Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of CenturyLink for Forbearance	)	WC Docket No. 12-60
Pursuant to 47 U.S.C. § 160(c) from	)	
Dominant Carrier and Certain *Computer*	)	
Inquiry Requirements on Enterprise	)	
Broadband Services	)	

JOINT COMMENTS AND OPPOSITION OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE NEW JERSEY DIVISION OF RATE COUNSEL

Charles Acquard, Executive Director
National Association of State Utility
Consumer Advocates - NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380
www.nasuca.org

Stefanie A. Brand, Director
New Jersey Division of Rate Counsel
Christopher J. White,
Deputy Rate Counsel
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

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I. INTRODUCTION

In response to the Public Notice issued March 6, 2012, by the Federal Communications Commission ("FCC" or "Commission"),[1] the New Jersey Division of Rate Counsel ("Rate Counsel") and the National Association of State Utility State Consumer Advocates ("NASUCA") (hereafter collectively "State Consumer Advocates")[2] hereby oppose the Petition filed February 23, 2012, by CenturyLink

[1]/ Federal Communications Commission Public Notice, "Pleading Cycle Established for CenturyLink's Petition Seeking Forbearance from Enforcement of Dominant Carrier and Certain *Computer Inquiry* Requirements on Enterprise Broadband Services," WC Docket No. 12-60, DA 12-346, March 6, 2012. Initial comments originally were due April 5, 2012. The Commission subsequently extended the dates for the initial and reply comments to April 20, and May 7, 2012, respectively. WC Docket No. 12-60, *Order*, DA 12-451, rel. March 22, 2012.

[2]/ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the

requesting forbearance under 47 U.S.C. § 160(c) from enforcement of certain of the Commission's dominant carrier regulations and certain *Computer Inquiry* tariffing requirements with respect to CenturyLink's packet-switched and optical transmission services (hereafter "enterprise broadband services"). In particular for Legacy CenturyTel,[3] CenturyLink seeks forbearance related to: Ethernet Transport, Ethernet Virtual Private Line, Local Transport – Synchronous Optical Channel, Synchronous Optical Channel Service, Custom Connect, Frame Relay Access Service, Asynchronous Transfer Mode Cell Relay Access Service, Video Frame Services – Type II; and for Legacy Embarq, forbearance on Ethernet Virtual Private Line and 270 Mbps Digital Video Transport Service ("DVTS").[4] For the reasons discussed below, State Consumer Advocates submit that the FCC should deny the Petition.

EXECUTIVE SUMMARY

Over the years, incumbent telecommunications service providers and newcomers alike have gamed the regulatory process to secure a competitive advantage in terms of reduced regulation and claimed cost savings. Yet the alleged cost savings have not trickled down to consumers in the form of lower prices and better service quality. The Commission, during the past several years, has been inundated with forbearance filings by different carriers who have all slowly but successfully chipped away at the core and

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state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A.* §§ 52:27EE-46 *et seq*.

[3] / That is, CenturyTel as it existed prior to the merger of CenturyTel and Embarq to form CenturyLink.

[4] / Petition of CenturyLink for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Dominant Carrier and Certain *Computer Inquiry* Requirements on Enterprise Broadband Services, filed February 23, 2012 ("CenturyLink Petition") as listed on Attachment A of the Petition.

purpose of the *Telecommunications Act.* Riding on the coattails of previous forbearances granted to AT&T, BellSouth, ACS of Anchorage, Qwest, Embarq and Verizon, to name only a few, CenturyLink follows suit by the filing of yet another *"me too"* Forbearance Petition.

State Consumer Advocates remain resolute and reiterate the arguments made in opposition to the numerous prior forbearance petitions, and urge the Commission not to grant the forbearance requested herein by CenturyLink.[5] Granting CenturyLink's Petition would be ill-advised because it would further exacerbate a telecommunications service market which continues to be insufficiently competitive to discipline the behavior and performance of the largest market participants. The numerous forbearances granted in the past six years, exempting carriers from certain dominant carrier regulation and certain *Computer Inquiry* requirements under the Act have not yielded the promised or expected outcome of greater deployment and penetration of enhanced better services at

