment is calculated to ensure that each provider receives its correct annual distribution. Specifically, the Stipulation states: “[i]f necessary, adjustments to fourth quarter 2014 distributions shall be made so that the *total* distributions to non-rural eligible providers reflects the sizing factor and so that total distributions to all eligible providers do not exceed the fund cap....”⁹

15. Important assumptions underlie the sizing factor. First, the factor discounts on a proportionate basis across all supported wire centers; it does not eliminate eligible wire centers from support in order to fit CenturyLink’s total annual distributions under the \$54 million cap. Second, the amounts used to calculate the sizing factor’s numerator and denominator are annual amounts; they are not quarterly amounts or an amount attributable to a portion of a calendar year.

16. The parties to the Stipulation anticipated and consented to changes in disbursements that may result from the outcome of Commission proceedings adjudicating whether areas of Colorado are subject to effective competition for basic services.

The Stipulation says:

The Settling Parties recognize that on February 21, 2014, Hearing Commissioner Joshua Epel issued a Recommended Decision deeming certain CenturyLink QC wire centers to be effective competition areas (ECAs). The Commission may approve and adopt the Recommended Decision, and may also deem other wire centers to be ECAs during 2014. If the Commission issues appropriate orders, the 2014 CHCSM disbursements will be adjusted accordingly.¹⁰

17. The Stipulation included another CenturyLink agreement. CenturyLink agreed that it “will support all aspects of the Agreement embodied in this document in any hearing, ... proceeding, or judicial review relating to this Agreement or the implementation of its terms and

⁹ *Id.*, at ¶ G(6) (emphasis added).

¹⁰ *Id.*, at ¶ J.

conditions[.]” and “will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Agreement.”¹¹

18. Based upon the parties’ representations and covenants in the Stipulation, the Commission granted CenturyLink’s motion for approval.¹² The approval order reiterates the provision in the Stipulation that 2014 disbursements are subject to change: “The Commission may adjust 2014 disbursements according to its decision in Proceeding No. 13M-0422T and governing statutes or rules.”¹³

19. It is within this background of new statutes, CenturyLink’s and the Staff’s Stipulation, and the Commission decision approving the Stipulation, that the issue arises of the amount of money the Commission should transfer from the high cost fund to the broadband fund.

3. Commission Determinations of Effective Competition in CenturyLink Wire Centers and its Implementation of the Legislative Amendments to Sections 208 and 502

20. As the Stipulation noted, the Commission was conducting, concurrent with the filing of the Stipulation, a proceeding to determine whether effective competition for basic service exists in 56 of CenturyLink’s wire center serving areas. CenturyLink had filed testimony and briefing in support of findings of effective competition, as reflected by the following in its Statement of Position: “The evidence in this case is clear: each of the 56 wire centers at issue in this phase of the proceedings is effectively competitive under Commission rules and

¹¹ *Id.*, at ¶ 5.

¹² Decision Granting Motion and Approving Stipulation and Settlement Agreement, issued April 3, 2014, in Proceeding No. 04M-388T, Decision No. C14-0353.

¹³ *Id.*, at ¶ 6.

Colorado law.”¹⁴ On February 21, 2014, the Hearing Commissioner issued a Recommended Decision. The Recommended Decision analyzed each of the factors stated in § 40-15-207, C.R.S., and found that effective competition exists in each of CenturyLink’s 56 wire center areas.¹⁵

21. On April 28, 2014, the Commission issued a final decision adopting the Recommended Decision.¹⁶ No party filed for judicial review of the findings and determinations under Section 207 that effective competition exists in all 56 wire centers.

22. These findings caused the Commission to apply new sections 208 and 502, which allow high cost distributions to support basic service only in areas *without* effective competition. The Commission therefore entered a second decision finding that the 56 wire centers do not satisfy the high cost fund eligibility requirement of areas without effective competition.¹⁷ The Commission concluded that high cost funding for basic service in the 56 wire centers shall be eliminated as of the day House Bill 14-1331 became effective, which was May 9, 2014.¹⁸

23. CenturyLink requested reconsideration of this second decision, which the Commission denied.¹⁹ No party filed for judicial review of this second decision.

¹⁴ CenturyLink’s Statement of Position, filed January 24, 2014, in Proceeding No. 13M-0422T, at 1.

¹⁵ Recommended Decision of Hearing Commissioner Joshua B. Epel Deeming 56 Wire Centers Effective Competition Areas, issued February 21, 2014, in Proceeding No. 13M-0422T, Decision No. R14-0190.

¹⁶ Decision Denying Exceptions, issued April 28, 2014, in Proceeding No. 13M-0422T, Decision No. C14-0434.

