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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

LAWRENCE G. WASDEN, Attorney General of the State of Idaho,)	Case No.
)	
Plaintiff,)	COMPLAINT
)	
vs.)	Filing Fee: Exempt
)	Idaho Code § 31-3212
CENTURYLINK COMMUNICATIONS, LLC (f/k/a QWEST COMMUNICATIONS COMPANY, LLC), a Delaware limited liability company; and ENA SERVICES, LLC, a Delaware limited liability company,)	
)	
Defendants.)	

Plaintiff, Lawrence G. Wasden, the Attorney General of the State of Idaho, on behalf of
the State of Idaho, complains and alleges as follows:

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NATURE OF THE ACTION

1. The Attorney General brings this case seeking declaratory judgment against Defendants, CenturyLink Communications Company, LLC, and ENA Services, LLC, requiring them to repay all money the State of Idaho paid to Defendants under contracts that the Idaho Supreme Court has deemed void *ab initio*. The Attorney General also seeks declaratory judgment that Defendants may not recover any money they claim is due for services they provided pursuant to the void contracts.

2. The Attorney General brings this case to enforce an Idaho law requiring that “[a]ny sum of money advanced by the state in consideration of a void contract shall be repaid forthwith,” Idaho Code § 67-9213 (previously codified at Idaho Code § 67-5725), and a direction by the Idaho Supreme Court that the Attorney General pursue repayment.

THE PARTIES

3. Plaintiff is the Idaho Attorney General. He is the chief legal officer of the State of Idaho and is authorized to bring suit on behalf of the State.

4. Defendant CenturyLink Communications Company, LLC, is a Delaware limited liability company whose principal place of business is Monroe, Louisiana. It has been known during times relevant to this action as Qwest Communications Company, LLC. CenturyLink is registered to do business in Idaho and its registered agent is C T Corporation in Boise, Idaho. CenturyLink conducts business activity throughout Idaho, including Ada County.

5. Defendant ENA Services, LLC, is a Delaware limited liability company whose principal place of business is Nashville, Tennessee. It is registered to do business in Idaho, and its registered agent is C T Corporation of Boise, Idaho. ENA conducts business activity throughout Idaho, including Ada County.

JURISDICTION, FORUM, AND VENUE

6. This Court has subject matter jurisdiction over this action under Idaho Code § 10-1201.

7. This Court has personal jurisdiction over each Defendant pursuant to Idaho Code § 5-514.

8. Forum is proper in the District Court for the Fourth Judicial District of the State of Idaho, and venue is appropriate in Ada County.

THE FACTS

9. The Idaho Legislature established the Idaho Education Network (or IEN, as it is called) in 2008. It was to be a high-bandwidth telecommunications system for every public school in Idaho. *See* 2008 Idaho Sess. Laws. ch. 260, § 3; Idaho Code § 67-5745D.

10. Along with establishing the IEN, the Legislature also “created in the state treasury the Idaho education network fund” and provided that “[m]oneys in the fund may be expended, pursuant to appropriation, for implementation and ongoing costs of the IEN.” Idaho Code § 67-5745E(7).

11. The Idaho Department of Administration, through its Division of Purchasing, is generally responsible for soliciting and reviewing bids for contracts with the State, and for awarding and administering such contracts, including the IEN contracts.

12. In December 2008, the Idaho Department of Administration, through its Division of Purchasing, issued Request for Proposals No. 02160 (referred to as “the RFP”) to procure services and equipment for the IEN.

13. CenturyLink, then known as Qwest, and ENA each submitted bids in response to the RFP. In January 2009, the Department of Administration awarded statewide blanket

purchase order contracts—SBPOs for short—to CenturyLink (SBPO 01308) and to ENA (SBPO 01309).

14. The Department of Administration issued amendments to the IEN SBPOs in February 2009.

15. CenturyLink and ENA each performed under its amended SBPO from November 2009 to November 2014. During this period, each month CenturyLink and ENA submitted an invoice to the Department for services performed in the prior month. The Department paid CenturyLink and ENA pursuant to the invoices until November 2014.

16. On November 10, 2014, District Judge Patrick Owen issued a summary judgment order determining that the amended SBPOs were void. The court concluded that the Department violated state public purchasing laws when it issued amendments to the IEN SBPOs in February 2009.

17. Following Judge Owen's order, the Department ceased paying CenturyLink and ENA for services they provided to the IEN. Nevertheless, the Department continued to order services, and CenturyLink and ENA continued to provide those services, until late February 2015. ENA submitted invoices totaling \$4,427,368.81 that the Department did not pay due to the judicial determination that SBPO 01309 is void. CenturyLink submitted invoices totaling \$812,826.49 that the Department did not pay due to the judicial determination that SBPO 01308 is void.

