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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

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
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THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' POST-HEARING BRIEF

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The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (hereafter, "DoD/FEA" or "Federal Agencies"), hereby files this Post-Hearing Brief in the above-captioned proceeding. This filing is made pursuant to the schedule promulgated by the Presiding Administrative Law Judge (hereafter, "ALJ") at the Hearing on December 20, 2010. This brief addresses the unopposed Settlement Agreement and Stipulation between the Joint Applicants and DoD/FEA (hereafter, "DoD/FEA Agreement") filed on November 5, 2010, as Joint Applicants-DoD/FEA Joint Exhibit 1.¹ For the reasons set forth below, DoD/FEA urges

¹ The issues identified by the ALJ for post-hearing briefing relate to the Settlement Agreement among the Joint Applicants, the Commission's Utilities Division Staff ("Staff") and the Residential Utility Consumer Office

that the subject application be approved, subject to acceptance of the terms and conditions of the DoD/FEA Agreement.

I. INTRODUCTION AND BACKGROUND

On May 13, 2010, Qwest Corporation, Qwest Communications Company LLC, Qwest LD Corp. d/b/a Qwest Long Distance, Embarq Payphone Services, Inc. and CenturyTel Solutions, LLC (hereafter referred to jointly as "Applicants") filed an application with the Arizona Corporation Commission (hereafter, "the Commission") seeking approval of the transfer of control of all the regulated Qwest Communications International Inc. operating subsidiaries (hereafter, "Qwest") in Arizona to CenturyLink, Inc. (hereafter, "CenturyLink") (hereafter, the "transaction" or "merger"). Applicants thereafter filed, on May 24, 2010, testimony of four witnesses in support of the transaction.

DoD/FEA filed its Application to Intervene on June 18, 2010.² The Commission granted DoD/FEA's Application, and those filed by other parties, and set dates for a prehearing conference and evidentiary hearings by a Procedural Order released by the ALJ on July 2, 2010. Pursuant to the schedule set forth in that order, DoD/FEA, the Commission's Staff and other intervenors filed direct testimony on September 27, 2010. Applicants filed rebuttal testimony on October 27, 2010. Certain parties also filed surrebuttal testimony on November 10, 2010, and thereafter testimony in support of or in opposition to settlement agreements on December 8, 2010.

("RUCO") (hereafter, "Staff/RUCO Agreement"). As such, rather than burden the record on those issues, DoD/FEA elects to defer briefing those issues to the signatories of that Agreement and to those with positions in opposition thereto.

² In the Application, DoD/FEA noted the strong presence of the Federal agencies in Arizona and the interest of DoD/FEA in ensuring that the telecommunications services that they receive are not adversely affected by the transaction. DoD/FEA also stated that it has a unique government end-user perspective on the issues that might arise as a result of this transaction, given the nature and extent of its numerous and varied telecommunications purchases from both Qwest and competitive carriers that have relied on Qwest for elements of their business offerings.

Hearings on the transaction application commenced on November 15, 2010. Pre-filed testimony, including that of DoD/FEA expert witness Charles W. King, was received into the record. Prior to the hearings, however, certain parties herein filed agreements with the Commission that settled the issues that they raised in their testimony.³ As noted above, DoD/FEA and Applicants jointly filed their Settlement Agreement and Stipulation on November 5, 2010. The substantive terms of the DoD/FEA Agreement are set forth in Attachment 1 to this Brief. Because the unopposed DoD/FEA Agreement resolves the concerns that DoD/FEA raised in its Application to Intervene and testimony, we will not comment extensively in this brief on the testimonies and exhibits of other parties in this proceeding. None of the other parties in this proceeding either opposed or addressed the DoD/FEA Agreement. Rather, we explain herein that the DoD/FEA Agreement is necessary to prevent potential transaction-related harm to DoD/FEA and accordingly should be approved by the Commission concurrently with approval of the transaction application, which so conditioned, is in the public interest.

II. DoD/FEA'S PRE-FILED TESTIMONY

As noted above, upon Commission approval all contested issues between DoD/FEA and Applicants about the transaction would be resolved by the DoD/FEA Agreement. We will, however, note below the DoD/FEA testimony that was filed prior to execution of the DoD/FEA Agreement and hearings herein, because if the DoD/FEA Agreement is not approved substantially unaltered, we respectfully request that the Commission issue a decision on the contested issues raised in the testimony.