¹⁷ Decision: (1) Applying Recently Enacted Statutes to 56 Wire Center Serving Areas; (2) Vacating Certain Commission Determinations; and (3) Closing the Proceeding, issued June 13, 2014, in Proceeding No. 13M-0422T, Decision No. C14-0642.

¹⁸ *Id.*, at ¶ 8.

¹⁹ Decision Denying Applications for Rehearing, Reargument, or Reconsideration, issued August 4, 2014, in Proceeding No. 13M-0422T, Decision No. C14-0908.

4. Commission Findings that Moneys No Longer Required to Support Basic Service Shall be Transferred to the Broadband Fund

24. The Commission took the next logical step in the application of House Bills 14-1328 and 14-1331 to its findings of effective competition and the elimination of high cost support to the 56 wire centers. The Commission's Decision of October 16, 2014, instructed Staff to calculate the amount of high cost funding attributable to the 56 wire centers and then transfer that amount to the Board.²⁰ This Decision recognized the May 9, 2014, effective date for the new legislation, and it directed that the same proportionate adjustments calculated under the Stipulation – that fit CenturyLink's annual distributions within the \$54 million cap – shall be applied to determine the amount attributable to the 56 wire centers. The amount allocated to support service in the 56 wire centers from May 9, 2014, to the end of the calendar year is no longer necessary to support CenturyLink's provisioning of basic service in those 56 wire centers, and thus under § 40-15-509.5(3), C.R.S., that amount should be transferred to the broadband fund.

25. The direction given for Staff's calculation follows the same procedure established by the Stipulation to calculate CenturyLink's distributions: "We will use the cost and support information in the proxy cost model, plus the methodology in the 2014 Stipulation, to calculate the portion of CenturyLink's distributions used by the company to support basic service in the 56 wire centers."²¹ The Decision recites the Stipulation's detailed explanation of how to calculate and apply the sizing factor to the amounts produced from the proxy cost model, all to ensure that the proportionate amount that CenturyLink would have received for the 56 wire

²⁰ Decision Allocating Colorado High Cost Support Mechanism Funds to the Broadband Deployment Board, issued October 16, 2014, in Proceeding No. 04M-388T, Decision No. C14-1251.

²¹ *Id.*, at ¶ 14.

centers for the time period from May 9, 2014 to December 31, 2014 is transferred to the Board.²² Because the example in Exhibit C to the Stipulation projected a sizing factor of 85.55 percent, it is reasonable and logical to assume the method to be applied under this Decision should result in a sizing factor close to 85 percent, which would then be multiplied to the amount of support for the 56 wire centers, from May 9 to the end of the year, produced under the proxy cost model.

C. Staff and CenturyLink's RRRs and Proposed Calculations.

26. Staff's RRR to the October 16, 2014, Decision requests clarification of the method to calculate the amount attributable to the 56 wire centers. Staff observes that the purpose of the sizing factor is to reduce all payments to CenturyLink and other non-rural providers "proportionately" to ensure the fund does not disburse more than \$54 million annually. Staff's RRR then presents two options with accompanying sample calculations to illustrate its request. The first option applies the instructions in the Decision as written, but with a variation not contained in the Decision. Staff identifies this method in its RRR as the "literal paragraph 15 method." Staff's proposes, and recommends for Commission adoption, a second option, which uses only fourth quarter numbers to calculate a sizing factor. Staff calls its recommended method the "fourth quarter approach."

27. CenturyLink's RRR says Staff's fourth quarter approach "may not precisely comply with applicable law," but, the company "reluctantly supports" Staff's method to calculate the amount to be transferred to the Board.²³ We therefore address the positions common to Staff's and CenturyLink's RRRs, which propose Commission adoption of the "fourth quarter approach."

²² *Id.*, at ¶ 15.

²³ Application for Rehearing, Reargument, or Reconsideration, filed by CenturyLink on November 5, 2014, in Proceeding No. 04M-388T, at 1.

28. Staff's RRR provides an estimate of \$3,986,735 as the funding amount attributable to the 56 wire centers from May 9 to the end of the calendar year, as produced by the cost model before application of the sizing factor. Thus, as stated in the Decision and above, the Commission's objective is to calculate the proportion of \$3,986,735 in a manner that matches how all other amounts produced by the model must be sized down to account for the \$54 million cap.

29. Staff's calculation of its "literal paragraph 15 approach," produces a sizing factor of 82.68433 percent. When this factor is applied to \$3,986,735, then \$3,296,405 is the amount attributable to the 56 wire centers that would be deducted from CenturyLink's annual total and then transferred to the Board.