5/ *See, e.g., Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Philadelphia, Pittsburgh, Boston, New York City, Providence and Virginia Beach Metropolitan Statistical Areas,* WC Dockets 06-172 and 07-97, Comments and Reply Comments of the National Association of State Utility Consumer Advocates on Remand, September 21, 2009 and October 21, 2009; *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended,* WC Docket No. 07-267, Initial and Reply Comments of the New Jersey Division of Rate Counsel and NASUCA, March 7, 2008 and March 24, 2008; *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas,* WC Docket 07-97, Initial and Reply Comments of the New Jersey Division of Rate Counsel, August 31, 2007 and September 28, 2007; Initial and Reply Comments of NASUCA, August 31, 2007 and October 1, 2007; *Petition of Qwest Corporation For Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c),* WC Docket No. 07-204, New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General's Office and NASUCA, Initial and Reply Comments, December 6, 2007 and December 21, 2007; *In the Matter of Petition of AT&T Inc, for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-139, New Jersey Division of Rate Counsel, Initial and Reply Comments, August 20, 2007 and September 19, 2007; NASUCA, Initial and Reply Comments, August 20, 2007 and September 19, 2007; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342, New Jersey Division of the Ratepayer Advocate, Initial and Reply Comments, January 23, 2006 and February 10, 2006; NASUCA, Reply Comments, February 13, 2006; *Qwest's Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Comments of the New Jersey Division of the Ratepayer Advocate, January 23, 2006.

lower prices and increased service quality. Although the industry clamors that enterprise broadband services are highly competitive, and that continued regulation is ill-suited, outdated and therefore unnecessary, recent industry mergers stand as a testament to a continually shrinking supplier base, with a voracious appetite to curtail competition, while increasing pricing, and providing less service quality and innovative technology to an all-too-often captive subscriber/consumer base. State Consumer Advocates submit that (1) a grant of CenturyLink's petition would detrimentally impact consumers and is contrary to the public interest, (2) the proposed relief is unwarranted because the record shows that CenturyLink has not been hindered in competing for the service for which forbearance is requested, and (3) the enterprise broadband market shows substantial growth in revenue now and in the future with minimal declines in prices so far. As a result, CenturyLink has failed to show that any of the §160 criteria are met, let alone all three criteria, and the Petition should be denied.

II. ANALYSIS OF PETITION

A. CenturyLink Overstates the Extent of Competition It Faces in the Market

Under the National Broadband Plan, the FCC called for a dramatic increase in data collection in an attempt to better measure competition in the broadband industry. Despite this call, CenturyLink's current filing is devoid of company specifics on any loss suffered as a result of operating under tariff requirements and other dominant carrier regulation. In support of its petition CenturyLink makes generalized statements about the state of competition such as:

1) CLECs use of copper loops through the use of "pair bonding" enables CLECs to provide broadband speeds and performance that are comparable to those of CenturyLink's enterprise broadband services but at a fraction of the cost of employing fiber and winning small, medium and large business customers in CenturyLink's service territory. [CenturyLink Attachment F ¶ 2].

2) Over 12-18 months CLECs have launched and marketed "Ethernet-Over-Copper" services throughout Las Vegas, Phoenix and Seattle and over Tier 2 and Tier 3 cities such as Boise, ID, Fargo, ND, Medford, OR and Billings, MT. [CenturyLink Attachment F ¶ 3].

3) Integra Telecom is one of the most successful providers of these services and provides a package of voice, data and Internet services with up to 30 Mbps of symmetrical upstream and downstream bandwidth, and currently services more than 120 central offices throughout its eleven-state footprint in the western U.S. [CenturyLink Attachment F ¶ 5].

CenturyLink argues that disparate regulation such as price caps and tariffed rates have had "a significant negative impact on enterprise broadband customers and have precluded CenturyLink from offering customers the simple, tailored arrangements they seek," resulting in their loss of market share.

State Consumer Advocates submit that the joint statement issued by Commissioners Copps and Adelstein in the *AT&T and BellSouth Forbearance Order*[6] is still compelling. The Commissioners in their Joint Statement noted that "[i]n places where substantial competition does not exist, it seems that forbearance actually can make the problem worse as 'potential' competitors will have even less ability to successfully compete to provide a check on any anti-competitive behavior." The Internet Broadband market continues to be controlled by five top carriers, and market entry remains difficult, making continued dominant carrier regulation in the public interest for the protection of

[6] / *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services: Petition of BellSouth Corporation for Forbearance Under section 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; FCC WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel October 12, 2007), Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan S. Adlestein, Dissenting, at 42.

consumers.[7] It has been fifteen years since the Commission first grappled with the issue of broadband deployment, and two years since the issuance of the National Broadband Plan and ushering in the hope of bridging the digital divide, but the reality is to the contrary.

