

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE VERIFIED )  
 PETITION OF UNITED TELEPHONE ) CAUSE NO. 43763  
 COMPANY OF INDIANA, INC., D/B/A )  
 EMBARQ FOR A FINDING BY THE ) FINAL ORDER  
 INDIANA UTILITY REGULATORY )  
 COMMISSION OF EMBARQ'S ) APPROVED: JAN 20 2010  
 COMPLIANCE PURSUANT TO )  
 INDIANA CODE § 8-1-2.6-1.3 )

**BY THE COMMISSION:**

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

1. **Procedural History.** On August 13, 2009, Petitioner, United Telephone Company of Indiana, Inc., d/b/a CenturyLink<sup>1</sup> ("CenturyLink" or "Petitioner") filed its Verified Petition ("Petition") requesting the Indiana Utility Regulatory Commission ("Commission") issue an Order finding that CenturyLink has complied with the broadband service availability requirements set forth in Indiana Code I.C. § 8-1-2.6-1.3. CenturyLink increased the monthly rates for residence Basic Telecommunications Service ("BTS") by \$1.00 in 71 of its exchanges, pursuant to I.C. § 8-1-2.6-1.3(c). Rate changes made pursuant to I.C. § 8-1-2.6-1.3(c) have broadband service availability requirements as specified in I.C. § 8-1-2.6-1.3(e). In addition, CenturyLink filed a concurrent *Verified Petition for the Protection of Confidential and Proprietary Information* for its evidence supporting CenturyLink's compliance with the broadband service availability requirements.

On September 8, 2009, the Commission issued its Legal Notice of a Prehearing Conference and Preliminary Hearing. On September 29, 2009 the Indiana Office of Utility Consumer Counselor ("Public" or "OUCC") with Petitioner's authorization filed an *Agreed Procedural Schedule*. Pursuant to notice and as provided for in 170 I.A.C. § 1-1.1-15, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission convened a prehearing conference in this Cause at 9:30 a.m. on October 1, 2009 in Judicial Courtroom 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At the prehearing conference, the Presiding Administrative Law Judge read the parties' agreement into the record.

On October 2, 2009, Petitioner filed a Motion for Extension of Time to conduct the hearing that in accordance with I.C. § 8-1-2.6-1.3 (e) is required to be held within ninety (90)

<sup>1</sup> On September 11, 2009, United Telephone Company of Indiana, Inc. submitted a Verified Communications Service Provider ("CSP") Notice of Change Form to change its d/b/a from Embarq to CenturyLink. On October 13, 2009, the Commission posted acknowledgment and acceptance of the d/b/a change on our website, noting that the 30-day posting period had elapsed.

days after a provider has requested a hearing. On October 6, 2009, the Commission issued a docket entry granting Petitioner's motion.

On October 2, 2009, the Commission granted CenturyLink's *Petition for the Protection of Confidential and Proprietary Information*, determining that the confidential information be held as confidential by the Commission on a preliminary basis.

On October 5, 2009, the Commission issued its Legal Notice of Public Hearing at 9:30 a.m. on December 1, 2009 in Judicial Courtroom 224 of the National City Center at 101 West Washington Street, Indianapolis, Indiana. On October 14, 2009, the Commission issued a Prehearing Conference Order establishing the procedural schedule, based upon the agreement of the parties. On October 20, 2009, CenturyLink prefiled the direct testimony of its witness, Alan I. Matsumoto, Regulatory Manager, constituting its case-in-chief in support of the Petition. The testimony included Confidential Exhibit 3, CenturyLink's evidence of compliance with the broadband service availability requirements.

On November 2, 2009, the Presiding Officers issued a docket entry with data requests. On November 9, 2009, CenturyLink filed a *Motion for Extension of Time* to respond to the data requests. On November 12, 2009, the Commission issued a docket entry granting CenturyLink's motion. On November 12, 2009, CenturyLink filed its responses to the data requests.

On November 3, 2009, the OUCC filed its *Notice of Intent Not to Prefile Testimony*.

Pursuant to notice and as provided for in 170 I.A.C. § 1-1.1-15, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission convened an evidentiary hearing in this Cause at 9:30 a.m. on December 1, 2009 in Judicial Courtroom 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. CenturyLink and the OUCC appeared and were duly represented by counsel. No petitions to intervene were filed in this Cause. No members of the general public appeared or sought to testify at the evidentiary hearing.