30. Staff's second method of calculation, the "fourth quarter approach," calculates the sizing factor by first making adjustments to the cap and payment obligations based upon payments made, and obligations existing, as of the fourth quarter. Using this method, Staff calculates a sizing factor of 42.56291 percent, resulting in a transfer to the Board of \$1,696,871.

31. In response to Staff's request for clarification and CenturyLink's RRR, the Commission rules that it intended to direct Staff to use the methodology as written in the Decision. This methodology shall govern the calculation of the amount no longer necessary to support the 56 wire centers and the amount transferred to the Board. It abides by the language of the Stipulation used to calculate the sizing factor, as well as the example attached as Exhibit C to the Stipulation.

32. Staff's "literal paragraph 15 approach" contains a variation that the Commission does not approve; therefore, we attach as Attachment 1 to this Decision an example of the correct method, using Staff's numbers from Table 1 of its RRR. It produces a sizing factor of

84 percent, which when applied to \$3,986,735, produces an amount of \$3,340,576 to be transferred to the Board.

33. The Commission denies Staff's "fourth quarter approach." The Commission-approved Stipulation does not specify or permit a method of adjusting amounts paid and obligations existing as of the fourth quarter. The Stipulation and the example attached as Exhibit C uses annual amounts to calculate the sizing factor. Neither the Stipulation nor Exhibit C engages in the calculations underlying the "fourth quarter approach."

34. Common sense observations also dispel the "fourth quarter approach." The Commission's objective is to size down the \$3,986,735 in the same, proportionate manner as payments to CenturyLink under the Stipulation are sized. It defies practicality and reason that reducing \$3,986,735 to \$1,696,871 accounts for the cap, when the total amount to be distributed to all carriers, using the model, is about \$64 million, and the cap is \$54 million. Further, a sizing factor of about 42 percent from Staff's fourth quarter approach is out of proportion with the sizing factor of 85.55 percent produced by the example in Exhibit C.

35. Staff and CenturyLink contend that the sizing takes place only during the fourth quarter and thus the calculation should use fourth quarter numbers to compute the sizing factor. This is incorrect. The instructions in the Stipulation and Exhibit C apply *annual* amounts to calculate the sizing factor.²⁴ The Stipulation says that, for ease of administration, distributions in the first three quarters are calculated as if no cap or sizing factor is applied, then the amount of the fourth quarter payment is determined to ensure a correct total payout for the year.²⁵ As stated in the Stipulation: "[i]f necessary, adjustments to fourth quarter 2014 distributions shall be made

²⁴ See Stipulation, at ¶¶ G(1-6), and Exhibit C attached to Stipulation.

²⁵ *Id.*, at ¶ G(6).

so that *total* distributions to non-rural eligible providers reflects the sizing factor and so that *total* distributions to all eligible providers do not exceed the fund cap....”²⁶ Nothing in the Stipulation or the example in Exhibit C supports using only fourth quarter numbers to calculate the sizing factor or the amount of total annual distributions.

36. CenturyLink argues that the Decision removes support attributable to the 56 wire centers twice. CenturyLink is incorrect. As explained above, the accounting adjustments to be made to the fourth quarter payment for total, annual disbursements will prevent double removal of support. In the first three quarters, providers receive disbursements without regard to the cap, and, as shown in Exhibit C to the Stipulation, regardless of the amount a provider receives the first three quarters, the amounts disbursed in the fourth quarter are computed to ensure that the provider receives the correct total disbursement for the full year. Regardless of the amount CenturyLink received in the first three quarters, the fourth quarter payment is calculated so that CenturyLink receives the correct amount of distributions for the year.

37. We direct Staff to ensure that the amount attributable to the 56 wire centers from May 9 to the end of the year is deducted only once from the calculation of CenturyLink’s total, annual distribution. Using the amounts shown in our Attachment 1, if distributions to CenturyLink, after applying the sizing factor, would have been \$47.8 million if the Commission had not found effective competition in the 56 wire centers, and assuming the sized amount attributable to the 56 wire centers for the period from May 9 to the end of the year is about \$3.3 million, then the \$3.3 million will be subtracted once from the \$47.8 million and transferred to the Board. CenturyLink will receive a total distribution for 2014 of about \$44.5 million under this example. Because the fund has paid CenturyLink about \$40.5 million through the

²⁶ *Id.*, at ¶ G(6) (emphasis added).

first three quarters, the fund will disburse about \$4.0 million to CenturyLink in the fourth quarter to reach \$44.5 million.

