

ORIGINAL



0000118751

BEFORE THE ARIZONA CORPORATIO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**COMMISSIONERS**  
KRISTIN K. MAYES - CHAIRMAN  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

RECEIVED  
2010 OCT 12 P 3:47  
ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE JOINT NOTICE AND )	DOCKET NOS. T-01051B-10-0194
APPLICATION OF QWEST CORPORATION, )	T-02811B-10-0194
QWEST COMMUNICATIONS COMPANY, LLC, )	T-04190A-10-0194
QWEST LD CORP., EMBARQ )	T-20443A-10-0194
COMMUNICATIONS, INC. D/B/A CENTURY )	T-03555A-10-0194
LINK COMMUNICATIONS, EMBARQ )	T-03902A-10-0194
PAYPHONE SERVICES, INC. D/B/A )	
CENTURYLINK, AND CENTURYTEL )	
SOLUTIONS, LLC FOR APPROVAL OF THE )	
PROPOSED MERGER OF THEIR PARENT )	
CORPORATIONS QWEST COMMUNICATIONS )	
INTERNATIONAL INC. AND CENTURYTEL, )	
INC. )	

Arizona Corporation Commission  
**DOCKETED**  
OCT 12 2010

DOCKETED BY

**REPLY TO IN FURTHER SUPPORT OF  
MOTION TO COMPEL DISCOVERY**

Integra Telecom (“Integra”) respectfully submits this Reply in further support of its motion to compel CenturyLink to produce the Hart-Scott-Rodino Act (“HSR Documents”).<sup>1</sup> In arguing that portions of the HSR Documents are irrelevant or not likely to lead to admissible evidence, CenturyLink’s response fails to address the Commission’s “public interest” standard for assessing proposed mergers or acquisitions under the Arizona Constitution, state law and the Commission’s Public Utility Holding Companies and Affiliated Interests rules, A.A.C. R14-2-801 et seq. (“Affiliated Interest Rules”). This public interest standard requires the Commission to consider

<sup>1</sup> Level 3 Communications, XO Telecom, Pac-West Telecomm, Inc. and tw telecom of arizona llc joined in the Motion to Compel.

1 the impact of the merger on wholesale services and the potential effect on telecommunications  
2 competition in Arizona. And the HSR Documents are relevant under that standard.

3 CenturyLink has, however, indicated that it is willing to provide the HSR Documents  
4 under similar protections as were agreed to in Minnesota. CenturyLink's proposal is an acceptable  
5 resolution to the Motion to Compel.

6 **ARGUMENT**

7 **A. The Commission considers the public interest in assessing a merger or**  
8 **acquisition.**

9 CenturyLink argues that under the standard set forth in A.A.C. R14-2-803.C, the impact of  
10 the proposed CenturyLink/Qwest merger/acquisition on wholesale services and  
11 telecommunications competition is irrelevant. However, Rule 803.C is merely one aspect of  
12 inquiry required of the Commission in response to a proposed merger or acquisition. Pursuant to  
13 the Arizona Constitution and A.R.S. Title 40 generally, the Commission also considers the public  
14 interest. In Decision No. 67454 (January 4, 2005)(this decision addressed the Reorganization of  
15 UniSource Energy Corporation), the Commission expressly addressed the standard of review for a  
16 proposed merger, acquisition or reorganization under the Affiliated Interest Rules. The  
17 Commission noted that Rule 803.C set only a minimum standard for consideration of transactions  
18 under the Affiliated Interest Rules. Decision No. 67454 at 28. The Commission found that it also  
19 "must act in the public interest," that the inquiry into the public interest was "broad" and that it  
20 should "examine all the evidence available in determining what is in the public interest." Id. The  
21 Commission has routinely applied a public interest standard to "reorganizations" -- such as  
22 mergers or acquisitions -- under the Affiliated Interest Rules. See, e.g., Decision No. 69344  
23 (February 20, 2007)(Arizona-American Water Company); Decision No. 70890 (May 6,  
24 2009)(Global Water).

25 The Commission also has recognized that "the individual circumstances of each case  
26 influence the scope and breadth of the 'public interest' inquiry." Decision No. 67454 at 29. In this  
27 case, it is important to consider that the Commission has repeatedly supported and facilitated

**ROSHKA DEWULF & PATTEN, PLC**  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 telecommunications competition. For example, the Commission has opposed Qwest's forbearance  
2 petitions at the FCC due to concerns about the adverse impact on available wholesale services and  
3 the detrimental impact on competition. A critical aspect of the public interest in the proposed  
4 merger/acquisition in this docket is the potential impact on Qwest's obligations under the 1996  
5 Telecommunications Act and on wholesale service – which could severely harm competition  
6 unless appropriate safeguards and conditions are imposed.

7 Assuming that the proposed resolution discussed below does not materialize, then Integra  
8 stands by its arguments in the Motion to Compel. Those arguments – and the relevancy of the  
9 documents sought under the Motion to Compel – should be assessed under the appropriate  
10 standard of review, and not the one set forth in CenturyLink's response.

11 **B. CenturyLink's proposed resolution regarding the HSR Documents is**  
12 **acceptable.**

13 CenturyLink has proposed to produce to immediately produce 30 of the 39 requested HSR  
14 Documents as Highly Confidential and to provide the remaining nine HSR Documents under the  
15 similar protections as agreed to in Minnesota. That proposal is an acceptable resolution to this  
16 Motion to Compel.

17 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of October 2010.

18  
19  
20 By   
21 Michael W. Patten  
22 Roshka DeWulf & Patten, PLC  
23 One Arizona Center  
24 400 East Van Buren Street, Suite 800  
25 Phoenix, Arizona 85004

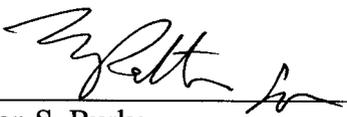
26 Counsel for Integra Telecom and Level 3  
27

ROSHKA DEWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

By   
Gregory Merz (Pro Hac Vice)  
Gray Plant Mooty  
500 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402

Attorney for Eschelon Telecom of Arizona, Inc., Electric  
Lightwave, LLC and Mountain Telecommunications of  
Arizona, Inc. dba Integra Telecom

By   
Joan S. Burke  
Law Office of Joan S. Burke  
1650 North First Avenue  
Phoenix, Arizona 85003

Attorney for XO Communications Services, Inc., tw  
telecom of arizona llc and Pac-West Telecomm, Inc.

Original and 13 copies of the foregoing  
filed this 12<sup>th</sup> day of October 2010 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered/mailed  
this 12<sup>th</sup> day of October 2010 to:

Norman Curtright  
Qwest Corporation  
20 East Thomas Road, 16<sup>th</sup> Floor  
Phoenix, Arizona 85012

Daniel Pozefsky  
Residential Utility Consumer Office  
1100 West Washington, Ste 220  
Phoenix, Arizona 85007

Jeffrey W. Crockett  
Bradley Carroll  
Snell & Wilmer  
One Arizona Center  
400 E. Van Buren  
Phoenix, Arizona 85004

Joan S. Burke  
Law Office of Joan S. Burke  
1650 North First Avenue  
Phoenix, Arizona 85003

Kevin K. Zarling, Esq.  
Senior Counsel  
CenturyLink  
400 West 15<sup>th</sup> Street, Suite 315  
Austin, Texas 78701

Nicholas J. Enoch, Esq  
Jarrett J. Haskovec, Esq  
Lubin & Enoch, PC  
349 North Fourth Avenue  
Phoenix, Arizona 85003

**ROSHKA DEWULF & PATTEN, PLC**  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Scott J. Rubin, Esq  
333 Oak Lane  
2 Bloomsburg, Pennsylvania 17815

3 Gregory L. Rogers  
Level 3 Communications, LLC  
4 1025 Eldorado Blvd.  
Broomfield, CO 80021  
5 Rogelio Peña  
Peña & Associates, LLC  
6 4845 Pearl East Circle, Suite 101  
Boulder, CO 80301

7 William A. Haas  
8 Vice President of Public Policy & Regulatory  
PAETEC Holding Corp.  
9 One Martha's Way,  
Hiawatha, Iowa 52233

10 Karen L. Clauson  
11 Vice President, Law & Policy  
Integra Telecom  
12 6160 Golden Hills Drive  
Golden Valley, Minnesota 55416-1020

13 Gregory Merz  
14 Gray Plant Mooty  
500 IDS Center  
15 80 South Eighth Street  
Minneapolis, Minnesota 55402

16 Stephen S. Melnikoff, Esq  
17 Regulatory Law Office  
U. S. Army Litigation Center  
18 901 North Stuart Street, Suite 700  
Arlington, Virginia 22203

19 Harry Gildea  
20 Snavelly King Majoros O'Connor & Bedell,  
Inc.  
21 1111 14<sup>th</sup> Street, N.W., Suite 300  
Washington, , D.C. 20005

22 Michel Singer Nelson  
23 360networks (USA), Inc.  
370 Interlocken Blvd, Suite 600  
24 Broomfield, Colorado 80021

25 Penny Stanley  
360networks (USA), Inc.  
26 370 Interlocken Blvd, Suite 600  
Broomfield, Colorado 80021  
27

Thomas Campbell  
Michael Hallam  
Lewis & Roca  
40 North Central Avenue  
Phoenix, Arizona 85004

Deborah Kuhn  
Assistant General Counsel  
Verizon  
205 North Michigan Avenue, 7<sup>th</sup> Floor  
Chicago, Illinois 60601

Lyndall Nipps  
Vice President, Regulatory  
tw telecom  
9665 Granite Ridge Drive, Suite 500  
San Diego, California 92123

Rex Knowles  
Executive Director  
XO Communications Services, Inc.  
7050 Union Park Avenue, Ste 400  
Midvale, Utah 84047

James C. Falvey  
Senior Regulatory Counsel  
Pac-West Telecomm, Inc.  
420 Chinquapin Round Red, Ste 2-1  
Annapolis, Maryland 21401

John Ilgen  
Westel, Inc.  
Vice President of Sales & Marketing  
9606 N. Mopac Expressway, Suite 700  
Austin, Texas 78759

Belinda Martin, Esq.  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Maureen A. Scott, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

**ROSHKA DEWULF & PATTEN, PLC**  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Steve Olea  
2 Director, Utilities Division  
3 Arizona Corporation Commission  
4 1200 West Washington  
5 Phoenix, Arizona 85007

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

By Mary Ippolito