CenturyLink offered into evidence as its case-in-chief the direct testimony of its witness Alan I. Matsumoto as Petitioner's Exhibit 1. Confidential Exhibit 3 of Mr. Matsumoto's direct testimony, a table depicting the percentage of the households with broadband service available at the requisite speeds for each affected exchange, was introduced as Petitioner's Exhibit 1-Confidential. CenturyLink's Responses to the Presiding Officers' data requests were also offered into evidence as Petitioner's Exhibit 2. The OUCC had no objection to the admission of CenturyLink's evidence. The Presiding Officers had questions for Mr. Matsumoto at the hearing. The testimony and other evidence accepted into the record at the hearing are summarized below.

Based upon the applicable law and the evidence herein, the Commission now finds:

**2. Notice and Jurisdiction.** Proper, legal and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as provided for by Indiana law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. CenturyLink is a "public utility" and "incumbent local exchange carrier" as

those terms are defined in I.C. § 8-1-2-1, *et seq.*, and as set forth in 47 U.S.C. §251(h) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Therefore, we determine that we have jurisdiction over CenturyLink and the subject matter of this proceeding.

**3. Summary of Evidence.**

**A. Petitioner’s Prefiled Testimony.** On October 20, 2009, CenturyLink prefiled the direct testimony of its witness, Alan I. Matsumoto, Regulatory Manager, constituting its case-in-chief in support of the Petition. Mr. Matsumoto’s testimony outlined CenturyLink’s tariff changes filed on April 14, 2008, that included increasing the monthly rates for residence basic telecommunications service by \$1.00. The rate increases were implemented on a billing cycle basis beginning on May 14, 2008 for selected exchanges:

Arcola	Francesville	Millersburg	Shipshewana
Argos	Franklin	Monroe	South Milford
Ashley	Geneva	Monticello	South Whitley
Aurora	Goodland	Nappanee	Syracuse
Avilla	Howe	New Carlisle	Topeka
Bargersville	Jamestown	Nineveh	Trafalgar
Berne	Kentland	North Judson	Tri-Lakes
Bremen	Knightstown	North Liberty	Union City
Brook	Knox	North Webster	Van Buren
Burnettsville	Lagrange	Pennville	Vevay
Columbia City	Lapaz	Pierceton	Walkerton
Corunna	Lapel	Plymouth	Warsaw
Cromwell	Larwill	Portland	Wheatfield
Decatur	Laud	Remington	Whiteland
Dillsboro	Lawrenceburg	Rensselaer	Winamac
East Enterprise	Leesburg	Rising Sun	Wolcott
Flora	Marietta	Rossville	Wolcottville
Fortville	Milford	San Pierre	

Mr. Matsumoto’s testimony stated that CenturyLink complied with the rate increase notice requirements of I.C. § 8-1-2.6-1.3 (c) through 30-day advance notice of the rate increase to the Commission with its April 14, 2008 tariff filing, a copy of which was attached to his testimony as Exhibit 1. CenturyLink also provided 30-day advance notice of the rate increase to all affected customers through a bill message that ran beginning on April 14, 2008. The rate increases were implemented beginning on May 14, 2008.

Mr. Matsumoto’s testimony reiterated that for basic telecommunications service rate increases made pursuant to I.C. § 8-1-2.6-1.3(c), broadband service availability requirements are set forth in I.C. § 8-1-2.6-1.3(e). That statute specifies that not later than eighteen calendar months after the first rate increase in the affected exchange, the provider must offer broadband service to at least 50% of the households located in the affected exchange, at an average speed of

at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream, as defined by I.C. § 8-1-2.6-1.3(a).

Mr. Matsumoto's testimony described how CenturyLink developed the evidence to demonstrate compliance with the broadband service availability requirements. CenturyLink determined the number of all households in each exchange using July 2009 data from its Willserve database. The Willserve database houses all of the addresses that could potentially be served by CenturyLink. Using network information, CenturyLink determined the number of households that had broadband service available at an average speed of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream for each exchange. Dividing the number of households with broadband service available at the requisite speeds by the total number of households for each exchange produced the percentage of the households with broadband service available for each exchange. CenturyLink's evidence of compliance with the broadband service availability requirements is a table with the percentage of the households with broadband service available at the requisite speeds for each of the 71 affected exchanges and was attached to Mr. Matsumoto's testimony as CenturyLink Confidential Exhibit 3.

