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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CENTURYLINK COMMUNICATIONS,
LLC, f/k/a Qwest Communications Company,
LLC, a limited liability company,

Plaintiff,

vs.

STATE OF IDAHO;
IDAHO DEPARTMENT OF
ADMINISTRATION;
ROBERT L. GEDDES, in his official capacity
as Director of the Idaho Department of
Administration;
OFFICE OF THE IDAHO ATTORNEY
GENERAL; and
LAWRENCE G. WASDEN, in his official
capacity as Attorney General for the State of
Idaho,

Defendants.

Case No.

COMPLAINT

CenturyLink Communications Company, LLC (“CenturyLink”), for its complaint against the Defendants, alleges as follows:

INTRODUCTION

A. CenturyLink’s Claim for Payment for Services Rendered

1. This is an action to recover compensation from the State of Idaho that its lawful representatives – including legislative leadership and executive officials – have repeatedly acknowledged the State owes CenturyLink for services rendered and accepted, and that the Idaho State Legislature has legally authorized and appropriated.

2. As detailed in this Complaint, CenturyLink was awarded a contract to build and manage telecommunications networks for the State of Idaho – state agency networks and the Idaho Education Network (“IEN”). The Request for Proposals (“RFP”) to which CenturyLink responded was created by the State; the award was made by the State; the contract was controlled by the State; and the scope of work CenturyLink was to perform was determined by the State, in its sole discretion. Each of these actions was done unilaterally by the State.

3. The Idaho Department of Administration worked closely with the Idaho Attorney General’s office during this process. Specifically, the Attorney General’s assigned representative reviewed and approved each of the IEN Strategic Engagement Plans developed by the Department of Administration to implement the IEN and assign work to the State’s chosen contractors. The Attorney General’s assigned representative then reviewed and approved the “Amendments” that allocated the IEN work between CenturyLink and Education Networks of America (“ENA”), a co-awardee under the RFP.

4. Indeed, according to J. Michael Gwartney, the former Director of the Department of Administration, a representative of the Idaho Attorney General “was in every meeting and every discussion relative to this process.”

5. Nevertheless, the Idaho Supreme Court has held that the State improperly and unilaterally divided the IEN work that was dually awarded to CenturyLink and ENA between CenturyLink and ENA through documents designated as Amendment No. 1 to SBPO 01308 and Amendment No. 1 to SBPO 01309 (collectively “Amendments No. 1”), and that the underlying contracts were therefore void under Idaho procurement law.

6. The Court reached these conclusions without allowing CenturyLink to present evidence or defenses, or even have an opportunity to answer the operative complaint and assert its affirmative defenses as required by the Idaho Rules of Civil Procedure.

7. In any event, CenturyLink performed essential services requested by the State and its general contractor for the IEN, ENA, and has valid claims against the State for all amounts due, plus interest and attorneys’ fees.

B. The State’s Demand for Return of Payments made for Services Rendered

8. On August 10, 2016, the Idaho Attorney General demanded that CenturyLink and ENA – who have both been found to be wholly innocent in the entire process – return to the State the money they were paid for services rendered to the State relating to the IEN procurement. A copy of the demand letter is attached as Exhibit A.

9. All of the services at issue were requested and ordered by the State.

10. All services at issue were actually provided to the State by CenturyLink and ENA.

11. CenturyLink made significant investments in infrastructure in the State to provide the services ordered by the State.

12. The State has never contested the value or suitability of the services CenturyLink and ENA provided to the State.

13. The State was wholly and unilaterally responsible for any flaws in the IEN procurement.

14. Moreover, the Director of the Idaho Department of Administration is the proper officer of the State of Idaho under whose authority the IEN contract was made and entered into.

15. By letter dated July 25, 2016, the Director of the Idaho Department of Administration advised that no demand for repayment should be made. A copy of the letter is attached as Exhibit B.

16. Due to this actual controversy, CenturyLink also seeks a declaration pursuant to 28 U.S.C. Sections 2201 and 2202, that return of money paid for IEN-related services is neither required nor permitted.

PARTIES

17. Plaintiff CenturyLink Communications Company, LLC (“CenturyLink”), is a Delaware limited liability company with its principal place of business in Monroe, Louisiana. It was formerly known as Qwest Communications Company, LLC (“Qwest”).

18. Defendant State of Idaho is one of the fifty United States of America.

19. Defendant Department of Administration is the executive branch department of the State of Idaho that is responsible for the procurement of goods and services for most State agencies, and was responsible for providing oversight for the IEN. *See generally* Idaho Code § 67-5745D(3). The Department of Administration procured telecommunication services from CenturyLink on behalf of the State administrative agencies and School Districts. Robert L. Geddes is the Director of the Department of Administration.

20. Defendant Office of the Idaho Attorney General is the executive branch department of the State of Idaho that has demanded repayment of all sums paid by the State to ENA for the IEN, asserting that such payments for services previously rendered and paid for by the State were “advances.”

21. Defendant Lawrence G. Wasden is a resident of the State of Idaho and is the Attorney General of the State of Idaho.

JURISDICTION & VENUE

22. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331 and §1343(a), because the cause of action arises, in part, out of the Constitution and laws of the United States.

23. The Court may also exercise supplemental jurisdiction over CenturyLink’s declaratory relief and state law claims pursuant to 28 U.S.C. §1367(a), because the claims arise out of the same case and controversy as CenturyLink’s federal claims.

24. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391 because all defendants are residents of the State in which the district is located and reside in this district.

