

**COVER SHEET – AGENDA ITEM #R1**

For Commission Meeting: October 17, 2016

“Order 2016-01: Curative Plan Agreement for CenturyLink’s Quarterly Customer Service Standards”

**Recommendation**

Staff recommends the Commission approve Order 2016-01: Curative Plan Agreement for CenturyLink’s Quarterly Customer Service Standards (attached).

**Background**

On December 10, 2015, MHCRC staff sent CenturyLink a Notice and Opportunity to Cure for failing to adhere to applicable Customer Service Standards for 3rd Quarter 2015. The violation notice applied to three specific Customer Service Standards that were not met: telephone answering time, standard installations and appointments met.

In letters dated January 7 and January 25, 2016, CenturyLink presented a curative plan stating reasons why a cure was not reasonably possible within the thirty (30) day cure period and documenting ongoing efforts to cure the asserted violation. On March 17, 2016 MHCRC staff sent CenturyLink a letter documenting agreements reached regarding a Curative Plan; to which CenturyLink signed an Acceptance of the terms of the Curative Plan.

By accepting the Curative Plan, CenturyLink was granted an extended time period (through June 30), as requested by CenturyLink, to meet or exceed the applicable Customer Service Standards. If CenturyLink failed to achieve a cure for the Quarter ending June 30, 2016, MHCRC staff had the ability to commence a Formal Hearings process, in accordance with §6.6 of the MHCRC’s Rules of Procedure, to determine appropriate remedies.

MHCRC staff received CenturyLink’s 2<sup>nd</sup> Quarter 2016 customer service report on July 29. The report showed that CenturyLink met the standard for call answer time. However, the report also indicted that CenturyLink had fallen a small percentage below meeting or exceeding the applicable Customer Service Standards for standard installations and appointments met.

In lieu of convening a formal proceeding to determine remedies, MHCRC staff and CenturyLink discussed and reached agreement on an additional Curative Plan. The agreement reached is the result of extensive discussions with CenturyLink about its concerted, good faith efforts to cure the violations and takes into consideration CenturyLink’s new entrant status in the Portland market and the fact that CenturyLink’s efforts to date have had an impact on service level improvements that are reflected in other, significant improvements in the quarterly Customer Service Standard metrics.

In summary, Order 2016-01 directs CenturyLink to pay \$5,000 if CenturyLink fails to meet or exceed the standard installation and appointments met metrics by 3<sup>rd</sup> Quarter 2016 (ending September 30, 2016) and provides for a waiver of the payment if both metrics are cured or a reduction in the payment (to \$2,500) if only one metric is cured, but not the other. Furthermore, in an effort to further incentivize a cure, if CenturyLink fails to meet the standard(s) for 3<sup>rd</sup> Quarter and then fails to meet the same standard(s) for 4<sup>th</sup> Quarter 2016 (ending December 30,

2016), CenturyLink is obligated to pay an additional \$10,000 per metric missed, up to a total of \$20,000 if both metrics are missed.

Staff recommends that the MHCRC approve the proposed Curative Plan as reasonably protecting the public interest, and providing adequate incentives for CenturyLink to take steps to ensure compliance.

Attachment: Order 2016-01 DRAFT

Prepared by: Rebecca Gibbons  
September 30, 2016

**Before the  
Mt. Hood Cable Regulatory Commission  
111 SW Columbia St., Suite 600  
Portland, OR 97201**

Establishing Curative Plan Agreement	)	Order 2016-01
For CenturyLink’s Quarterly	)	Adopted by the Commission:
Customer Service Standards	)	DRAFT

Section 1.     The Commission finds:

- 1.1     The Mt. Hood Cable Regulatory Commission (“MHCRC” or “Commission”) was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village (“the Jurisdictions”). Among other things, the MHCRC oversees compliance with the cable services franchise agreements, subject to discretionary review by the Jurisdictions as provided under §4.A. of the IGA.
- 1.2     The City of Portland (“City”) granted Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”) a cable services franchise (“Franchise”) effective July 26, 2015.
- 1.3     The City’s Cable Television Consumer Protection policies are set forth in Portland City Code (PCC) 3.115.070 through PCC 3.115.140 (“Customer Service Standards”). The Customer Service Standards are binding on CenturyLink as binding legislation enacted by the City Council as well as under §10.1 of the Franchise.
- 1.4     PCC 3.115.100.A of the Customer Service Standards provides, in relevant part: “[CenturyLink] is required to have trained company representatives available to respond to customer telephone inquiries during Normal Business Hours.” PCC 3.115.100.B further provides “Under Normal Operating Conditions, telephone answer time by trained company representatives, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. [CenturyLink] shall meet these standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a calendar quarterly basis.”
- 1.5     PCC 3.115.110 of the Customer Service Standards provides, in relevant part:

Under Normal Operating Conditions, [CenturyLink] shall meet each of the following standards no less than ninety five (95) percent of the time measured on a quarterly basis:

  - A. Standard installations shall be performed within seven (7) business days after an order has been placed.
  - ...
  - D. [CenturyLink] shall be deemed to have honored a scheduled appointment . . . when a technician arrives within the agreed upon time and, if the subscriber is absent when the technician arrives, the technician leaves written notification of arrival and return time.”

- 1.6 In accordance with §19.2(A) of the Franchise, on December 10, 2015, MHCRC staff sent CenturyLink a Notice and Opportunity to Cure for failing to adhere to applicable customer service obligations for 3<sup>rd</sup> Quarter 2015. (MHCRC Staff Letter dated December 10, 2015).
- 1.7 In accordance with §19.2(B) of the Franchise, CenturyLink was given an opportunity to remove or otherwise cure the asserted violation within the thirty (30) day notice period, or if cure is not reasonably possible, document good faith efforts satisfactory to the Jurisdictions to cure.
- 1.8 In letters dated January 7 and January 25, 2016, CenturyLink presented a curative plan stating reasons why a cure was not reasonably possible within a thirty (30) day period and documenting ongoing efforts to cure the asserted violation. On March 17, 2016 MHCRC staff sent CenturyLink a letter documenting agreements reached regarding a Curative Plan. CenturyLink signed an Acceptance of the terms of the Curative Plan dated April 4, 2016.
- 1.9 The Curative Plan gave CenturyLink an agreed upon time period within which to achieve a cure. CenturyLink committed to meet or exceed the applicable Customer Service Standards for 2<sup>nd</sup> Quarter 2016 (period ending June 30, 2016). If CenturyLink failed to achieve a cure for the Quarter ending June 30, 2016, MHCRC staff had the ability to commence a Formal Hearings process, in accordance with §6.6 of the MHCRC's Rules of Procedure, to determine appropriate remedies.
- 1.10 On July 29, 2016, CenturyLink provided a Customer Service Standards Report for Second Quarter 2016 (April through June 2016). The report showed that CenturyLink met the standard for call answer time. However, the report also indicted that CenturyLink had fallen a small percentage below meeting or exceeding the applicable Customer Service Standards for standard installations and appointments met.
- 1.11 While the report indicates that CenturyLink fell short of meeting the cure objectives during 2<sup>nd</sup> Quarter 2016, CenturyLink has engaged in concerted, good faith efforts to cure. CenturyLink's efforts have had an impact on service level improvements that are reflected in other, significant improvements in the quarterly Customer Service Standard metrics. In addition, CenturyLink informed MHCRC staff that it is engaged in ongoing efforts to upgrade and improve customer service systems and processes. CenturyLink has described to MHCRC staff the steps it has been taking to improve performance and anticipates continued improvement in the coming months.
- 1.12 As a new entrant into the Portland cable services market competing with a dominate, incumbent provider, CenturyLink has been offering cable services since only May 2015. CenturyLink is additionally deploying Fiber to the Home (FTTH) technology that requires a uniquely skilled workforce for installation/repair.
- 1.13 The Franchise provides for remedies for failure to comply with customer service standards and reports, including but not limited to liquidated damages of \$1,000 per day or per violation, up to a total of \$40,000 during any rolling twelve (12) month period.
- 1.14 CenturyLink and MHCRC staff have discussed and reached agreement on an additional Curative Plan to address CenturyLink's second quarter report showing percentages just below the 95% standard for appointments met and install times in lieu of convening a formal proceeding at this time. Staff recommends that the MHCRC approve the proposed Curative Plan as reasonably protecting the public interest, and providing adequate incentives for CenturyLink to take steps to ensure compliance.