**B. Responses to Docket Entry Questions.** On November 2, 2009, the Presiding Officers issued a docket entry with data requests to CenturyLink regarding CenturyLink's methods to determine: (1) the number of households that are broadband capable and (2) whether the broadband available to those households meets the speed requirements in the statute.

On November 12, 2009, CenturyLink filed responses to the data requests indicating that CenturyLink's qualification process begins by identifying geographic markets that are candidates for High-Speed Data ("HSD") services, compiling a list of wire centers. Outside plant ("OSP") facilities associated with the wire centers with a copper/fiber path back to a Digital Subscriber Line Access Multiplexer ("DSLAM") location are pre-qualified for HSD services. For each working number or service address, pre-qualification reflects the theoretical Maximum Engineering Data Rate ("MEDR").

CenturyLink's response described software and systems that perform a loop makeup for the full length of the cable feeding a serving terminal. An Adjusted Loop Length ("ALL") represents the actual loop route distance from the serving terminal to the central office or serving carrier site, with consideration for gauge changes. MEDR maintenance supports batch requests for recalculation due to cable throws, adding or removing of cables or devices in the network. An initial As Is Data Rate ("AIDR") pre-qualification value process reflects a predicted data rate supported by loops in their present condition, and referenced to the serving terminal. The AIDR predicts the data rate that could be supported by a loop in its current condition, referenced to a serving terminal location. The AIDR can be determined by one of three methods: (a) Access Care-TollGrade - Loop characteristics are measured utilizing the AccessCare test platform and a TollGrade Digitest test head deployed at each DSLAM location; (b) AUTOAIDR - Loop characteristics are measured utilizing the Engineering Work Order ("EWO") records and AUTOAIDR at each DSLAM location (HOST/Remote & DLCs); and (c) Manual Loop Make-up - If the specific loop is assumed to be in good condition, the AIDR can be obtained by running a manual loop in EWO.

**C. Additional Testimony Presented by CenturyLink.** In response to questions from the bench, Mr. Matsumoto briefly described the process CenturyLink uses to determine compliance with the broadband service availability requirements. Mr. Matsumoto explained that the data CenturyLink filed considers the actual loop configuration, e.g., loops with load coils would not be considered broadband capable. Upon questioning, Mr. Matsumoto indicated that CenturyLink used AIDR data and not MEDR data to determine broadband speeds. Mr. Matsumoto discussed CenturyLink's Willserve database, which determines the households in an exchange, and indicated that mapping data were used to update the database prior to CenturyLink's filing its Petition.

**D. Commission Analysis and Findings.** CenturyLink's Petition was filed pursuant I.C. § 8-1-2.6-1.3(e). The relevant statutes for evaluating and determining CenturyLink's compliance with I.C. § 8-1-2.6-1.3(e) are:

**IC 8-1-2.6-0.1**

- (a) As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:
- (1) is provided to a residential customer through the customer's primary line; and
  - (2) is:
    - (A) the sole service purchased by the customer;
    - (B) not part of a package of services, a promotion, or a contract; or
    - (C) not otherwise offered at a discounted price.

**IC 8-1-2.6-1.3**

(a) As used in this section, "broadband service" means a connection to the Internet that provides capacity for transmission at an average speed of at least one and one-half (1.5) megabits per second downstream and at least three hundred eighty-four (384) kilobits per second upstream, regardless of the technology or medium used to provide the connection.

(b) As used in this section, "rate transition period" refers to the period beginning March 28, 2006, and ending June 30, 2009, during which a provider may act under this section to increase the provider's flat monthly rate for basic telecommunications service offered in one (1) or more local exchange areas in Indiana.