GENERAL ALLEGATIONS

A. The Idaho Education Network

25. In 2008, the Idaho State Legislature determined that: (a) Idaho does not have a statewide coordinated and funded high-bandwidth education network; (b) such a network would enable required and advanced courses, concurrent enrollment, and teacher training to be deliverable to all public high schools through an efficiently-managed statewide infrastructure; and (c) leveraging demand at the statewide level would provide overall benefits and efficiencies

in the procurement of telecommunications services, including high-bandwidth connectivity, internet access, purchases of equipment, federal subsidy program expertise and other related services. Idaho Code § 67-5745D(1).

26. In furtherance of these goals, the Legislature authorized the creation of the IEN. *See* Idaho Code §§ 67-5745D and 67-5745E.

27. The IEN was planned to be, and ultimately became, a coordinated, statewide telecommunications distribution system, including two-way interactive video, data, internet access and other telecommunications services for providing distance learning and connecting each institution of higher education and other locations as necessary to facilitate distance education, teacher training and other related services for distance learning for Idaho public schools. *See* Idaho Code § 67-5745D(2).

28. To implement its stated public policies with respect to the IEN, the Legislature mandated that the Department of Administration utilize technology to facilitate comparable access to educational opportunities for all students; be a leader in the use of technology to deliver advanced high school curricula, concurrent college credit, and ongoing teacher training on an equitable basis throughout the state; and leverage Idaho's statewide purchasing power to promote private sector investment in telecommunications infrastructure that would benefit other technology applications such as telemedicine, telecommuting, telegovernment and economic development. *See* Idaho Code § 67-5745E(2).

B. Request for Proposals No. 02160

29. In December 2008, the Idaho Department of Administration, through the Division of Purchasing, issued Request for Proposals ("RFP") No. 02160 to procure telecommunication services and related services and equipment for both the IEN and state agency networks.

30. CenturyLink (then known as Qwest) and ENA each submitted bids in response to RFP No. 02160.

31. On or about January 20, 2009, Department of Administration issued a Letter of Intent advising bidders of the State of Idaho's intent to award the project to Qwest and ENA.

32. A week later, the Department of Administration issued two identical Statewide Blanket Purchase Orders to Qwest (SBPO 01308) and ENA (SBPO 01309), awarding each a contract related to the IEN and state agency services.

33. The issuance of an award is an acceptance of the offer of the response to the request for proposal.

34. A written contract was formed as a result of the State's acceptance of the offers made by ENA and CenturyLink. The responses to the RFP 02160 were signed by the parties to be charged, ENA and CenturyLink, and the acceptance of the offers were the awards signed by a duly authorized officer of the State of Idaho.

35. The contract that was formed as a result of these writings could only be amended by a writing signed by both parties.

36. The State never intended, and its RFP No. 02160 did not contemplate, building two IEN's.

37. As with any issuance of dual awards, the State had the right to determine what to purchase under either of the awards.

38. For example, the State routinely issues multiple awards for the purchase of motor vehicles, obligating all awardees to sell the vehicles offered in response to the request for proposal, and granting the state the right to purchase a needed vehicle from any of the co-awardees.

39. Through the Amendments No. 1, the State advised that ENA would be the service provider of record for the IEN, gave ENA responsibility to coordinate delivery of all IEN network services and support, and directed ENA to use CenturyLink as the contractor for IEN technical network services.

40. The State, through its Department of Administration *unilaterally* determined which IEN services it would acquire from the two contractors.

41. The Amendments No. 1 did not require the signature of either ENA or CenturyLink, and were not signed by either party.

42. The Amendments No. 1 did not obligate the State to purchase any services.

43. Although unilaterally designated “Amendments” by the state, the Amendments No. 1 could not legally amend the awards or release ENA and CenturyLink from their contractual obligations.

44. Rather, they were intended to be statements of intent as to which services the State would purchase under either contract in order to avoid duplication of purchases.

45. The Attorney General’s assigned representative reviewed, revised, and approved the Amendments No. 1 that provided ENA and CenturyLink guidance as to which services the State would purchase under each contract.

46. Mike Gwartney, then the Director of the Department of Administration, later signed a letter to Syringa outlining the State’s reasoning:

After the initial award, Administration then unilaterally determined how best to divide the work between the two awardees/contractors. Administration’s determination was based upon the individual strengths of each awardees/contractors’ proposals. For example, ENA had expertise in providing E-rate services and providing video conferencing operations. Qwest had expertise in providing the technical operations (ie., the backbone). Before Amendment 1 to SBPO 01308 and SBPO 01309 were issued, Administration contemplated various ways to divide the

responsibilities between Qwest and ENA, including but not limited to dividing the services to be provided by Qwest and ENA regionally. However, the division of responsibilities reflected in the Amendment 1s is a reflection of what Administration believed would best serve the State of Idaho and the schools.

Letter from M. Gwartney to G. Lowe (July 24, 2009) at 2 (emphasis added).

47. This letter was drafted by a representative of the Attorney General's Office.

48. The Idaho Supreme Court has previously held that the decision to divide work between ENA and CenturyLink was unilaterally made by the State and solely attributable to it. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 305 P.3d 499 (Idaho 2013) ("*Syringa I*"). That determination is binding on the State.

C. Services CenturyLink Provided to the IEN

49. Idaho Code Section 67-5745E(7) "created in the state treasury the Idaho education network fund [...] consist[ing] of funds received from state appropriations, grants, federal moneys, donations or funds from any other source." The Legislature further provided that "[m]oneys in the fund may be expended, pursuant to appropriation, for implementation and ongoing costs of the IEN." *Id.*

50. Idaho Code §§ 67-5745D and 67-5745E were lawfully passed by the Legislature and duly approved by the Governor.

51. Therefore, all orders and expenditures by the State to implement the IEN were duly authorized by law.

52. Idaho Code Section 67-5747(1)(a)(i)-(v) "authorized and directed" the Department of Administration to "control and approve the acquisition and installation of all communications equipment and facilities for all departments and institutions of state

government, [except institutions of higher education, elected executive officers, the legislative and judicial departments, and public safety and microwave equipment].”