A recent study conducted by the Leichtman Research Group, Inc. ("LRG") shows that eight broadband providers account for 88 percent of the market, with the top four companies — Comcast Corp., AT&T Inc., Verizon Communications Inc., Time Warner Cable, controlling 73 percent of that market.[8] Further, "the eighteen largest cable and telephone providers in the U.S. represent about 93% of the market, and acquired 3 million net additional high-speed Internet subscribers in 2011, with Comcast and Time Warner collectively picking up more than 1.5 million new customers, with most of the growth coming from dissatisfied subscribers seeking better broadband speeds."[9] Moreover, the data reveals stalled growth:

> Despite AT&T's position as the second largest Internet Service Provider in the country, the company only picked up 117,000 new customers in 2011. In contrast, Time Warner Cable, with 6 million fewer customers, added almost a half-million new broadband

7 / Investigative Reporting Workshop, American University School of Communication, "Industry lobbying keeps public in dark about broadband," by John Dunbar, Friday March 12, 2010. Publicly available document at: http://investigativereportingworkshop.org/investigations/broadband-adoption/story/industry-lobbying-keeps-public-dark-about-broadband/, citing as their source, research conducted by the Leichtman Research Group, Inc. (LRG) www.LeichtmanResearch.com.

8 / *Id,. See also:* Ethernet Services Market: CenturyLink Petition, Confidential Attachment H Conf Report 2 Frost Sullivan – Retail Carrier.pdf at p. 79 – Chart titled: 2010 Percent of Revenue Total Retail Carrier Ethernet Services Market: U.S., 2010, shows CenturyLink market share; and Chart titled: Competitive Environment - Retail Carrier Ethernet Services Market: Competitive Structure, U.S., 2010, at p. 83, shows the number of competitors and market share.

9 / Comcast/Time Warner Cable Biggest Broadband Winners; DSL Withers on the Vine, by Phillip Dampier, March 19, 2012; http://stopthecap.com/tag/internet/internet-service-provider, citing as their source, research conducted by the Leichtman Research Group, Inc.

> subscriptions last year. [Likewise] Frontier Communications, which made broadband a primary target for expansion, has not seen considerable growth either. The company only added just short of 38,000 new broadband customers last year, almost all getting DSL, often at speeds of 1-3Mbps. [10]

This data from LRG on the Internet Broadband market undercuts CenturyLink's claim that it cannot compete in the Enterprise Broadband market absent a grant of the Petition.

CenturyLink argues that it is working at a competitive disadvantage because of being subject to dominant carrier regulation,[11] which companies such as AT&T, Verizon, Embarq, Qwest and the like have shed through grants of forbearance. State Consumer Advocates note that, despite the claimed competitive disadvantage, CenturyLink has been successful in obtaining over 270 contracts.[12] This fact undercuts CenturyLink's claim that it cannot compete without the relief sought. Moreover, the LRG study demonstrates that even companies that have been granted the types of forbearance which CenturyLink seeks have experienced market losses.[13] Therefore, it appears that market share loss may correlate more accurately to the quality of product and service offerings a carrier offers, and to problems affecting reliability, affordability and adequacy of service rather than as a result of a disparate regulatory framework, or non-level playing field, as CenturyLink would have the Commission believe.

State Consumer Advocates posit that the internet marketplace is as equally concentrated as the enterprise market and in both markets competitors are able to

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[10] / Comcast/Time Warner Cable Biggest Broadband Winners; DSL Withers on the Vine, by Phillip Dampier, March 19, 2012http://stopthecap.com/tag/internet/internet-service-provider, citing as their source, research conducted by the Leichtman Research Group, Inc.

[11] / CenturyLink Petition at p. 7.

[12] / *Id.*, at pp. ii and 4.

[13] / *Supra* at fn 10.

compete. Forbearance of dominant carrier and *Computer Inquiry* regulations for these carriers has not resulted in bridging the digital divide.

