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BEFORE THE ARIZONA CORPORATION COMMISSION

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2010 DEC -1 P 14:05

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE JOINT APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP. dba QWEST LONG DISTANCE, EMBARQ PAYPHONE SERVICES, INC. AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.

DOCKET NO. T-01051B-10-0194
T-02811B-10-0194
T-04190A-10-0194
T-20443A-10-0194
T-03555A-10-0194
T-03902A-10-0194

STAFF'S NOTICE OF FILING TESTIMONY IN SUPPORT OF THE SETTLEMENT AGREEMENT

Staff of the Arizona Corporation Commission ("Staff") hereby files the Testimony in Support of the Settlement Agreement of Elijah Abinah of the Utilities Division in the above docket.

RESPECTFULLY SUBMITTED this 1st day of December 2010.

Arizona Corporation Commission

DOCKETED

DEC 1 2010

DOCKETED BY [Signature]

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19
20 
21

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chairman

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

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

DIRECT

TESTIMONY

OF

ELIJAH O. ABINAH

FOR THE

ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION

IN SUPPORT OF THE SETTLEMENT AGREEMENT

December 1, 2010

EXECUTIVE SUMMARY
MERGER OF CENTURYLINK AND QWEST COMMUNICATIONS INTL.
DOCKET NOS. T-01051B-10-0194, et al.

I am offering testimony on behalf of the Utilities Division Staff in support of the Settlement Agreement entered into between the Joint Applicants, the Utilities Division Staff and the Residential Utility Consumer Office.

My testimony is organized into three sections. Section I provides a discussion and insights into the Settlement process itself. Section II identifies and discusses the reasons why the Settlement Agreement is in the public interest. Finally Section III addresses several general policy considerations.

The Settlement Agreement was the result of an open, transparent process in which all parties to the Docket were allowed to participate. The issues of all participants were aired and discussed. While not all active parties signed onto the Settlement Agreement, all of Qwest's retail and wholesale customers in Arizona will benefit as a result of the Agreement.

The Settlement Agreement contains important commitments and agreements by the Joint Applicants on merger costs, regulatory matters, retail operations, wholesale operations, financial matters, reporting, and conservation of Commission resources. The Settlement Agreement also contains a commitment by the Joint Applicants to invest not less than \$70 million in broadband in Arizona over the next 5 years.

With the conditions contained in the Settlement Agreement, Staff believes that the proposed merger of CenturyLink and Qwest is in the public interest and should be approved by the Commission.

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street,
4 Phoenix Arizona, 85007.

5

6 **Q. Where are you employed and in what capacity?**

7 A. I am employed by the Utilities Division (“Staff”) of the Arizona Corporation Commission
8 (“ACC” or “Commission”) as Assistant Director.

9

10 **Q. How long have you been employed with the Utilities Division?**

11 A. I have been employed with the Utilities Division since January 2003.

12

13 **Q. Please describe your educational background and experience.**

14 A. I received a Bachelor of Science degree in Accounting from the University of Central
15 Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from
16 Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the
17 ACC, I was employed by the Oklahoma Corporation Commission for approximately eight
18 and a half years in various capacities in the Telecommunications Division.

19

20 **Q. What are your current Responsibilities?**

21 A. As Assistant Director, I review submissions that are filed with the Commission and make
22 policy recommendations to the Director regarding those filings.