53. Therefore, all orders and expenditures by the State to procure State agency network services were duly authorized by law.

54. On a telecommunications circuit-by-circuit basis, the State of Idaho ordered services from ENA and CenturyLink to create the IEN.

55. Each order of services was specific to a circuit required by the IEN, and was placed only after each circuit had been designed, engineered and priced.

56. Although the state ordered services in a manner consistent with the intentions expressed in the “Amendments,” ENA and CenturyLink’s obligations to provide services were governed by the SBPOs 01308 and 01309 that issued on January 28, 2009.

57. Prior to issuing the first invoice for actual service, CenturyLink had expended substantial resources in designing, engineering and installing the circuits necessary to connect a particular school to the internet and the circuits internal to the school to allow those within the school building to enjoy internet access.

58. The State has never paid CenturyLink for services that were not provided.

59. The State never paid CenturyLink for services *before* they had been rendered.

D. The Syringa Lawsuit

60. Syringa is a telecommunications provider in Idaho.

61. Syringa did not submit a bid in response to RFP No. 02160. Instead, Syringa supported ENA’s bid as a potential subcontractor.

62. Syringa was dissatisfied with the State’s election to purchase network services from CenturyLink (through ENA).

63. On December 15, 2009, Syringa sued CenturyLink, ENA, the Department of Administration, and two State employees, alleging against CenturyLink claims for tortious interference with contractual relations and prospective economic advantage.

64. After months of discovery, Syringa failed to uncover any evidence that CenturyLink did anything unlawful or otherwise improper.

65. To the contrary, the evidence established that CenturyLink submitted a bid in response to RFP No. 02160 to the Idaho Department of Administration. Instead of selecting a single contractor, the Department selected two. And after further consideration, the Department of Administration unilaterally decided to purchase certain services from ENA, and to allocate other responsibilities to CenturyLink.

66. The district court ultimately dismissed Syringa's lawsuit against all of the Defendants on their respective motions for summary judgment.

67. Specifically with respect to CenturyLink (then Qwest), the district court held:

. . . Syringa has failed to demonstrate that there was any improper or wrongful conduct on the part of Qwest. . . . The decision to make . . . multiple awards to ENA and Qwest was a unilateral decision on the part of the State, Syringa has not pointed to any actions by Qwest demonstrating any improper motive to harm Syringa or actions giving rise to inferences of bribery, deceit, threats or any other type of wrongful conduct. The evidence demonstrates that Qwest and the IEN Alliance both competed fairly and, ultimately unsuccessfully, to get the entire project. **The decision to make the multiple awards, and the decision dividing the work between ENA and Qwest were made by DOA, without tortious interference by Qwest.**

Order dated February 9, 2011, at 38 (emphasis added).

68. Syringa appealed.

69. On March 29, 2013, the Idaho Supreme Court affirmed most of the district court's conclusions, including the dismissal of five of the six counts in Syringa's Complaint. *Syringa I*, 305 P.3d 499 (Idaho 2013) .

70. The Supreme Court concluded that "Syringa cannot point to anything that [CenturyLink] did" wrong in this matter, stating that "[s]uspicion is not a substitute for facts." *Syringa I*, 305 P.3d at 509-10.

71. However, the Supreme Court reversed the granting of summary judgment as to Syringa's Count Three, in which it challenged Amendment No. 1 to SBPO 01308.

72. In doing so, the Idaho Supreme Court ruled only on the issue of whether Syringa had *standing* to challenge the award of the IEN Purchase Order to Qwest under Count Three of its Complaint, which challenged the IEN award under Idaho procurement law.

73. In *Syringa I*, the merits of the claim alleged in Count Three of Syringa's Complaint had never been briefed because the district court on summary judgment had ruled that Syringa had failed to exhaust its administrative remedies as to that claim.

74. Accordingly, the District Court had not addressed, and the parties had not framed for appeal, the issue of whether Count Three of the *Syringa Lawsuit* stated a claim. Nor had the parties addressed the facts surrounding that issue on summary judgment.

75. Although the merits of the issue had never been briefed by the parties or addressed by the district court, the Court suggested that by dividing the scope of work between ENA and Qwest, the Department of Administration may have violated state procurement law.

76. The Supreme Court remanded the case to the district court on September 9, 2013.

77. In a decision entered November 10, 2014, the district court granted summary judgment in favor of Syringa, holding that the Department of Administration's award of the IEN

work to Qwest and ENA violated state procurement law, and for that reason, that SBPO 01308 and SBPO 01309, as amended by the Amendments No. 1, were void.

78. The district court granted summary judgment in favor of Syringa as part of a series of procedural violations, including: (a) the court held that the original contracts were void, which Syringa had not alleged until after the appeal, (b) the court construed the standing decision by the Idaho Supreme Court as a final adjudication on the merits of Syringa's complaint and any possible defenses to it; and (c) the court held that the awards to CenturyLink and ENA were void without providing CenturyLink (or ENA) an opportunity to conduct discovery or develop and present a factual record, thus denying CenturyLink the opportunity to be heard.

79. At the time this decision was issued, CenturyLink had not even been allowed an opportunity to answer the operative Complaint or assert its affirmative defenses.

80. On February 11, 2015, the district court denied motions for reconsideration filed by CenturyLink, ENA, and the Department of Administration.

81. The Department of Administration, ENA, and CenturyLink appealed to the Idaho Supreme Court arguing that the Department of Administration's award did not violate state procurement law, and noting numerous procedural violations of the district court in this case.

82. In a decision entered March 1, 2016, the Idaho Supreme Court upheld the district court's order despite the many clear procedural violations, and affirmed the judgment.