CenturyLink's Petition lacks sufficient empirical and evidentiary support but offers mere conclusions, not empirical data, to support the Petition. Crucially, CenturyLink's assertion that tariffing requirements affect its ability to compete lacks empirical support. In addition, the assertion ignores the ability to file multiple service offerings tariffs in anticipation of using them in the future for responding to requests for proposals. CenturyLink can also file tariffs that indicate that particular offering are done on a individual contract basis. CenturyLink's arguments are further undercut by the detailed information contained in Attachments H, I, J and L on the product and price offering of their competitors.[14]

Therefore, continued application of dominant carrier regulation and certain Computer Inquiry tariffing requirements are necessary to ensure continued safe and adequate services and to ensure that charges, practices, and services are not unjustly or unreasonably discriminatory, in furtherance of the public interest.[15]

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[14]/ CenturyLink Petition: Confidential Attachment H Conf Report 2 Frost Sullivan – Retail Carrier.pdf at pp. 79 – 83, Chart titled: 2010 Percent of Revenue Total Retail Carrier Ethernet Services Market: U.S., 2010, shows the number of competitors and CenturyLink market share; Confidential Attachment I Conf Report 6 Frost Sullivan – Wholesale Carrier.pdf Report titled: Wholesale Carrier Ethernet Services Market Update, 2011 - Demand for Mobile Backhaul Applications Surges, Outgrows Predicted Growth Rates July 2011, Report section titled: Market Share and Competitive Analysis—Total Market beginning at p. 53, Subtitled: Competitive Environment at p. 55; Competitive Analysis – Market Share at p. 56; Confidential Attachment J Conf Report 4 IDC-US Carrier Ethernet Serv.pdf: ReportTitled, Market Analysis, US Carrier Ethernet Services 2011 – 2015 Forecast, by : Nav Chander, subsection titled: Future Outlook, Forecasts and Assumptions and Figure 2 US Ethernet Services Revenue Share by Service Type 2010, at p. 9 and at pp. 26-27; and Confidential Attachment L Conf Report 3 Frost Sullivan – US Mobile Ba.pdf Chart 28: Mobile Backhaul Services Market: Competitive Structure (U.S.), 2010 at pp. 38-39.

[15]/ 47 U.S.C. § 160(a).

B. CenturyLink is a Substantial Provider of Enterprise Broadband Services.

The Commission should reject CenturyLink's characterization that dominant carrier classification causes it to compete at a disadvantage in an "intensely competitive market," a market where, it says, "CenturyLink is nowhere close to being a dominant provider of enterprise broadband services."[16] The various studies and reports noted by State Consumer Advocates throughout these comments, as well as data contained in several reports submitted by CenturyLink in Attachments H, I and L show the alleged competitive disadvantages do not in fact exist, and undercut CenturyLink's claim that it cannot compete without regulatory forbearance. CenturyLink has been able to compete in this market and has not shown anything to the contrary. Moreover, if such competition existed, one would expect service quality to increase, or rates to decline, or both.[17] CenturyLink provides no empirical evidence of either.

CenturyLink's own attachments show that CenturyLink has not been detrimentally affected by the regulatory framework it operates under. For example, a recent retail carrier Ethernet services market update titled "*2011 Revenue Growth Continues even as Competition Heats Up!*" produced by Frost & Sullivan - Market Engineering, dated August 2011 shows CenturyLink maintaining its share of the market.[18] Likewise, the report categorizes CenturyLink as a substantial market

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16 / CenturyLink Petition, at pp.7 and 24.

17 / National Bureau of Economic Research (NBER) Working Paper Series titled: *Evidence of a Modest Price Decline in US Broadband Services*, by Shane Greenstein and Ryan C. McDevitt - Working Paper 16166, dated July 2010 , pp. 3-5 and Table 1 at p.9, p. 26 at fn 38 and pp. 28-29, publicly available document at: http://www.nber.org/papers/w16166.

18 / CenturyLink Petition, Confidential Attachment H Conf Report 2 Frost Sullivan – Retail Carrier.pdf at p. 79 – Chart titled: 2010 Percent of Revenue Total Retail Carrier Ethernet Services Market: U.S., 2010, shows CenturyLink market share.

participant.[19] Per the Frost & Sullivan analysis, revenue opportunities are expanding and market shares for competitors are not declining.[20]

Moreover, in the realm of wholesale services, CenturyLink's confidential Attachment I shows that CenturyLink has maintained its market share. The remaining wholesale service providers control a small portion of the market.[21] Additionally, CenturyLink demonstrates a significant market presence in the mobile backhaul services market. It was noted that competitors including CenturyLink have certain competitive advantages in this market.[22]

Lastly, the claimed pricing declines are flawed. A recent 2010 study conducted by the National Bureau of Economic Research ("NBER") examined Internet Broadband contracts and price indexes for the period of most-rapid growth and diffusion, in the industry (2004 to 2009).[23] The study revealed that in 3Q2008, the largest five market competitors which included Qwest (now CenturyLink), accounted for 60% of broadband contracts, and found no dramatic price decline in broadband pricing despite rapid growth

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[19] / *Supra* at fn 18., at Chart titled: Competitive Environment - Retail Carrier Ethernet Services Market: Competitive Structure, U.S., 2010, at p. 83, shows the number of competitors and market share.

[20] / CenturyLink Petition, Confidential Attachment H Conf Report 2 Frost Sullivan – Retail Carrier.pdf at pp. 81-82.

[21] / CenturyLink Petition, Confidential Attachment I Conf Report 6 Frost Sullivan – Wholesale Carrier.pdf Report titled: Wholesale Carrier Ethernet Services Market Update, 2011 - Demand for Mobile Backhaul Applications Surges,Outgrows Predicted Growth Rates July 2011. Report section titled: Market Share and Competitive Analysis—Total Market beginning at p. 53, Subtitled: Competitive Environment at p. 55; Competitive Analysis – Market Share at p. 56.

[22] / CenturyLink Petition, Confidential Attachment L Conf Report 3 Frost Sullivan – US Mobile Ba.pdf Chart 28: Mobile Backhaul Services Market: Competitive Structure (U.S.), 2010 at pp. 38-39.

[23] / National Bureau of Economic Research (NBER) Working Paper Series titled: *Evidence of a Modest Price Decline in US Broadband Services*, by Shane Greenstein and Ryan C. McDevitt. Working Paper 16166, dated July 2010 at: http://www.nber.org/papers/w16166.

in adoption and revenue.[24] The study shows that revenue grew from $5.5 billion in 1998 to $39 billion in 2006 and found this record "astonishing for an entirely new market."[25] During this period broadband revenues comprised approximately half the total revenue for Internet access over the eight years, beginning with less than 6% in 1999 and growing to 72% of the total revenue in 2006. However, the evidence pointed to only a modest decline in broadband prices of 10% over a little more than five years, or under 2% a year in nominal terms.[26] State Consumer Advocates submit that in the Internet Broadband market prices have fallen modestly but market share remains unaffected. This is being repeated in the Enterprise Broadband market and this undercuts CenturyLink's claim for relief.

III. CENTURYLINK HAS FAILED TO DEMONSTRATE THAT ITS PETITION MEETS THE ACT'S THREE-PART TEST.

CenturyLink asserts that for each of the component forbearance requests included in its Petition, all three statutory requirements for forbearance set forth in Section 160(a) of the 1996 Act are satisfied.[27] Section 160(a) provides:

> [T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or a telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that:

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24 / National Bureau of Economic Research (NBER) Working Paper Series titled: *Evidence of a Modest Price Decline in US Broadband Services*, by Shane Greenstein and Ryan C. McDevitt. Working Paper 16166, dated July 2010 at: http://www.nber.org/papers/w16166, at p. 26, fn 38.

25 / *Id.*, at pp. 3-5; *see also* : Table 1 at p. 9.

26 / *Id.*, at pp. 28-29.

27/ CenturyLink Petition, at pp. 30, 35, 39 & 44.

1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

3) forbearance from applying such provision or regulation is consistent with the public interest.[28]

In applying Section 160, the Commission has stated that it "is obligated to forbear under section 160(a) only if all three elements of the forbearance criteria are satisfied. Thus, the Commission 'could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.'"[29] In addition, the Commission must be guided by Section 160(b), which directs the Commission, in determining whether forbearance is in the public interest, to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[30]

As the FCC has applied the forbearance standard – and repeatedly reviewed filings that fell short of meeting the evidentiary burden – it has clarified and refined its interpretation. In 2010, the FCC released its order denying the petition of Qwest Corporation ("Qwest") (again, now part of CenturyLink) for forbearance from providing

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28/ 47 U.S.C. § 160(a).