1 **Q. Did you participate in negotiations that led to the execution of the proposed**
2 **agreement?**

3 A. Yes, I did.
4

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to support the Settlement Agreement between Staff, RUCO
7 and the Joint Applicants.
8

9 **Q. How is your testimony being presented?**

10 A. My testimony is organized into three sections. Section 1 provides discussion and insight
11 into the Settlement process. Section II identifies and discusses the reasons why the
12 Settlement Agreement (“Agreement”) is in the public interest. Section III addresses
13 several general policy considerations.
14

15 In addition to the process and the public interest components, my testimony will in general
16 summarize the entire Agreement and will later address in general the following categories
17 of conditions that are addressed in the Settlement Agreement:
18

- 19 1. Merger Costs,
- 20 2. Regulatory,
- 21 3. Retail Operations,
- 22 4. Wholesale Operations,
- 23 5. Financial,
- 24 6. Reporting, and
- 25 7. Conservation of Commission Resources

1 **I. SETTLEMENT PROCESS**

2 **Q. Please discuss the settlement process.**

3 A. The Settlement process was open, transparent, and inclusive. All parties received notice of
4 the Settlement meetings and were accorded an opportunity to raise, discuss, and propose
5 resolution to any issues they desired.

6
7 **Q. Were other Staff members participants in this discussion?**

8 A Yes, the Staff negotiating team consisted of Steven Olea, (Director of Utilities Division),
9 Terri Ford (Chief of Telecom and Energy), Del Smith (Chief of Engineering), Gordon Fox
10 (Public Utilities Analyst, Manager), Will Shand (Telecom Manager), Armando Fimbres
11 (Telecom Analyst), Pamela Genung (Telecom Analyst), Maureen Scott (Staff Legal
12 Counsel), Robin Mitchell (Staff Legal Counsel), Bridget Humphrey (Staff Legal Counsel)
13 and myself.

14
15 **Q. How many Settlement meetings were held?**

16 A. There were five days of Settlement Discussion held from November 15 through
17 November 19, 2010.

18
19 **Q. Did all parties involved in this Docket participate in the negotiations process?**

20 A. Most of the active parties to this Docket were involved in the negotiations process, and any
21 party to this case was free to participate in the negotiation process. Some parties who had
22 already settled with the Joint Applicants did not actively participate in the negotiations
23 including Integra Telecom, Inc. ("Integra"), 360 Networks ("360"), Communications
24 Workers of America ("CWA") and the U.S. Department of Defense and All Other Federal
25 Agencies ("DOD/FEA").

1 **Q. Who participated in those meetings?**

2 A. In addition to Staff, RUCO and the Joint Applicants, the participants in the meetings
3 included Cox Arizona Telcom L.L.C. ("Cox"), Westel, Inc. ("Westel"), tw telecom ("tw"),
4 XO Communications ("XO"), PacWest Telecomm ("PacWest"), Level 3 Communications
5 ("Level 3") and PAETEC Communications, Inc. ("PAETEC"). Westel, Inc. ("Westel")
6 entered into a settlement agreement with the Joint Applicants during the first few days of
7 negotiations. Cox entered into a settlement with the Joint Applicants near the end of the
8 negotiations.

9
10 **Q. What parties signed the Settlement Agreement besides Staff?**

11 A. RUCO and the Joint Applicants signed the Settlement Agreement.

12
13 **Q. Were there parties that did not enter into settlement agreements with the Joint**
14 **Applicants?**

15 A. Yes. twt, PAETEC, XO, PacWest, and Level 3 have not negotiated agreements with the
16 Joint Applicants and are not signatories to this Agreement.

17
18 **Q. Will the CLECs that did not sign onto the Settlement Agreement between Staff,**
19 **RUCO and the Joint Applicants and that were unable to reach a settlement on their**
20 **remaining issues still benefit from the agreement reached between Staff, RUCO and**
21 **the Joint Applicants?**

22 A. Without question. All CLECs will benefit from the wholesale conditions that were agreed
23 upon by Staff, RUCO and the Joint Applicants. All parties who participated in the
24 negotiations had input into the agreements reached involving the Staff conditions. Some
25 CLECs did not believe the language went far enough in some cases to cover their specific
26 concerns, so they did not sign onto the agreement. But these CLECs will still benefit from

1 the agreement reached between Staff, the Joint Applicants and RUCO since these
2 conditions will apply to all CLECs in Arizona if the proposed Settlement Agreement and
3 merger are approved by the Commission.

4
5 **Q. Did Staff and the Signatories meet with all the interested parties in the Docket?**

6 A. Yes. All active parties in the Docket were involved in the negotiations to the extent that
7 they wanted to be. They presented their issues and considerable discussion was held
8 regarding all issues raised. The Joint Applicants also offered to meet separately with any
9 CLEC to discuss its concerns in further detail and to see if a resolution could be reached.

10
11 **Q. In your opinion, was there an opportunity for all issues to be discussed and
12 considered?**

13 A. Yes, In my opinion, each party had the opportunity to raise and have their issues
14 considered.

15
16 **Q. Were the Signatories able to resolve all issues?**

17 A. Yes, the Signatories were able to resolve and reach agreement on all issues they
18 considered.

19
20 **Q. How would you describe the negotiations?**

21 A. I believe that all participants zealously advocated and represented the interests of their
22 constituents. I would characterize the discussions as candid and professional. Staff is
23 pleased with the desire and effort put forth by all parties. All parties had the opportunity to
24 be heard and to have their issues fairly considered.

25

1 **Q. Mr. Abinah, would you describe the process as requiring a lot of give and take?**

2 A. Yes, I would. As a result of the many and varied interests represented in the Settlement
3 process, a willingness to compromise was absolutely necessary. As evidenced in the
4 Agreement, the Signatories compromised vastly different litigation positions.

5
6 **Q. In your previous response, you stated that the parties were able to settle despite vastly
7 different litigation positions. Is that correct?**

8 A. Yes.

9
10 **Q. In your opinion, was the public interest compromised in any way as a result of the
11 Settlement?**

12 A. No, not in my opinion. As I will discuss later in this testimony, I believe that the
13 compromises made by the various parties will further the public interest.

14
15 **Q. Mr. Abinah, are there any other comments you would like to make in regard to the
16 Settlement process?**

17 A. Yes. In my view, the Settlement process resulted in an Agreement which some may not
18 view as perfect but nonetheless is balanced and consistent with the public interest.

19
20 **Q. Mr. Abinah, in your opinion, were all parties afforded due process?**

21 A. Yes. The process was open, transparent and inclusive.

1 **II. PUBLIC INTEREST**

2 **Q. Mr. Abinah, in Staff's opinion, is the Proposed Settlement in the public interest?**

3 A. Yes, absolutely. In Staff's opinion, the Proposed Settlement is fair, balanced, and in the
4 public interest.

5
6 **Q. Mr. Abinah, briefly summarize the reasons that Staff concludes that the Settlement is**
7 **fair, balanced, and in the public interest.**

8 A. The agreed upon provisions in each of these areas were the result of many hours of
9 negotiation and a lot of give and take on the part of all parties. The settlement process was
10 open, transparent and inclusive. The Settlement Agreement reflects the negotiated
11 resolution of all contested issues in this Docket and has widespread support from active
12 Parties to this Docket, except certain CLECs. It reflects a careful balancing of the interests
13 of the various Parties involved. The Settlement Agreement produces the following
14 benefits, among others:

- 15 1. Maintains competition in that the merger of the Joint Applicants will not lead to a
16 reduction in the number of providers of competitive telecommunications services in
17 Arizona,
- 18 2. Merged Company provides financial stability as a result of the combination that
19 may result in the upgrade of Qwest Corporation's debt to investment grade through
20 creation of a combined company that is stronger financially than either company
21 would be standing alone. This will provide the Merged Company the ability to
22 make necessary investments to its network in order to provide advanced
23 products and services
- 24 3. Maintains stable local exchange rates through the extension of interconnection
25 agreements, wholesale agreements, commercial agreements and tariffs for the
26 benefit of CLECs and their respective customers
- 27 4. Requires the Joint Applicants to evaluate existing litigation involving the
28 Commission and make a good faith effort to resolve the issues without further
29 litigation, thus preserving Staff resources, and

- 1 5. Commits the Joint Applicants to investment in Broadband infrastructure in an
2 amount no less than \$70 million within the State of Arizona over a five year period
3 beginning January 1, 2011.