83. The Idaho Supreme Court noted that *Syringa I* was only a ruling on standing, stating that "we ultimately concluded that 'Syringa has *alleged*,' rather than demonstrated, an injury sufficient to confer standing. Further, we did not order entry of judgment in Syringa's favor; we merely held that 'Syringa has standing to challenge the amended contract to Qwest.'"

Syringa Networks, LLC v. Idaho Dep't of Admin. (“*Syringa II*”), 367 P.3d 208, 223 (Idaho 2016) (citations to *Syringa I* omitted).

84. Nevertheless, the Court then converted its ruling in *Syringa I* on standing into a ruling on the merits: “We now specifically hold what we said in the context of standing in *Syringa I*...” and affirmed the district court’s ruling of summary judgment in favor of Syringa. *Syringa II*, 367 P.3d at 223.

85. At the time this decision was issued, CenturyLink had still not been allowed to conduct discovery or develop and present a factual record with respect to Syringa’s Count III, or even present an answer and affirmative defenses.

86. As a consequence of these rulings, the State of Idaho has failed and refused to pay for services that it ordered, continued to request after *Syringa I*, and for which it admits it owes CenturyLink compensation.

87. Moreover, the Attorney General now has asserted that money the State previously paid for services that it ordered and used are “advances” that must be repaid to the State.

88. This assertion is based on one sentence in the *Syringa II* opinion: “Section 67-5725 does impose an obligation on the proper officer ‘of the state of Idaho’ to seek repayment of money advanced under the void SBPOs, if repayment is refused or delayed.” *Syringa II*, 367 P.3d at 225. This sentence is not supported by any analysis or precedent.

E. CenturyLink’s Continued Service to the State

89. From 2009 and into 2015, the State ordered and CenturyLink provided telecommunications services to the IEN and state agencies under SBPO 01308.

90. There is no dispute that the State ordered (either directly or through ENA) the telecommunications services CenturyLink provided.

91. There is no dispute that CenturyLink provided the telecommunications services to the State that the State ordered on behalf of its schools, school districts, and agencies.

92. There is no dispute regarding the quality, suitability, or value of any of the telecommunications services that CenturyLink provided to the State.

93. Indeed, on or about January 19, 2013, the State extended SBPO 01308 through at least January 2019. In reliance on that renewal, CenturyLink reduced its prices for services provided to the State, and committed to extend its fiber optic services to multiple rural school locations that required millions of dollars in investment.

94. CenturyLink estimates these investments, made in reliance on the State's representations, to be in excess of \$13,500,000. This includes \$11,768,000 in rural infrastructure, \$1,280,000 in price reductions, and about \$500,000 in Metro Optical Ethernet investment. CenturyLink made those investments in good faith.

95. There is no dispute that the State has accepted and used telecommunications services from CenturyLink without compensating CenturyLink for the services.

96. Moreover, the State has repeatedly acknowledged its obligation to pay for the services provided by CenturyLink (and ENA).

97. Specifically, in meetings following the Idaho Supreme Court's March 29, 2013, decision, State agents Teresa Luna, Greg Zickau, Governor Butch Otter, and the Governor's chief of staff, David Hensley, along with legislative leadership, have acknowledged, or have been present when other State agents have acknowledged, the State's continuing obligation to pay for all network services provided to the State under SBPO 01308 or otherwise.

98. These acknowledgements were made at various times and in various locations to, or in the presence of, CenturyLink employees Jim Schmit, Ed Lodge, and Joel Strickler.

99. Moreover, on information and belief, these acknowledgments have also been made to, or in the presence of, ENA representatives Bob Collie, Gayle Nelson, and Rex Miller.

100. In specific reliance on the State's acknowledgement of its continuing obligation to pay for all network services CenturyLink provided to the State, CenturyLink continued to provide those services without interruption.

101. The State was aware at the time of making these promises that CenturyLink had made and was continuing to make costly investments to serve the State in reliance on its promises to pay for services provided to the State.

102. In addition, Chapter 229 of the 2014 Idaho Session Laws "appropriated to the Department of Administration for the Idaho Education Network Program \$4,800,000 from the General Fund to be expended for the period July 1, 2014, through February 28, 2015."

103. Under this appropriation, the Department of Administration was directed to "make a request each month . . . for an allotment of spending authority that is limited to the monthly amount payable for services that support the Idaho Education Network, as appropriated in Section 1 of this act."

104. The specific intent of this appropriation was to pay funds due in fiscal year 2015 "for services to be rendered to the [IEN]."

105. This appropriation constitutes legislative and executive endorsement of the State's IEN commitments and the promises made to CenturyLink (and ENA).

106. However, on or about February 18, 2015, the State gave written notice that it would no longer pay for CenturyLink's services:

As you are aware, SBPO1308 and SBPO1309 have been declared void. Ten days from now, the current legislative funding for the IEN portion of services under SBPO1308 and SBPO1309 will expire and no further

appropriation will be made. The Court's decision, combined with the resulting legislative action, necessitates this correspondence.

State of Idaho Standard Contract Terms and Conditions section 26 requires that you be provided not less than ten calendar days notice that work under the IEN portion of SBPO1308 and SBPO1309 must cease due to legislative non-appropriation. This correspondence will serve as the required notification.

Please note that my staff have been directed to place no future purchase orders for agency work under the void SBPOs.

107. Nevertheless, at the State's request, CenturyLink continued to provide network services to school districts and state agencies to avoid harm to the State, State Agencies, School Districts, and the public. But the State then failed to pay CenturyLink for the services that it requested from CenturyLink.

108. On information and belief, the State also ceased making payments to ENA; this caused ENA to cease making payments to CenturyLink for services rendered to the State.