(c) This subsection applies to a provider that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Subject to subsection (e), during the rate transition period, a provider may act without the prior approval of the commission to increase the provider's flat monthly rate for basic telecommunications service in any local exchange area in which the provider offers basic telecommunications service on March 27, 2006. Subject to subsection (h), a provider may increase the provider's flat monthly rate for basic telecommunications service in a local exchange area as follows:

- (1) The provider may increase the flat monthly rate not more frequently than once during each successive twelve (12) month period during the period beginning March 28, 2006, and ending June 30, 2009. The amount of any increase in the flat monthly rate imposed

during a twelve (12) month period described in this subdivision may not exceed one dollar (\$1). . . .

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection. . . .

(e) This subsection applies to a provider that acts under subsection (c) or (d) to increase the provider's flat monthly rate for basic telecommunications service in a local exchange area in Indiana. Not later than eighteen (18) calendar months after the provider's first rate increase in the local exchange area under subsection (c) or (d), the provider must offer broadband service to at least fifty percent (50%) of the households located in the local exchange area, at the average speeds set forth in subsection (a), as determined by the commission after notice and an opportunity for hearing. The commission may extend the eighteen (18) month period allowed under this subsection by not more than nine (9) additional calendar months for good cause shown by the provider. The commission shall hold a hearing and make a finding as to whether the provider offers broadband service to at least fifty percent (50%) of the households in the local exchange area not later than the earlier of the following:

(1) Ninety (90) days after a request by the provider for a hearing and determination by the commission. The provider may request a hearing and determination under this subdivision at any time before the expiration of:

(A) the eighteen (18) month period allowed by this subsection; or

(B) any extension of the eighteen (18) month period allowed by the commission under this subsection. . . .

The evidence shows that during the "rate transition period," specifically on April 14, 2008, CenturyLink filed tariff changes that increased the monthly rates for "basic telecommunications service" by one dollar (\$1), pursuant to I.C. § 8-1-2.6-1.3(c). Basic telecommunications service rate increases made pursuant to I.C. § 8-1-2.6-1.3(c) have broadband service availability requirements set forth in I.C. § 8-1-2.6-1.3(e). CenturyLink filed its Petition in accordance with I.C. § 8-1-2.6-1.3(e), requesting the Commission hold a hearing and make a finding that it offers broadband service to at least fifty percent (50%) of the households in the local exchange areas.

CenturyLink's testimony demonstrates compliance with the basic telecommunications service rate increase notice requirements of I.C. § 8-1-2.6-1.3(c) through 30-day advance notice of the rate increase to the Commission and 30-day advance notice of the rate increase to all affected customers through a bill message that ran beginning on April 14, 2008.

CenturyLink's testimony described in sufficient detail how it developed the evidence to demonstrate compliance with the broadband service availability requirements set forth in I.C. § 8-1-2.6-1.3(e). CenturyLink determined the number of all households in each exchange using July 2009 data and determined the number of households that had broadband service available at the statutorily required average speeds of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream for each exchange. Dividing the number of households with broadband service available at the requisite speeds by the total number of households for each exchange produced the percentage of the households with broadband service available for

each exchange. CenturyLink's evidence of compliance with the broadband service availability requirements of at least 50% for each of the 71 affected exchanges is contained in Petitioner's Exhibit 1 - Confidential.

Having reviewed the Petition and having considered all evidence submitted in this Cause, the Commission finds that CenturyLink has fulfilled the broadband service availability requirements set forth in I.C. § 8-1-2.6-1.3(e). Specifically, the Commission finds that not later than eighteen calendar months after the first rate increase in each affected exchange, CenturyLink offers broadband service to at least 50% of the households located in the affected exchange, at an average speed of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream, as defined by I.C. § 8-1-2.6-1.3(a).

Accordingly, CenturyLink's Petition shall be approved, as set forth herein.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Consistent with the findings above, and in accordance with I.C. § 8-1-2.6, *et seq.*, CenturyLink's Petition for an Order finding that CenturyLink has complied with the broadband service availability requirements in I.C. § 8-1-2.6-1.3(e) is approved.

2. This Order shall be effective on and after the date of its approval.

**HARDY, ATTERHOLT, GOLC, LANDIS AND ZIEGNER CONCUR:**

**APPROVED: JAN 20 2010**

**I hereby certify that the above is a true and correct copy of the order as approved.**

  
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**Brenda A. Howe**  
**Secretary to the Commission**