4 **III. OVERVIEW OF THE SETTLEMENT AGREEMENT**

5 **Q. Please briefly provide an overview of the Settlement Agreement.**

- 6 A. The Settlement Agreement was entered into by the Settling Parties to resolve all issues
7 related to the Joint Application for approval of the proposed merger between Qwest and
8 CenturyLink.

9
10 A. **WHOLESALE CONDITIONS**

11 **Q. Did Staff reach agreement with the Joint Applicants and RUCO regarding the**
12 **Wholesale Operations conditions in Attachment 1 of the Settlement Agreement?**

- 13 A. Yes. Conditions 19 through 31 in Attachment 1 are the Wholesale Operations conditions
14 on which the Joint Applicants, RUCO and Staff reached agreement.

15
16 **Q. Can you briefly describe the wholesale conditions that are contained in the Settlement**
17 **Agreement?**

- 18 A. Yes. Very generally, the wholesale conditions contain very important commitments by the
19 Joint Applicants pertaining to any integration of the wholesale operations of CenturyLink
20 and Qwest, the Qwest Performance Assurance Plan ("QPAP") for wholesale customers,
21 and the Change Management Process ("CMP"). The wholesale conditions also contain
22 important commitments regarding the extension of existing interconnection agreements,
23 commercial agreements, wholesale agreements and tariffs. All of the commitments by the
24 Joint Applicants will benefit CLECs operating in Arizona by ensuring, as much as possible,
25 that the merger will not adversely impact the level of service provided to the CLECs post-
26 merger.

1 **Q. How did the Joint Applicants, Staff and RUCO arrive at the wholesale conditions that**
2 **are contained in the Agreement?**

3 A. Just before the hearing in Arizona and Colorado, the Joint Applicants were able to reach
4 agreement with Integra, one of the largest CLECs now operating in Arizona, on many
5 wholesale conditions. The Joint Applicants proposed some of the Integra conditions in lieu
6 of the Staff conditions. After review, certain of the Integra conditions, with modifications
7 requested by Staff, were agreed to by Staff, RUCO and the Joint Applicants, in lieu of
8 Staff's original conditions.

9
10 **Q. Are the wholesale conditions in the Settlement Agreement are different from the**
11 **Integra conditions at times.**

12 A. Yes. Staff was not satisfied with the language of the Integra Settlement Agreement at
13 times and Staff's revised language is reflected in the conditions contained in Attachment 1
14 of the Settlement Agreement. In addition, other Staff wholesale conditions were left in
15 place and/or modified as appropriate and included in the Agreement.

16
17 **Q. Do you believe overall the wholesale conditions that were agreed upon will benefit**
18 **CLECs in Arizona?**

19 A. Yes. And, I believe Integra's (one of the largest CLECs operating in Arizona at this
20 time) involvement in negotiating and agreeing to many of the conditions (with the
21 exception of Staff's modifications which enhance the conditions) speaks volumes regarding
22 the adequacy of the conditions and their benefits to CLECs in Arizona. In addition, the
23 Joint Applicants agreed to additional conditions that will benefit CLECs in Arizona, that
24 were not in Staff's original list of conditions.

1 **Q. Will many of the conditions in the Integra agreement be available to CLECs in other**
2 **Qwest states as well?**

3 A. Yes. Through the negotiation process, it became clear that CenturyLink and Qwest desired
4 to achieve some uniformity on the wholesale issues between states in the Qwest region.
5 Thus, except for modifications negotiated by Staff for Arizona, CLECs in other states will
6 have the benefit of the same Integra conditions to the extent they opt into that agreement.