109. Further, as indicated above, on August 10, 2016, the Attorney General demanded repayment of the money previously paid to CenturyLink, although the State previously had never taken the position that the IEN contracts were void, or that it could avoid payment for services that it had ordered and used.

F. Actions and/or Omissions Under Color of State Law

110. The acts and/or omissions of the State of Idaho, the Office of the Idaho Attorney General, Lawrence Wasden, the Idaho Attorney General, the Department of Administration, Robert Geddes, current director of the Department of Administration, all acting under color of state law, constitute: the taking of CenturyLink's private property without just compensation in violation of 42 U.S.C. §1983, the Fifth Amendment, incorporated by the Fourteenth Amendment, of the United States Constitution, and Art. I, §14 of the Constitution of the State of Idaho,

violation of the contracts clause in violation of 42 U.S.C. § 1983 and Art. I, §10 of the United States Constitution; and a violation of CenturyLink's right to due process of law in violation of 42 U.S.C. § 1983, the Fifth Amendment, incorporated by the Fourteenth Amendment, of the United States Constitution, and Art. I, §13 of the Constitution of the State of Idaho.

CLAIMS FOR RELIEF

COUNT I

§1983—Taking Services Without Just Compensation

111. CenturyLink restates here the previous paragraphs of this Complaint.

112. Under the Fifth Amendment of the United States Constitution, as incorporated to the states by the Fourteenth Amendment, it is unlawful for “private property [to] be taken for public use, without just compensation.” U.S. Const. Amend. V.

113. The Defendants took CenturyLink's telecommunications services without compensating CenturyLink.

114. Services constitute private property that cannot be taken without just compensation.

115. The economic impact of taking telecommunications services provided by CenturyLink is considerable. Defendants have taken millions of dollars of services from CenturyLink without providing compensation.

116. CenturyLink also has invested millions of dollars to provide telecommunications services for the IEN. CenturyLink expected to recoup its investment, and make a profit, based on the award to CenturyLink for purposes of building the IEN. CenturyLink's expectations were based in law and contract.

117. Defendants' refusal to pay CenturyLink just compensation for the services rendered and the State of Idaho's subsequent repudiation of the IEN severely frustrated CenturyLink's distinct investment-backed expectations.

118. Defendants' taking of telecommunications services represents an acquisition of resources for uniquely public functions, namely public education and state agency services.

119. The acts and/or omissions of the Defendants, under color of state law, constitute the taking of private property without just compensation in violation of 42 U.S.C. §1983 and the Fifth Amendment of the United States Constitution.

120. CenturyLink is entitled to recover just compensation for its services, plus interest, punitive damages, and all reasonable costs of litigation, including attorney's fees and court costs, pursuant to 42 U.S.C. §1988.

COUNT II

§1983—Taking Contract Rights Without Just Compensation

121. CenturyLink restates here the previous paragraphs of this Complaint.

122. Under the Fifth Amendment of the United States Constitution, as incorporated to the States by the Fourteenth Amendment, it is unlawful for "private property [to] be taken for public use, without just compensation." U.S. Const. Amend. V.

123. Valid contracts are property subject to taking under the Fifth Amendment.

124. Contracts between CenturyLink and the State and CenturyLink and ENA were taken without just compensation.

125. CenturyLink entered into a valid contract with the State at the time the State issued the SBPOs to CenturyLink. The SBPOs have since been declared void because "the SBPOs, *when amended by Amendments One to divide the scope of work*, violated State procurement law." Because the action of amending the SBPOs voided both the SBPOs and

Amendments No. 1, the State effectively took benefits of the original SBPOs without just compensation by issuing Amendments No .1.

126. State breach of contract claims are not adequate to vindicate CenturyLink's rights, as the original SBPOs have been declared void due to the violation of the State's procurement law caused by issuing Amendments No. 1. The State entered into a lawful contract with CenturyLink, unilaterally made that contract unlawful, and thus void, through issuing the Amendments No. 1, and never justly compensated CenturyLink for the benefits it was owed under the original lawful contract.

127. An implied contractual relationship also existed between CenturyLink and the State. To the extent that there is no other binding agreement between the parties, the terms and existence of a contract for the sale of telecommunications services between CenturyLink and the State are demonstrated by the conduct of the parties, with the request for continued services by the State, and the performance of those services by CenturyLink.

128. Specifically, the circumstances here imply a request by the State for the performance of IEN and state agency services by CenturyLink; the circumstances imply a promise by the State to compensate CenturyLink for such performance; and CenturyLink performed the services as requested.

129. CenturyLink entered into a valid contract with ENA, a Qwest Total Advantage Agreement, through which CenturyLink provided services to the State for the IEN.

130. The State of Idaho deprived CenturyLink of the benefits of the implied contract with the State and express contract with ENA by renouncing the IEN, thereby frustrating the purpose of the contracts.

131. State breach of contract claims are not adequate to vindicate CenturyLink's rights as frustration of purpose excuses performance under the contract.

132. The acts and/or omissions of the Defendants, under color of state law, amounted to taking of property without just compensation in violation of 42 U.S.C. §1983 and the Fifth Amendment of the United States Constitution.

133. CenturyLink is entitled to recover just compensation for the benefits it was entitled to under the original SBPOs with the State and the Qwest Total Advantage Agreement with ENA, plus interest, punitive damages, and all reasonable costs of litigation, including attorney's fees and court costs. 42 U.S.C. §1988.

COUNT III
§1983—Violation of Contracts Clause

134. CenturyLink restates here the previous paragraphs of this Complaint.

135. Under the contract clause of the United States Constitution it is unlawful for a State to "pass any...Law impairing the Obligation of Contracts." U.S. Const. Art. I § 10, cl. 1.