38. Staff and CenturyLink question the procedure employed by the Commission to notify interested parties of the calculation of moneys transferred to the Board. Section 40-15-509.5(3), C.R.S., authorizes the Commission to transfer to the broadband fund an amount of money it determines is no longer necessary to support basic service. The Decision provided notice to the public and all interested persons that the Commission was invoking § 40-15-509.5, C.R.S. The Decision directed Staff to perform the same administrative tasks that it otherwise performs every quarter without any additional Commission decision or process, which is to calculate the correct amounts and distribute them to CenturyLink and other providers. In this case, the Decision afforded interested parties a process not typically provided in the administration and actual disbursement of funds, because the Decision provided the interested parties the opportunity to file applications for RRR under § 40-6-114, C.R.S. The Staff and CenturyLink have taken advantage of the notice provided by the Decision, and of an opportunity to be heard through the applications for RRR afforded by § 40-6-114, C.R.S.

39. Our rulings to reduce high cost distributions to CenturyLink complied with due process. CenturyLink was an active party in Proceeding No. 13M-0422T, in which the Hearing Commissioner issued a Recommended Decision and found the 56 wire centers to have effective competition. CenturyLink advocated in support of these findings. The Commission *en banc* affirmed the Recommended Decision on April 28, 2014, and then the Commission applied the new statutes to the affirmed findings of effective competition in its June 13, 2014, Decision. All decisions issued in Proceeding No. 13M-0422T are final, and CenturyLink did not appeal

those determinations eliminating funding from the 56 wire centers as of May 9, 2014. Therefore CenturyLink is not entitled to challenge these discussions in this proceeding.

40. In addition, Hearing Commissioner Epel issued his findings of effective competition in the 56 wire centers on February 21, 2014 in Decision No. R14-0190. CenturyLink filed its motion for approval of the 2014 Stipulation on March 14, 2014, and the attached Stipulation explicitly acknowledged that the Commission may adjust the allocation of high cost funds due to effective competition findings in Proceeding No. 13M-0422T. The Commission's April 3, 2014, decision approving the Stipulation recognized that legislative enactments may affect 2014 disbursements, through its statement that the Commission "may adjust 2014 disbursements according to its decision in Proceeding No. 13M-0422T and governing statutes or rules."²⁷ We therefore deny the Staff's and CenturyLink's positions challenging notice in this matter.

D. CenturyLink's Separate Objections to the Decision

41. Though CenturyLink supported Staff's proposal, CenturyLink's RRR offers its own calculations of the amount to be transferred to the Board. CenturyLink also asserts separate objections to the Decision.

42. CenturyLink's RRR says little to describe its calculations. CenturyLink's explanation is only as follows:

A strict legal interpretation of the applicable law and the Commission's rules and prior orders, including its orders approving the 2014 Stipulation in this case, would result in only a small amount of money being found to be attributable to the 56 Wire Centers after the effective date of HB 14-1331 and transferred to the broadband fund, as shown in the calculations reflected in Exhibit A appended hereto. *This is primarily because the Proxy Cost Model demonstrates required support for the noncompetitive wire centers in excess of the current cap.*

²⁷ Decision Granting Motion and Approving Stipulation and Settlement Agreement, issued April 3, 2014, in Proceeding No. 13M-388T, at ¶ 6 (emphasis added).

*Removing support from the competitive wire centers does not reduce the need for support in the noncompetitive wire centers.*²⁸

From this statement and our review of CenturyLink's exhibit, upon the Commission's finding of effective competition in the 56 wire centers, CenturyLink appears to shift moneys formerly supporting the 56 wire centers to support other wire centers. Further, CenturyLink's calculation of the sizing factor and resulting distributions also appear to remove the 56 wire centers from the projections produced by the proxy cost model. CenturyLink then performs a comparison of the amount of funding CenturyLink would receive when the 56 wire centers are included, versus when they are not. CenturyLink candidly admits that its calculations result in a small amount attributable to the 56 wire centers for the period from May 9 to December 31: \$260,760.

43. If we have interpreted CenturyLink's method correctly, it contradicts the criteria for transferring money to the Board under House Bill 14-1328. The new statute authorizes the Commission to transfer monies that the Commission determines are no longer required to support basic service "through an effective competition determination." § 40-15-509.5(3), C.R.S. (2014). An effective competition determination does not result in the shifting of funds to other areas or wire centers. We interpret the legislative intent underlying the new Section 509.5 to transfer to the Board the moneys formerly spent to support service in an area of effective competition, not to increase funding to other wire centers.