7
8 **B. FINANCIAL CONDITIONS**

9 **Q. Did Staff reach agreement with the Joint Applicants and RUCO regarding the**
10 **Financial Conditions in Attachment 1 of the Settlement Agreement?**

11 A. Yes. Conditions 32 through 33 in Attachment 1 are the Financial conditions on which the
12 Joint Applicants, RUCO and Staff reached agreement.

13
14 **Q. Please generally describe the Financial conditions.**

15 A. The Joint Applicants have committed to certain reporting requirements. In addition,
16 CenturyLink has agreed not to seek to recover any acquisition adjustment paid for Qwest.

17
18 **C. REPORTING CONDITIONS**

19 **Q. Did Staff reach agreement with the Joint Applicants and RUCO regarding the**
20 **Reporting conditions in Attachment 1 of the Settlement Agreement?**

21 A. Yes. Conditions 34 through 40 in Attachment 1 are the Reporting conditions on which the
22 Joint Applicants, RUCO and Staff reached agreement.

1 **Q. What do the Reporting conditions cover?**

2 A. The Reporting conditions include commitments by the Joint Applicants to provide the
3 Commission with information on activities relating to integrating Qwest's operations with
4 CenturyLink, as well as achieving the synergies identified as a result of the transaction.
5 Reporting is also to include organizational and staffing changes; cost savings; Capital
6 Expenditures ("CAPEX") and operating expense information; information on improvement
7 in the Merged Company's complaint level in Arizona, new services made available to
8 customers, improvement in service quality measures, infrastructure improvements,
9 expanded broadband coverage and any other impacts on Arizona operations and customers.

10

11 **Q. Why is this information important in Staff's opinion?**

12 A. This information is important for the Commission to be able to track changes resulting
13 from the merger that may affect Qwest's wholesale and retail customers and to determine
14 whether important synergies and cost savings identified by the Joint Applicants as a benefit
15 of the merger actually transpire.

16

17 **D. CONSERVATION OF COMMISSION RESOURCES**

18 **Q. Did Staff reach agreement with the Joint Applicants and RUCO regarding the**
19 **Conservation of Commission Resources in Attachment 1 of the Settlement**
20 **Agreement?**

21 A. Yes. Condition 41 in Attachment 1 is the Conservation of Commission Resources
22 condition on which the Joint Applicants, RUCO and Staff reached agreement.

1 **Q. Is Condition 41 in Attachment 1 the exact same condition in Attachment 1 of Staff's**
2 **November 10, 2010 Surrebuttal Testimony?**

3 A. Yes.

4
5 **Q. Why is Condition 41 beneficial in Staff's opinion?**

6 A. Condition 41 requires the Merged Company to evaluate existing litigation involving the
7 Commission and make a good faith effort to resolve the issues without further litigation.
8 The cases to be included in any evaluation include: (a) McLeodUSA v. ACC, Arizona
9 District Case Court Case No. CV07-2145-PHX-HRH, (b) Qwest v. ACC, Arizona District
10 Court Case No. CV08-2374-PHX-JAT, and (c) Pac-West/Level 3 VNXX Remand
11 Proceeding, ACC Docket Nos. T-01051B-05-0495, T-03693A-05-0495, T-01051B-05-
12 0415, T-036564A-05-415. These are cases which have involved the expenditure of
13 significant resources by the Commission Staff, Qwest and individual CLECs. Staff
14 believes that resolution of the issues outside of litigation is possible in each of these cases
15 and would be beneficial since these resources could then be devoted to improving customer
16 service in Arizona.

17

18 **E. MERGER COST CONDITIONS**

19 **Q. Did Staff reach agreement with the Applicants and RUCO regarding the Merger Cost**
20 **conditions in Attachment 1 of the Settlement Agreement?**

21 A. Yes. Conditions 1 through 3 contained in Attachment 1 are the Merger Cost conditions on
22 which the Applicants, RUCO and Staff have reached agreement.