136. The State of Idaho violated the Contracts Clause in regards to the CenturyLink's contracts with the State and ENA.

137. An express contractual relationship existed between CenturyLink and the State of Idaho after the original SBPOs were submitted but before Amendments No. 1 were issued. Though the contracts have been declared void based on state procurement law, they would not have been void had Amendments No. 1 never been issued, and thus a valid contractual relationship once existed.

138. The State's action unilaterally "amending" CenturyLink's contract caused CenturyLink's contract to be declared void by the Idaho Supreme Court. This declaration has resulted in the Idaho Attorney General demanding repayment of all amounts paid to ENA

pursuant to Idaho Code § 67-5725. As the State is applying Idaho Code §67-5725, said statutory provision is unconstitutional as an impairment of CenturyLink 's contract rights.

139. The impairment resulted in voiding the contracts, impairing the contracts.

140. The impairment was not reasonable and necessary to serve an important public purpose. To the contrary, the Amendments No. 1 resulted in failure of the IEN and millions of dollars wasted to the detriment of the school districts and ultimately the public.

141. An implied contractual relationship existed between CenturyLink and the State. To the extent that there is no other binding agreement between the parties, the terms and existence of a contract for the sale of telecommunications services between CenturyLink and the State are demonstrated by the conduct of the parties, with the request for continued services by the State and the performance of those services by CenturyLink.

142. Specifically, the circumstances here imply a request by the State for the performance of IEN and state agency services by CenturyLink; the circumstances imply a promise by the State to compensate CenturyLink for such performance; and CenturyLink performed the services as requested.

143. An express contractual relationship existed between CenturyLink and ENA, through which CenturyLink provided services to the State for the IEN.

144. The State of Idaho refused to pay money previously appropriated for purposes of the IEN.

145. The State of Idaho effectively repealed Idaho Code §67-5745D and §67-5745E, eliminating the IEN, thus impairing the implied contractual relationship between CenturyLink and the State, and between CenturyLink and ENA.

146. Non-appropriation substantially impaired the contractual relationships between CenturyLink and the State of Idaho and ENA, as CenturyLink provided telecommunications services under the contracts which the State would not compensate for, and the subsequent elimination of the IEN prevented CenturyLink from ever receiving the full benefit it was owed under either contract. These impairments are substantial.

147. The impairments were not reasonable and necessary to serve an important public purpose. The acts of both non-appropriation and repealing the IEN were done at the interest of the State, and at the expense of CenturyLink and the public.

COUNT IV

§1983—Deprivation of Property Without Due Process of Law

148. CenturyLink restates here the previous paragraphs of this Complaint.

149. CenturyLink had a reasonable expectation of realizing the benefit of its property rights in its contract.

150. In 2009, Syringa sued CenturyLink for tortious interference with contract (Count 4) and tortious interference with prospective economic advantage (Count 5).

151. In Count Three of its original Complaint, Syringa sued the Department of Administration on the basis that, “the IEN Purchase Order to Qwest (was) void, null and of no effect pursuant to Idaho Code 67-5725 and/or seeking permanent injunctive relief prohibiting the State and Qwest from performing under the IEN Purchase Order.”

152. The district court dismissed all claims prior to CenturyLink filing an answer.

153. On appeal in Syringa I, the Supreme Court of Idaho affirmed the dismissal of five of the six counts asserted by Syringa, but overturned the decision to dismiss Count Three, and remanded the case to the district court.

154. Prior to remand, Syringa had never challenged the original awards, and expressly limited its claims to challenging the Amendments No. 1.

155. On remand, the district court granted partial summary judgment in favor of Syringa through a series procedural violations, and without providing CenturyLink (or ENA) an opportunity to answer the complaint, conduct discovery, or develop any sort of factual record, thus denying CenturyLink the opportunity to be heard.

156. The Idaho Supreme Court affirmed the district court's judgment in *Syringa II*.

157. Throughout *Syringa I* and *Syringa II*, the State continuously defended its contracts. Even when the Idaho Supreme Court raised a concern about the procurement process, the State of Idaho continued to defend the contract and to request services, and the continuation of services, by CenturyLink under its contracts with both ENA and the State.

158. In now asserting for the first time that its contracts with both CenturyLink (then Qwest) and ENA were void ab initio, the State is taking a position, asserting an argument, and pursuing a claim, that it never asserted, argued, or briefed in the course of six years of litigation.

159. The State is precluded and estopped from asserting that its contracts with CenturyLink and ENA are void ab initio, or that it can avoid payment for services that it ordered on the basis that its unilateral actions were declared to have voided the contract five years into the performance of that contract.

160. The State of Idaho has taken intentional steps to deprive CenturyLink of its property rights in its contracts with the State and ENA.

161. The State of Idaho, acting through its Department of Administration, Executive Branch, Legislative Branch and Attorney General, all acting under the color of state law, have acknowledged that their conflicting acts have deprived, and are depriving, CenturyLink of its

property rights, including specifically its right to payment for the services requested by and rendered to the State of Idaho under its contract.

162. The demand of the Attorney General is based upon a ruling of the Idaho Supreme Court.

163. The ruling of the Idaho Supreme Court against CenturyLink was based upon faulty and inadequate procedures, applications of the Idaho Rules of Civil Procedure and substantive law.

164. After the ruling by the Idaho Supreme Court in *Syringa II*, CenturyLink has no adequate state law remedies.

165. The ruling of the Supreme Court was based upon civil procedures and interpretations of established law that violate the fundamental “rule of law” and violate the Fifth and Fourteenth Amendments to the Constitution of the United States of America, and Article I, Sec. 13 of the Constitution of the State of Idaho.