44. The assumption underlying CenturyLink's method appears to be that the Stipulation and the sizing factor remove complete wire centers from funding to fit total disbursements under the cap. That is incorrect. The Stipulation did not employ a method or have as an assumption the elimination of specific wire centers to decrease total disbursements to

²⁸ CenturyLink's Application for Rehearing, Reargument, or Reconsideration, at 4 (emphasis added).

fit under the cap. The Stipulation and the example attached as Exhibit C accomplish an across-the-board discount to all supported wire centers as a function of the sizing factor. It is the proportionate amount attributable to the 56 wire centers, computed through the sizing factor discount, that gives us the correct amount no longer needed for basic service support.

45. CenturyLink's calculation of \$260,760 would fail to pass legal and common sense examinations. The test for transferring moneys from the high cost fund to the Board requires an analysis of the moneys no longer necessary to support basic service in the areas found to be effectively competitive. Under CenturyLink's theory, only \$260,760 would have been used by CenturyLink to offset the high cost of providing basic service in the 56 wire centers from May 9 until the end of the year, in comparison to the model's projection of \$3,986,735 (before that amount is adjusted through the sizing factor). CenturyLink has an obligation to apply moneys received from the high cost fund to all eligible wire centers, and thus as a matter of law would have been using far more than \$260,760 to support basic service in the 56 wire centers from May 9 to the end of the year.

46. CenturyLink argues that the Decision violates the Stipulation and the proxy cost model "*by providing less support to the remaining wire centers* because the 56 Wire Centers were deemed competitive."²⁹ This is false. The amounts attributable to the remaining wire centers eligible for support remain the same. Stated another way, the proportionate amounts for each wire center as determined through the sizing factor do not decrease. Applying the example in Exhibit C to the Stipulation, each eligible wire center continues to receive about 85 percent of the amount projected by the proxy cost model.

²⁹ *Id.*, at 3 (emphasis added).

47. CenturyLink's next point is that House Bill 14-1331 became effective after the Commission approved the Stipulation. CenturyLink contends: "[t]his is a significant change in law such that the original stipulation and the orders approving it may be void."³⁰ CenturyLink does not apply or move for an order voiding the Stipulation, and CenturyLink does not tender the moneys it has received through the 2014 Stipulation; therefore, we interpret CenturyLink's assertion to be theoretical and not a formal request to annul the Stipulation.³¹

48. CenturyLink warns that, if the Stipulation is void, then support would be determined by the proxy cost model without any limitations imposed by the \$54 million cap. Though a formal claim to void the Stipulation has not been asserted at this time, CenturyLink's predictions of a void Stipulation and its consequences are not true. Again, the proper time to challenge the ECA determination and the approval of the Stipulation has long lapsed, and CenturyLink appears to be impermissibly attacking valid orders of the Commission. First, a claim to void the Stipulation would have to overcome its statement that recognized the potential for changes in disbursements due to findings of effective competition. Even if the Stipulation were rendered void, it approved use of the proxy cost model for 2014; thus, voiding the Stipulation may also void approval and use of the model in 2014. The \$54 million cap imposed by Commission rule remains intact, and voiding the Stipulation would require the Commission

³⁰ *Id.* (emphasis added).

³¹ Any claim under the Stipulation – that CenturyLink was unaware that the new telecom and broadband legislation could alter its distributions – is not credible. CenturyLink participated in the negotiation and drafting of the legislation. A CenturyLink representative supported passage of the legislation in testimony before the House Committee on Business, Labor, Economic, and Workforce Development on March 25, 2014, several days before the Commission approved the Stipulation on April 3, 2014. After Commission approval of the Stipulation, CenturyLink's representative testified in support of the amendments on April 16, 2014, before the Senate Business, Labor and Technology Committee. These testimonies are available at: <http://www.leg.state.co.us>. At no time, either before or after the Commission approved the Stipulation, did CenturyLink request the Commission to restrict or alter the provision in the Stipulation that authorizes a change in the amount of CenturyLink's distributions as a result of determinations of effective competition in CenturyLink's wire centers.

to determine another process or methodology by which support for all eligible providers will fit within the cap.

E. Expedited Transfer of Undisputed Amounts to Broadband Fund

49. We reiterate our authorization to Staff to make early transfers to the Board as soon as practical. Such transfers may be in amounts that constitute at least part of the amount attributable to the 56 wire centers. Early transfer will allow the Board to commence its operations as permitted under House Bill 14-1328.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration filed on November 4, 2014, by Staff of the Colorado Public Utilities Commission is denied, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration filed on November 5, 2014 by Qwest Corporation, doing business as CenturyLink QC, is denied, consistent with the discussion above.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 12, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners