

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-TCD-12-00000438 ¹
)	
CenturyLink, Inc.)	Acct. No.: 201332170006
)	
Compliance with the Commission's Rules and Regulations Governing Customer Proprietary Network Information)))	FRN: 0018626853

ADOPTING ORDER

Adopted: December 4, 2012

Released: December 4, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and CenturyLink, Inc. (CenturyLink or Company). The Consent Decree terminates the investigation initiated by the Bureau regarding CenturyLink's compliance with Section 222(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 222(c)(1), and Section 64.2007 of the Commission's rules, 47 C.F.R. § 64.2007.

2. The Bureau and CenturyLink have negotiated the terms of the Consent Decree that resolves these matters. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether CenturyLink possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R §§ 0.111, 0.311, that the attached Consent Decree **IS ADOPTED**.

¹ This case was formerly assigned the File No. EB-10-TC-485. In January 2011, the Telecommunications Consumers Division assigned a new case number.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to John E. Benedict, Vice President – Federal Regulatory Affairs & Regulatory Counsel, CenturyLink, 1099 New York Avenue, N.W., Suite 250, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

2011 (Qwest).⁴ To the extent that any Qwest customers are integrated into CenturyLink's legacy systems for CPNI opt-out, they shall be included as part of CenturyLink for purposes of this Consent Decree.

- f. "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
- g. "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which CenturyLink is subject by virtue of its business activities, including, but not limited to, the CPNI Rules.
- h. "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
- i. "Covered Employees" means all employees and agents of CenturyLink who perform, supervise, oversee, or manage the performance of, duties relating to the management of CenturyLink's CPNI opt-out programs.
- j. "CPNI Rules" means Section 222 of the Act, 47 U.S.C. § 222, and the rules set forth at Section 64.2001 et. seq., 47 C.F.R. § 64.2001 *et seq.*
- k. "Effective Date" means the date on which the Bureau releases the Adopting Order.
- l. "Investigation" means the Bureau's investigation regarding CenturyLink's compliance with Section 222 of the Communications Act, 47 U.S.C. § 222, and Section 64.2007 of the Commission's Rules, 47 C.F.R. § 64.2007, commenced by the Bureau's December 3, 2010 Letter of Inquiry to CenturyLink described in paragraph 4 below.
- m. "Operating Procedures" means the standard, internal operating procedures and compliance policies established by CenturyLink to implement the Compliance Plan.
- n. "Parties" means CenturyLink and the Bureau, each of which is a "Party."
- o. "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

⁴ The FCC approved CenturyLink, Inc.'s merger with Qwest Communications International, Inc. on March 18, 2011. The transaction closed on April 1, 2011.

III. BACKGROUND

3. Pursuant to Section 222 of the Act,⁵ the Commission has adopted rules to protect the confidentiality of customer proprietary network information (CPNI). These rules generally require customer approval before a carrier may use, disclose, or permit access to CPNI.⁶

4. On September 21, 2010, pursuant to section 64.2009(f) of the Commission's rules,⁷ CenturyLink filed a notice with the Commission reporting failures in its CPNI opt-out mechanism.⁸ According to CenturyLink, it sent biennial CPNI notices to its customers in September and early October 2009. The company states, however, that on September 16, 2010, it discovered that one of its interactive voice response systems (IVR) had not been properly recording opt-out selections for calls made to that toll-free number. The Bureau issued a letter of inquiry (LOI) to CenturyLink on December 3, 2010.⁹ CenturyLink submitted its response to the LOI on January 7, 2011.¹⁰ The Parties entered into agreements to toll the statute of limitations to give the Parties an opportunity to engage in settlement discussions leading to this Consent Decree.

IV. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** CenturyLink agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate

⁵ 47 U.S.C. § 222.

⁶ 47 C.F.R. § 64.2007.

⁷ 47 C.F.R. § 64.2009(f).

⁸ See Notification Pursuant to 47 C.F.R. § 64.2009(f); CC Docket No. 96-115, Letter from Susan T. Pate, Manager, Business Product Systems Integration, CenturyLink, Inc., to William Dever, Chief, Competition Policy Division, FCC Wireline Competition Bureau, and Colleen Heitkamp, Chief, FCC Consumer Policy Division, Consumer & Governmental Affairs Bureau (September 21, 2010) (on file in EB-TCD-12-00000438).

⁹ See Letter of Inquiry from Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Susan T. Pate, Manager, Business Product Systems Integration, CenturyLink, Inc. (December 3, 2010) (on file in EB-TCD-12-00000438).

¹⁰ See Letter from Carrick B. Inabnett, Vice President and Assistant General Counsel, CenturyLink, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (January 7, 2011) (on file in EB-TCD-12-00000438).

violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations contained herein, and to avoid expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation and in accordance with the terms of this Consent Decree, CenturyLink agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence related to the Investigation, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take, on its own motion, or refer to the Commission, any action against CenturyLink, concerning the matters that were the subject of the Investigation, or with respect to CenturyLink's basic qualifications, including its character qualifications, to be a Commission licensee or hold other Commission authorizations.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against CenturyLink for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by CenturyLink of the Act, the Commission's Rules, or the Adopting Order.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, CenturyLink agrees that it shall within thirty (30) calendar days after the Effective Date, develop and implement a Compliance Plan, consistent with its responsibility to ensure future compliance with the Communications Laws, including the CPNI Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

a. **Compliance Officer.** Within fifteen (15) calendar days after the Effective Date, CenturyLink shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that CenturyLink complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the CPNI Rules prior to assuming his/her duties.

b. **Compliance Operating Procedures.** To help ensure that IVR CPNI requests are properly recorded, CenturyLink shall maintain the following Operating Procedures regarding its use of any IVRs to record opt-out requests:

- i. A Covered Employee within the Company's marketing organization shall serve as Manager of Reporting Quality with responsibility of monitoring the IVR opt-out process end-to-end to ensure the transactions are being recorded with all necessary

- data. The Manager of Reporting Quality reports directly to the Company's Product Operations Manager and indirectly to the Senior Vice President – Marketing, whose organization oversees all consumer and small to large business marketing, including use of CPNI for CenturyLink marketing.
- ii. The Company shall maintain an alarm function to make sure the IVR is working and accepting calls. The alarm function is specialized software tied to the phone system that dials the telephone numbers for the CPNI IVR 800 routing numbers continuously. If it detects an inactive line, it will alert the relevant CenturyLink staff to take action. Monitoring will be provided 24 hours per day, 7 days per week, by the Customer Care Team.
 - iii. CenturyLink shall use an automated dashboard reporting system that generates data on opt-out elections and the IVR's results, so that any drops in volumes of opt-out elections will be noticeable. The automated dashboard reporting system shall track the activity on the IVR for elections, generating both summary and detail data. The summary data shall provide an overview of election volumes by day, and therefore, would reveal any sudden drops in activity. The detail data shall include a test account number and a telephone number, both of which are changed each business day. The dashboard reporting system shall allow the company to ensure the values, including customers' CPNI elections, are properly captured and written to the system report. This report shall be reviewed each business day by the Manager of Quality Reporting.
 - iv. CenturyLink shall monitor the IVR's performance each business day. Specifically, the Manager of Reporting Quality (or his or her designee) shall monitor the IVR's performance by telephoning the IVR each business day to confirm it is answering properly, giving the correct prompts, and operating correctly. This is in addition to the monitoring of the alarm functionality by the IVR Customer Care Team.
 - v. CenturyLink shall confirm each business day that data from CPNI elections entered via the IVR is properly transferred to CenturyLink's billing system and marketing database. Specifically, the Manager of Reporting Quality (or his or her designee) shall enter a sample CPNI opt-in/opt-out election at the IVR and track that the request registers properly from the CenturyLink IVR to the billing system and marketing database. If the sample opt-in/opt-out request does not register properly, the Manager of Reporting Quality shall analyze why and initiate repair and resolution. The Manager of Reporting Quality shall also immediately call an internal "red flag" meeting (or high priority meeting with notice to top marketing and systems

management). During the repair, calls to the IVR shall be rerouted 24/7 to a live operator to receive opt-in/opt-out selections. Additionally, marketing use of CPNI shall cease immediately until the error with the data feed is identified and corrected.

- vi. Any changes, additions, or deletions to the IVR system (or any systems that interact with the IVR system) shall be coordinated through the Manager of Reporting Quality to ensure there is no negative effect on the IVR system as a result of such change, addition, or deletion.

c. **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual may be made available and distributed by electronic means. The Compliance Manual shall explain the CPNI Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure CenturyLink's compliance with the CPNI Rules. CenturyLink shall periodically review and revise the Compliance Manual, as necessary, to ensure that the information set forth therein remains current and complete. CenturyLink shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

d. **Compliance Training Program.** CenturyLink shall establish and implement a Compliance Training Program on compliance with the CPNI Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of CenturyLink's obligation to report any noncompliance with the CPNI Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose such noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. CenturyLink shall repeat the compliance training on an annual basis and shall periodically review and revise the Compliance Training Program, as necessary, to ensure that it remains current and complete and to enhance its effectiveness.