COUNT V
Theft of Telecommunications Services

166. CenturyLink restates here the previous paragraphs of this Complaint.

167. Under the laws of the State of Idaho, “[i]t is theft of telecommunications services to use, receive, or control telecommunications services without paying the pecuniary consideration regularly charged by the supplier of the telecommunication services used, received or controlled.” Idaho Code § 18-6713(4).

168. “‘Telecommunication service’ means a service which, in exchange for a pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated

from each other by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection.” Idaho Code § 18-6713(1)(i).

169. CenturyLink has provided telecommunication services to state agencies and school districts in Idaho as defined by Idaho Code § 18-6713(1)(i).

170. These telecommunications services were ordered and controlled by the Department of Administration through the IEN RFP, the IEN awards, SBPOs 01308 and 01309, and the Amendments No. 1.

171. The Defendants have used, received, and controlled CenturyLink’s telecommunication services without paying the pecuniary consideration regularly charged by CenturyLink for the telecommunication services that they used, received and controlled.

172. “Actual knowledge by the supplier of the telecommunication services that a person is or has been using, receiving or controlling the services shall not be a defense to the crime of theft of telecommunication services.” Idaho Code § 18-6713(4)(a).

173. “The supplier of telecommunication services which is directly affected by the commission of [theft of telecommunications services] shall, regardless of whether there was a criminal conviction, have a civil cause of action against the person who commits any of the prohibited acts.” Idaho Code § 18-6713(9)

174. The term “person,” as used in Chapter 67 of the Idaho Penal Code, includes “any employee or agent of the state or political subdivision thereof and any individual, partnership, association, joint stock company, trust, cooperative, or corporation.” Idaho Code § 18-6701(5).

175. CenturyLink is entitled to recover its actual damages, presently estimated at over \$5,000,000, plus interest, punitive damages, and all reasonable costs of litigation, including attorney’s fees and court costs. Idaho Code § 18-6713(9).

COUNT VI
Breach of Implied Contract

176. CenturyLink restates here the previous paragraphs of this Complaint.

177. To the extent that there is no other binding agreement between the parties, the terms and existence of a contract for the sale of telecommunications services between CenturyLink and the State are demonstrated by the conduct of the parties, with the request for continued services by the State and the performance of those services by CenturyLink.

178. Specifically, the circumstances here imply a request by the State for the performance of IEN and state agency services by CenturyLink; the circumstances imply a promise by the State to compensate CenturyLink for such performance; and CenturyLink performed the services as requested.

179. This implied-in-fact contract is given the same legal effect as any other contract.

180. Thus, there is a contract between CenturyLink and the State for telecommunications services.

181. CenturyLink has performed its obligations under that contract.

182. The State has breached the contract by failing to pay for services rendered.

183. CenturyLink has suffered damages from this breach, presently estimated at no less than \$5,000,000, plus interest.

COUNT VII
Promissory Estoppel

184. CenturyLink restates here the previous paragraphs of this Complaint.

185. The State, through its agents, made promises to CenturyLink that it would receive payment for all services provided to the State.

186. CenturyLink reasonably and justifiably relied on the State's promises to its substantial economic detriment by providing essential services to the State, as well as by making substantial investments in rural infrastructure to serve the State.

187. The substantial loss to CenturyLink was caused by CenturyLink's acting in reliance on the State's promises.

188. CenturyLink has suffered damages from its reliance on the State, presently estimated at no less than \$18,500,000, plus interest.

COUNT VIII
Unjust Enrichment

189. CenturyLink restates here the previous paragraphs of this Complaint.

190. To the extent that there is no binding agreement between the parties, the State and the school districts within it have been unjustly enriched by CenturyLink under circumstances that require the State and school districts to compensate CenturyLink for the unjust gain to the State and its schools.

191. CenturyLink has provided essential and valuable services to the State and its school districts, conferring substantial benefits upon the State, its agencies, its schools, and its citizens.

192. CenturyLink has also made substantial investments in rural infrastructure to serve the State, conferring substantial benefits upon the State, its agencies, its schools, and its citizens.

193. The State requested these benefits, accepted them, and enjoyed their use.

194. Under the circumstances, it would be unjust for the State and its school districts to retain the benefits of the provided services without compensating CenturyLink for their full value, presently estimated at no less than \$18,500,000, plus interest.

COUNT IX
Quantum Meruit

195. CenturyLink restates here the previous paragraphs of this Complaint.

196. To the extent that there is no binding agreement between the parties, CenturyLink has conferred benefits on the State of Idaho and the school districts within it in the form of goods and/or services.

197. The State and school districts have accepted and retained those benefits.

198. CenturyLink is entitled to recover from the State the value of those services under an implied-in-fact contract under ordinary principles of equity and justice, presently estimated at no less than \$5,000,000, plus interest.

COUNT X
Declaratory Relief

199. CenturyLink restates here the previous paragraphs of this Complaint.

200. On August 10, 2016, the Idaho Attorney General demanded that CenturyLink and ENA return to the State the money they were paid for IEN-related services rendered to the State.

201. All of the services at issue were requested and ordered by the State.

202. All services at issue were actually provided to the State by CenturyLink.

203. CenturyLink made significant investments in infrastructure in the State to provide the services ordered by the State.

204. The State has never contested the value or suitability of the services CenturyLink and ENA provided to the State.

205. The State was wholly and unilaterally responsible for any flaws in the IEN procurement.

206. Nevertheless, the Attorney General contends that repayment is required by Idaho Code § 67-5725, because the underlying contracts were declared void. Effective July 1, 2016, Idaho Code § 67-5725 was repealed. S.L. 2016, ch. 289, § 4, eff. July 1, 2016.

207. In its place, Idaho Code § 67-9213 was enacted. It provides:

(1) All contracts made in violation of the provisions of this chapter shall be void. Any sum of money advanced by the state in consideration of a void contract shall be repaid forthwith.