18. Judge Owen issued his summary judgment order in a case filed by Syringa Networks, LLC. In December 2009, Syringa sued the Idaho Department of Administration, its director, and CenturyLink and ENA claiming, among other things, that the bidding process for the IEN RFP violated state public purchasing laws.

19. The district court dismissed every one of Syringa's claims, and on appeal the Supreme Court reversed the district court's judgment dismissing Syringa's claim that the IEN bidding process violated state public purchasing laws. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013) ("*Syringa P*").

20. On remand, the district court permitted Syringa to amend its claim relating to the alleged violation of state public purchasing laws. It granted partial summary judgment to Syringa and held that both SBPO 01308 and SBPO 01309, as amended, were void under state public purchasing laws.

21. At the time, Idaho Code § 67-5725 provided that:

All contracts made in violation of the provisions of this chapter [governing public bidding for state contracts] shall be void. Any sum of money advanced by the state in consideration of a void contract shall be repaid forthwith. 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.¹

22. On February 11, 2015, Judge Owen entered final judgment declaring that SBPO 01308 and SBPO 01309, as amended, are void. Later that month, the Idaho Legislature withdrew funding for the IEN contracts. The Department terminated the contracts due to legislative non-appropriation.

23. The district court's judgment was appealed to the Supreme Court. The Court held, 5-0, that the SBPOs as amended were void because the amendments altered the "property to be acquired" outside of the public bidding process, as prohibited by Idaho Code § 67-5718(2). *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 829, 367 P.3d 208, 224 (2016) ("*Syringa II*"). The Court rejected the argument that the amendments could be separated from

¹ This law was repealed and renumbered in 2016. It is now codified at Idaho Code § 67-9213 in substantially the same form. 2016 Idaho Sess. Laws, ch. 289, § 4.

the original SBPOs, observing that the State “essentially seek[s] to close the barn door after substantial funds had been advanced by the State under the unlawfully amended SBPOs.” *Id.*

24. Another issue on appeal was whether, having voided the contracts, the district court had a duty, under Idaho Code § 67-5725, to include a provision in its judgment directing that CenturyLink and ENA repay all sums of money advanced under the SBPOs.

25. The Court held that § 67-5725 did not require the district court to preemptively order the Department of Administration to seek repayment of funds in its judgment. It said, however, that the law “provides mandatory consequences.” *Syringa II*, 159 Idaho at 830, 367 P.3d at 225. It explained that § 67-5725 “does impose an obligation on the proper officer ‘of the state of Idaho’ to seek repayment of money advanced under the void [contract], if repayment is refused or delayed.” *Id.* And, if the appropriate State officer “fails to perform this statutory obligation, the State’s chief legal officer can step forward to make the State whole for these unfortunate violations of State law.” *Id.*

26. The Director of the Department of Administration sent a letter to the Attorney General in July 2016 stating that he would not seek from the Defendants repayment of funds the Department paid to Defendants under the void contracts. The Director’s decision apparently was based on an interpretation of the statutory term “money advanced.” The Director interpreted “money advanced” to mean money the State paid before receiving any goods or services. Because he believes the Department made no such payments to Defendants, the Director concluded that there is no “money advanced” to be repaid.

27. The Supreme Court did not conclusively determine the meaning of “money advanced” in its *Syringa II* opinion, but the opinion suggests that the Court interprets “money advanced” to have a broader meaning than the narrow definition the Director adopted. In its

briefing to the Court, CenturyLink argued in favor of the narrow definition of “money advanced” the Director has adopted. The Court’s opinion does not adopt this definition. Nor does it expressly reject it. But the opinion states that “substantial funds had been advanced by the State” to the IEN vendors, and it directs certain state officials to seek repayment of those funds.

28. Therefore, on August 10, 2016, the Attorney General—the State’s chief legal officer and acting under the direction given by the Court in *Syringa II*—sent CenturyLink and ENA letters demanding repayment of funds paid under the void contracts and requesting a response no later than August 22, 2016. The letter explained that absent timely resolution of the demand, the Attorney General would file an action to resolve the issue.

29. In response to the Attorney General’s demand for repayment, CenturyLink and ENA filed lawsuits in federal court on August 19, 2016. Their suits seek to prevent the State of Idaho from seeking repayment of amounts it paid pursuant to the void contracts. The suits also seek to recover from the State of Idaho the unpaid IEN invoices and additional damages. The claims for recovery are similar to those Defendants asserted in notices of claims² in 2015. Defendants have asserted various theories, including breach of contract, unjust enrichment, promissory estoppel, common law indemnity, tortious interference with contract, and federal and state just compensation and due process claims.