11. **Reporting Non-Compliance.** CenturyLink shall report to the Bureau any non-compliance with this Consent Decree within 15 calendar days after the discovery of non-compliance. CenturyLink shall also: (i) report to the Bureau any non-compliance with requirements relating to approval for use of CPNI, as set forth in Section 64.2007 of the Rules, within 15 calendar days after discovery of such non-compliance; (ii) report to the Bureau any non-compliance with requirements relating to notice for use of CPNI, as set forth in Section 64.2008 of the Rules, within 15 days after discovery of non-compliance; (iii) report to the Bureau any non-compliance with the requirements relating to safeguards for use of CPNI, as set forth in Section 64.2009 of the Rules; and (iv) simultaneously provide to the Bureau a confidential copy of all notifications that CenturyLink submits to law enforcement, pursuant to Section 64.2011(a) of the Rules. The reports required by this paragraph shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that CenturyLink has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that CenturyLink has taken or will take to prevent the recurrence of any such non-

compliance. All reports of non-compliance and notifications shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, with a copy submitted electronically to Donna Cyrus at donna.cyrus@fcc.gov.

12. **Compliance Reports.** The Compliance Officer, as an agent of and on behalf of CenturyLink, shall file compliance reports ninety (90) calendar days after the Effective Date, six (6) months after the Effective Date, one (1) year after the Effective Date, and at the end of the two (2) year term.

- a. Each compliance report shall include a detailed description of CenturyLink's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's CPNI Rules
- b. Each compliance report shall include a certification by the Compliance Officer, as an agent of and on behalf of CenturyLink, stating that the Compliance Officer has personal knowledge that CenturyLink (A) has established and implemented the Compliance Plan; (B) has been following all aspects of the Compliance Plan for the entire term of the Consent Decree; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree—including the reporting obligations set forth in paragraph 11 above—that have not been disclosed as required by paragraph 11 above. The certification shall be accompanied by a statement explaining the basis for the certification and must comply with Section 1.16 of the Rules,¹¹ and be subscribed to as true under penalty of perjury.
- c. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of CenturyLink, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (A) each instance of non-compliance; (B) the steps that CenturyLink has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that CenturyLink has taken or will take to prevent recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- d. All Compliance Reports must be mailed within fifteen (15) calendar days of the one (1) and the two (2) year anniversary of the Effective Date, and submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the file number listed above. CenturyLink shall also send an electronic copy of its certification to Donna Cyrus at donna.cyrus@fcc.gov.

¹¹ 47 C.F.R. § 1.16.

13. **Termination Date.** The obligations set forth in paragraphs 10 through 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date, except that the Compliance Report requirement shall expire twenty-four months and sixteen calendar days after the Effective Date. Additionally, in the event that the opt-out requirements set forth in sections 64.2001-2009 of the Commission's Rules (47 C.F.R. §§ 64.2001-2009) are repealed, this Consent Decree shall be terminated when the action repealing the rules becomes final.

14. **Voluntary Contribution.** CenturyLink agrees that it will make a voluntary contribution to the United States Treasury in the amount of one hundred, fifty thousand dollars (\$150,000) within thirty (30) calendar days after the Effective Date. CenturyLink shall also send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Waivers.** Provided the Bureau issues an Adopting Order, CenturyLink waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. CenturyLink shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein, and of the Commission's Rules. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, neither CenturyLink nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and CenturyLink shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a

¹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

judgment incorporating the terms of this Consent Decree. CenturyLink hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters contained in this Consent Decree.

16. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **Privileged and Confidential Documents.** By this Consent Decree, CenturyLink neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

18. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree is inconsistent with any subsequent rule or order adopted by the Commission, that provision will be superseded by such Commission rule or order.

19. **Successors and Assigns.** CenturyLink agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

21. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of both Parties.

22. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Counterparts.** This Consent Decree may be signed in counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

24. **Authorized Representative.** The individual signing this Consent Decree on behalf of CenturyLink represents and warrants that he is authorized by CenturyLink to execute this Consent Decree and to bind CenturyLink to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

For: Federal Communications Commission

P. Michele Ellison
Chief
Enforcement Bureau

Date

For: CenturyLink, Inc.

John E. Benedict
Vice President – Federal Regulatory Affairs & Regulatory Counsel
CenturyLink, Inc.

Date