(2) In the event of a refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract shall have been made or entered into, every person so refusing or delaying, together with that person's surety or sureties, shall be prosecuted at law for the recovery of such sum of money so advanced.

208. The Director of the Idaho Department of Administration is the proper officer of the state of Idaho under whose authority the IEN contract was made and entered into.

209. By letter dated July 25, 2016, the Director of the Idaho Department of Administration advised that no demand for repayment should be made because no money was “advanced” on the contracts; money was instead paid for services rendered.

210. The plain, usual, and ordinary meaning of “advanced” encompasses money paid *without products or services being provided previously or contemporaneously*, not compensation for services rendered:

- Black’s Law Dictionary (10th ed. 2014) – Advance: “The furnishing of money or goods before any consideration is received in return.”
- Dictionary.com (accessed Nov. 21, 2014) – Advance: “to supply beforehand; furnish on credit or before goods are delivered or work is done. . . . a giving beforehand; a furnishing of something before an equivalent is received.”
- Merriam-Webster.com (accessed Nov. 21, 2014) – Advance: “to supply or furnish in expectation of repayment <advance a loan>. . . . a provision of something (as money or goods) before a return is received.”

- Oxforddictionaries.com (accessed Nov. 21, 2014) – Advance: “Lend (money) to (someone): the bank advanced them a loan Pay (money) to (someone) before it is due: he advanced me a month’s salary. . . . An amount of money paid before it is due or for work only partly completed: the author was paid a \$250,000 advance[;] I asked for an advance on next month’s salary.”

211. The Idaho Code consistently distinguishes payment for services rendered from advances. *See* Idaho Code § 67-2302(16) (“this section shall in no way be construed to prohibit the state or any taxing district from making advanced payments, progress payments, or from prepaying where circumstances make such payments appropriate”); Idaho Code § 67-5704 (“Advance payments and interaccount transactions. Any unit of the department of administration providing services to departments of state government as authorized in this chapter may charge and receive payment in advance of performance thereof for a period of time not to exceed the current appropriation of the department requesting such services.”).

212. Indeed, over 110 years ago the United States Attorney General was asked to opine on the meaning of the term “advanced” in the identical context and answered unequivocally:

The word [advance] . . . has always had a definite and well-understood meaning in law. An ‘advance,’ in connection with a contract, is something paid in anticipation of the performance of the contract—a part of the consideration paid in ‘advance’ of the delivery of the thing, or the performance of the work, bargained for. It is therefore plain that the term is without meaning or significance except where the contract is in an executory state.

If the thing contracted for was delivered and the consideration paid at the time of the delivery—in other words, if the contract has been executed—there can, of course, be no such thing as an ‘advance’ in the legal sense of the word. . . .

Statutory Constr.-Money Advanced on Contracts, 25 U.S. Op. Atty. Gen. 71, 73 (1903)

(paragraph break added). The United States Attorney General explained further that “it is a well-known principle that where a contract has been executed the consideration cannot be

recovered simply on the ground that the contract was void, the party paying the consideration having ‘got full value for its (his) money[.]’” *Id.* at 74.

213. A real, actual, and substantial controversy exists between the parties in that the defendants have denied CenturyLink’s rights as described, and the Attorney General has sought to exercise authority not vested in him in a manner that further deprives CenturyLink of its constitutional rights. Moreover, the demand by the Attorney General puts CenturyLink in a dilemma that it was the purpose of the Declaratory Judgment Act to ameliorate in that compliance with the unlawful demand made on CenturyLink will be costly and non-compliance may also be costly. This controversy is therefore ripe for review.

214. This controversy is within the Court’s jurisdiction because the demand to take the property of CenturyLink without due process of law violates rights guaranteed to CenturyLink under the Constitution of the United States.

215. CenturyLink seeks a declaration pursuant to 28 U.S.C. Sections 2201 and 2202, that the return of money paid for IEN-related services is neither required nor permitted.

INJUNCTIVE RELIEF

216. The State of Idaho has deprived CenturyLink of its rights to substantive and procedural due process of law by declaring CenturyLink’s contract with the State void ab initio five years into the performance of that contract.

217. The Attorney General by letter dated August 10, 2016, has now demanded repayment of all sums paid by the State to CenturyLink for the IEN, asserting that Idaho Code § 67-5725 imposes a legal duty to seek recovery of these payments, insisting that the payments have been interpreted as “advances” under the statute.

218. These payments received by CenturyLink were not advances because they were payments paid for services that have been provided to the State.

219. The Director of the Department of Administration has admitted that these payments are not advances.

220. The Attorney General's action of seeking repayment constitutes an illegal taking.

221. State breach of contract claims are not adequate to vindicate CenturyLink's rights due to the State's violation of the State's procurement law.

222. CenturyLink seeks injunctive relief prohibiting the Attorney General and the State of Idaho from attempting to seek repayment of money paid for services rendered to the State.

223. Unless injunctive relief is ordered, CenturyLink's rights to due process will be violated and it will suffer irreparable injury. Injunctive relief may prevent the State from causing injury to CenturyLink.

224. CenturyLink has a high probability of success on the merits of its claim since the State has admitted the payments to CenturyLink were paid for services provided by CenturyLink under the contract and the State never took a position that the IEN contracts were void ab initio prior to the August 10, 2016 Demand. The actions seeking to recover these payments are serious issues concerning CenturyLink's due process rights. The importance of the protection of CenturyLink's due process rights outweighs any hardship that the State may suffer from affording CenturyLink due process.

ATTORNEYS' FEES AND COSTS

225. For the reasons set forth in this Complaint, CenturyLink has incurred and will continue to incur attorneys' fees and costs in connection with this lawsuit. Pursuant to Idaho