29 / 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. December 5, 2007) ("*Verizon Six MSA Order*"), at para. 20, quoting *Cellular Telecommunications & Internet Assoc. v. Federal Communications Commission*, 330 F.3d 502, 509 (D.C. Cir. 2003). See also *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14125, para. 12 (2007).

30 47 U.S.C. §160(b).

unbundled network elements ("UNEs") in the Phoenix Metropolitan Statistical Area.[31] Simultaneously, the Commission issued a Public Notice seeking "comment on the application of the analytical framework used in the *Qwest Phoenix Forbearance Order* to other, similar requests for regulatory relief, including the pending remands of the *Verizon 6 MSA Forbearance Order* (WC Docket No. 06-172) and the *Qwest 4 MSA Forbearance Order* (WC Docket No. 07-97)."[32] Verizon and Qwest each withdrew their petitions for forbearance. As the Commission has made clear in these earlier cases, petitioners seeking forbearance bear the burden of production and the burden of proof with respect to each and every Section 160 criteria. The present CenturyLink Petition clearly fails to meet this standard.

In addition to the substantive framework specified in Section 160, as interpreted and applied in the Commission's Orders, there is a procedural framework for handling forbearance petitions. Under Section 160(c), the FCC is permitted one year to act on any forbearance petition; if it has not acted within that timeframe, the petition is "deemed granted." The FCC may extend the period to act for 90 days, subject to making certain findings.

This constraint can place a significant burden on the Commission and on parties responding to the forbearance petition. After more than a decade dealing with Section 160 petitions, the FCC in 2009 adopted the *Forbearance Procedures Order*, which set

[31] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113 (rel. June 22, 2010) ("Qwest Phoenix Forbearance Order").

[32] Public Notice, "Wireline Competition Bureau Seeks Comment on Applying the *Qwest Phoenix Forbearance Order* Analytic Framework in Similar Proceedings," WC Docket Nos. 06-172, 07-97, DA 10-1115, June 22, 2010 ("Public Notice").

forth new rules for considering forbearance petitions.[33] The rules include a "complete as filed" requirement, "consistent with the principle that whenever a petitioner files a petition for forbearance, the petitioner bears the burden of proof with respect to establishing that the statutory criteria for forbearance are met."[34] Petitioners may not withdraw or "significantly narrow" a petition after the tenth day following reply comments without FCC authorization.[35] The FCC describes its new procedures as ensuring that forbearance petitions are "addressed in a timely, equitable and predictable manner" and that review will be "frontloaded, actively managed, transparent, and fair."[36] The Forbearance Procedures Order also sets out standards regarding initial FCC Bureau review and summary denial, and procedures for public notice.[37]

For the reasons discussed above, State Consumer Advocates respectfully urge the Commission to find that CenturyLink's Petition fails to demonstrate that the statutory criteria are satisfied and that forbearance is unwarranted and contrary to the public interest.

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[33] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56, released June 29, 2009 ("Forbearance Procedures Order"). Most of the new rules became effective on September 8, 2009 (the new rule 1.54, "Petitions for forbearance must be complete as filed," which required approval of the Office of Management and Budget, took effect later). Public Notice, "Notice of Effective Date of New Forbearance Rules," WC Docket No. 07-267, DA 09-1852, August 24, 2009.

[34] Forbearance Procedures Order, at para. 1. See, also, *id.*, at para. 20 for the FCC's reasoning that the Petitioner bears the burden of proof. The FCC states that the burden of proof includes both "burden of production" and "burden of persuasion." *Id.*, at para. 21.

[35] *Id.*, at para. 35.

[36] *Id.*, at para. 1.

[37] *Id.*, at paras. 28-29.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny CenturyLink's Petition. CenturyLink has not sustained its burden of proving that the Petition is consistent with the public interest.

Respectfully submitted,

NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER
ADVOCATES (NASUCA)
Charles A. Acquard, Executive Director
380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380
www.nasuca.org

NEW JERSEY DIVISION OF
RATE COUNSEL
Stefanie A. Brand, Esq., Director
Christopher J. White, Esq.
Deputy Rate Counsel
Maria T. Novas-Ruiz, Esq.
Assistant Deputy Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

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