Section 2. Now, therefore, the Commission orders as follows:

2.1 A. In order to extend the curative period with respect to the appointments met and install time measurements, CenturyLink is directed to pay Five Thousand Dollars (\$5,000) to the MHCRC Community Grants program under the following conditions:

- If CenturyLink meets or exceeds the standard installation interval *and* appointments met standard for the 3<sup>rd</sup> Quarter 2016 (ending September 30, 2016), then CenturyLink's obligation to pay the \$5,000 shall be waived, and the violation shall be deemed cured under the Curative Plan.
- If CenturyLink achieves a cure for one metric but not the other (*either* the standard installation interval *or* the appointments met standard is met, but not both) for the 3<sup>rd</sup> Quarter 2016, then the Five Thousand Dollar (\$5,000) payment will be reduced to Twenty-Five Hundred Dollars (\$2,500), and the violation shall be deemed cured under the Curative Plan with respect to the standard that was met.

B. Within 5 business days of receiving a quarterly customer service report indicating that the conditions in Section 2.1.A had not been met, staff shall prepare an invoice for payment to the MHCRC Community Grant program in the total amount identified in Section 2.1.A. CenturyLink shall pay the invoice within 30 days of the date of the invoice.

2.2 A. Subject to Section 2.1:

- If CenturyLink fails to meet the standard installation interval and/or appointments met standard for 3<sup>rd</sup> Quarter 2016, and then meets the same standard for 4<sup>th</sup> Quarter 2016, then the violation shall be deemed cured under the Curative Plan.
- If CenturyLink fails to meet the standard installation interval and/or appointments met standard for 3<sup>rd</sup> Quarter 2016 and then fails to meet the same standard for 4<sup>th</sup> Quarter 2016, CenturyLink shall be obligated to pay \$10,000 per metric missed, up to a total of \$20,000 if both metrics are missed.

B. Within 5 business days of receiving a quarterly customer service report indicating that the conditions in Section 2.2.A had not been met, staff shall prepare an invoice for payment to the MHCRC in the amount of Ten Thousand Dollars (\$10,000) per metric missed. CenturyLink shall pay the invoice within 30 days of the date of the invoice. For the purposes of this agreement, this payment shall constitute the sum of the liquidated damages assessed for the violation period 3<sup>rd</sup> Quarter 2015 through 4<sup>th</sup> Quarter 2016, and shall not be used as precedent for how payments are calculated in the future.

2.3 CenturyLink shall continue to provide monthly customer service standards metric data relating to installation intervals and appointments met (if it was missed for 3<sup>rd</sup> Quarter 2016), by the 25th calendar day of the following month, to MHCRC staff through the end of 4<sup>th</sup> Quarter.

2.4 This Agreement is entered into as part of CenturyLink's Curative Plan and as such CenturyLink agrees to waive any hearing or other proceedings to which it may be entitled under the Franchise related to the violations addressed in this Order. CenturyLink is not otherwise admitting any liability related to its performance of its obligations under the Franchise.

2.5 The Commission shall provide copies of this Order to each of the Jurisdictions for discretionary review, as provided under §4.A. of the IGA.

- 2.6 If CenturyLink fails, refuses or neglects to perform any or all of the conditions of this Order, the Commission reserves any and all rights to impose further remedies. However, nothing in this Order is intended to modify or expand the remedies available to the Commission under the Franchise Agreement between the parties.
- 2.7 As the terms of this Order have been discussed and agreed upon by MHCRC staff and CenturyLink representatives, on or before fifteen (15) days after the date of this Order, CenturyLink shall file with the MHCRC staff a written acceptance, duly executed by an authorized CenturyLink representative, in the form attached to this Order. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Order. Any failure by CenturyLink to file such written acceptance within such time shall be deemed an abandonment and rejection of the terms and conditions of this Order, and this Order shall thereupon be null and void without any further action by the MHCRC.

ADOPTED BY THE COMMISSION on DRAFT

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Carol Stundenmund, Chair

Reviewed by:

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Ben Walters, Legal Counsel

FORM OF ACCEPTANCE

This is to advise the Mt. Hood Cable Regulatory Commission that Qwest Broadband Services, Inc. d/b/a CenturyLink ("CenturyLink") hereby acknowledges and fully accepts the terms and conditions of Order 2016-01, passed by the Mt. Hood Cable Regulatory Commission on the 17<sup>th</sup> day of October, 2016, regarding the Curative Plan agreement for CenturyLink's Quarterly Customer Service Standards.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

This Acceptance was acknowledged before me on October \_\_\_\_\_, 2016,  
by \_\_\_\_\_ as \_\_\_\_\_, a duly authorized officer of  
CenturyLink.

\_\_\_\_\_  
Notary Public