30. The Eleventh Amendment prohibits Defendants from suing the State of Idaho in federal court, so the disputes between the State and Defendants will be resolved in this action.

31. There exists a present and live controversy concerning (a) Defendants’ obligation to repay the money they received under the void SBPOs; and (b) the State’s obligation and authority to pay Defendants under the void SBPOs for sums allegedly due and owing.

² The Idaho Tort Claims Act, Idaho Code §§ 6-901 *et seq.* imposes various requirements on parties with claims against the State, including the mandatory prerequisite of filing a notice of claim with Secretary of State prior to initiating suit.

CLAIMS FOR RELIEF

**CLAIM ONE: DEFENDANTS MUST REPAY ALL AMOUNTS PAID BY
THE STATE UNDER THE VOID CONTRACTS**

32. Both SBPOs have been declared by the highest court in this State as void *ab initio*. Idaho law, specifically former Idaho Code § 67-5725 and current § 67-9213, requires any money advanced in consideration of void contracts to be repaid to the State.

33. The State paid Defendants, in amounts to be proved at trial, for services and equipment under the void SBPOs.

34. Defendants are thus liable to the State for repayment of all funds paid by the State to Defendants.

35. The proper officer of the State of Idaho, the director of the Idaho Department of Administration, Robert Geddes, had a legal duty, imposed by Idaho Code § 67-9213, to seek repayment of funds paid by the State to the Defendants under the void SBPOs. Director Geddes has decided not to seek repayment.

36. The Attorney General is obligated, pursuant to the Supreme Court's direction in *Syringa II*, to seek from Defendants all funds paid to them under the void SBPOs. Pursuant to this duty, the Attorney General demanded repayment from Defendants.

37. Defendants have refused the Attorney General's demand that they repay the money they received under the void SBPOs.

38. The Attorney General seeks and is entitled to a declaratory judgment that the Defendants must repay all funds they received from the State under the void SBPOs.

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**CLAIM TWO: THE DEFENDANTS ARE NOT ENTITLED TO RECOVER FROM
THE STATE ANY PAYMENTS ALLEGEDLY DUE THEM UNDER THE VOID
CONTRACTS, AND THE STATE MAY NOT PAY DEFENDANTS ANY
AMOUNTS ALLEGEDLY DUE UNDER THE CONTRACTS**

39. Idaho law prohibits a State official from using State funds to make any payment on a void contract. Idaho has a strong public policy prohibiting payments on void State contracts. In *J & J Contractors/O.T. Davis Constr. v. State*, 118 Idaho 535, 797 P.2d 1383 (1990), the Idaho Supreme Court rejected a contractor's claim under the equitable theory of quantum meruit to recover payment on a void government contract that violated public bidding statutes. The Court explained its decision:

“It was manifestly the purpose of the legislature, in enacting the [public bidding statutes], to procure competitive bidding for contracts for making public improvements . . . and thereby to safeguard public funds and prevent favoritism, fraud and extravagance in their expenditure”

Seysler v. Mowery, 29 Idaho 412, 416-17, 160 P. 262, 263 (1916). This evidences that there is a strong public policy against the enforcement of governmental contracts that violate competitive bidding laws. To allow recovery in quantum meruit for work performed pursuant to governmental contracts that violate competitive bidding statutes would emasculate this public policy.

118 Idaho at 536, 797 P.2d at 1384. This public policy is further evidenced by Idaho's Constitution and statutes. Idaho Const. art. VII, § 10 prohibits a state official from “using [state money] for any purpose not authorized by law.” And Idaho Code § 67-9213 (former § 67-5725) renders void any contract made in violation of public contracting laws and requires repayment of State money advanced on such a contract.

40. No Idaho law obligates or authorizes the State to pay Defendants any sums allegedly due relating to the void SBPOs.

41. The Attorney General seeks and is entitled to a declaratory judgment that the State is neither obligated nor authorized to pay Defendants any sums allegedly due relating to the void SBPOs.

PRAYER FOR RELIEF

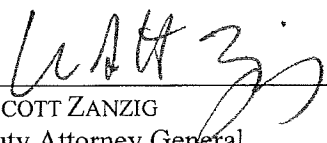
The Attorney General requests that the Court enter judgment in the Attorney General's favor and against Defendants as follows:

1. Declaring that Defendants must repay to the State all moneys paid to them by the State under the void SBPOs, in an amount to be proved at trial;
2. Declaring that the State is neither obligated nor authorized to pay Defendants any sums allegedly due relating to the void SBPOs.
3. Awarding the Attorney General his costs incurred in bringing this action.

The Attorney General also seeks judgment awarding him any other relief that may be just and proper under the facts proved at trial.

Dated August 23, 2016.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: 

W. SCOTT ZANZIG
Deputy Attorney General