23

1 **Q. Why are the Settlement Merger Cost conditions important?**

2 A. These conditions are important because they ensure that the Merged Company will not pass
3 through merger related costs to its wholesale or retail customers by increasing their rates.
4 They ensure that any one-time transition, branding, or other transaction related costs; any
5 acquisition premium; and any increases in overall management costs will not be passed on
6 the Qwest's customers. This condition is similar to if not identical to conditions agreed to
7 in other states by the Joint Applicants. These conditions also are important in that they
8 ensure that the Commission will have access to the Joint Applicant's books and records
9 relating to the transaction should that become necessary in the future in any relevant
10 proceeding.

11
12 **F. REGULATORY CONDITIONS**

13 **Q. Did Staff reach agreement with the Applicants and RUCO regarding the Regulatory**
14 **conditions in Attachment 1 of the Settlement Agreement?**

15 A. Yes. Conditions 4 through 9 contained in Attachment 1 are the Regulatory conditions on
16 which the Applicants, RUCO and Staff have reached agreement.

17
18 **Q. Can you briefly discuss the Regulatory Conditions contained in Attachment 1 of the**
19 **Settlement Agreement?**

20 A. Yes. The Regulatory conditions basically constitute an agreement by the Merged
21 Company to abide by the requirements of Sections 271 and 272 of the Telecommunications
22 Act of 1996 ("the 1996 Act") which are now applicable to Qwest, until those requirements
23 are no longer applicable. The Merged Company also agrees to continue to comply with all
24 relevant prior Commission orders and decisions, unless the Commission specifically finds
25 in an order that they are no longer applicable. There is also a condition which requires the

1 Merged entity to maintain its books and records in accordance with the Uniform System of
2 Accounts (“USOA”) and to provide the Commission with financial data on a separated
3 intrastate basis for as long as required by the Commission. There are other important
4 regulatory commitments in this section as well.

5
6 **G. RETAIL CONDITIONS**

7 **Q. Did Staff reach agreement with the Applicants and RUCO regarding the Retail**
8 **Operations conditions in Attachment 1 of the Settlement Agreement?**

9 A. Yes. Conditions 10 through 18 contained in Attachment 1 are the Retail Operations
10 conditions on which the Applicants, RUCO and Staff have reached agreement.

11
12 **Q. What do the Retail conditions cover and why are they important?**

13 A. The retail conditions are very important. Some of the more significant retail conditions
14 include a commitment by the Joint Applicants to deploy broadband in the state in an
15 amount of not less than \$70 million over a five year period beginning January 1, 2011.

16
17 The Joint Applicants also agree that they will not seek to make changes to the existing
18 Service Quality Tariff for 2 years unless recommended by the Commission or the
19 Commission Staff. After the two year period, the Service Quality Tariff will continue in
20 effect, and the Joint Applicants can apply to make changes to the tariff which may or may
21 not be accepted by the Commission.

22
23 Other retail commitments include the provision of information on the Merged Company’s
24 Internet Protocol Television (“IPTV”) deployment plans and broadband deployment plans.
25 There are also commitments relating to the integration of Qwest’s retail support systems

1 with portions of the CenturyLink and/or Embarq systems. The Merged Company also
2 agrees to maintain or improve its pre-merger complaint status in the Qwest Arizona service
3 areas. In addition, the Merged Company agreed to ensure that retail support centers are
4 sufficiently staffed with adequately trained personnel who will provide a level of service
5 not less than and functionally equivalent to that provided in the Qwest Arizona service
6 area.

7
8 **SUMMARY AND CONCLUSIONS**

9 **Q. Describe Staff's understanding of the overall Settlement Agreement?**

10 A. Staff and all parties to this Agreement have devoted considerable time, resources and effort
11 to reach a conclusion that is fair and reasonable. All parties have acknowledged their
12 acceptance of this Agreement, reached through open and frank discussions.

13
14 Overall, Staff is satisfied that the Agreement is in the public interest and it recommends
15 that the Commission adopt it.

16
17 **Q. Does this conclude your direct testimony?**

18 A. Yes, it does.