In his September 27, 2010 Initial Testimony (DoD/FEA Exhibit 1), DoD/FEA expert witness Charles W. King, President of the economic consulting firm of Snavelly King Majoros &

³ The Staff/RUCO Agreement was filed on November 26, 2010. Prior thereto, Applicants filed settlement agreements that they had entered into with certain wholesale customers.

O'Connor, Inc., discussed DoD/FEA's concerns and recommendations related to 1) the handling of merger-related transaction and transition/integration costs⁴; 2) necessary service quality enhancements⁵; and 3) ensuring the sufficiency of personnel with security clearances for the performance of government contracts⁶. As noted above and discussed below, each of these areas of contested issues has been resolved with the Applicants in the DoD/FEA Agreement subject to Commission approval.

III. THE DoD/FEA AGREEMENT

In an effort to address the issues that Mr. King raised in his testimony, DoD/FEA and Applicants met to discuss whether those concerns could be resolved by a settlement herein. The product of those negotiations is the DoD/FEA Agreement. In his direct testimony at the December 13, 2010 hearing Mr. King stated that the Commission should approve the transaction application with the accompanying DoD/FEA Agreement as being in the public interest, because that Agreement resolved the transaction-related issues that he had raised.

The DoD/FEA Agreement has a term of three years with extension upon mutual consent of the parties and is applicable to service provided to Federal Agencies in Colorado, Utah and Arizona. (Both the Colorado and Utah commissions have approved the DoD/FEA Agreement.) The DoD/FEA Agreement addresses the three areas noted above and explained by Mr. King in his testimony that led to our intervention herein. First, the DoD/FEA Agreement requires Applicants to make a Volume and Term Individual Case Basis (ICB) filing with the Commission after the transaction is approved and closed that includes a three-year rate cap for certain basic business services utilized by the Federal Agencies. This provision directly alleviates DoD/FEA's concern that the Federal Agencies may be adversely impacted by potential rate

⁴ DoD/FEA Exhibit 1, pp. 12-19.

⁵ *Id.*, pp. 19-22.

⁶ *Id.*, pp. 22-23.

increases that might be based in whole or in part on Applicants' efforts to recover their merger transaction and integration costs. This rate stability assurance, however, is based on a corresponding revenue assurance commitment by the Federal Agencies to maintain their billings in Arizona at a minimum of 90 percent of the average quarterly billings for the four quarters preceding the date of the DoD/FEA Agreement.⁷

The rate stability assurance provision benefits Federal Agencies by ensuring that they do not inappropriately bear any of the merger transaction and integration costs, which Applicants presumably will experience during the rate cap period. From DoD/FEA's perspective, the rate cap provision operates in a more certain and efficient manner than attempting to identify and exclude transaction-related costs in a rate proceeding.⁸ The revenue assurance commitment provision benefits the Applicants by providing a guaranteed stream of revenue from a major customer during the applicable period. Moreover, because these provisions are filed as an ICB, under the Commission's policies and practices related thereto they will apply as well to other similarly-situated customers. Additionally, because residential and small business basic local services are still provided under the Commission's regulatory oversight, the Commission with the assistance of the Staff and RUCO has the ability through its regulatory processes to assess the appropriateness of any request for increases in those rates during the three-year period.

The DoD/FEA Agreement also addresses certain service quality issues that led to DoD/FEA's intervention and testimony. The applicable provision states:

CenturyLink and Qwest commit that all service quality requirements that are part of any commission order relating to the proposed merger, as well as any other service quality

⁷ DoD/FEA Agreement, Attachment 1, p. 1. The DoD/FEA Agreement provides that if billings are continuously below the prescribed volume level for 180 days, the agreement may be terminated.

⁸ We note that the Staff/RUCO Agreement provides (paragraph 1) that the Applicants will not recover or seek to recover from retail or wholesale customers one-time transition, branding, or any other transaction-related costs. A rate cap has the same effect, but in our view is a more efficient approach to shielding ICB customers from these costs than attempting to identify and disallow them in a rate proceeding. Additionally, a rate cap is administratively easier to implement for a customer such as DoD/FEA with large numbers of diverse and complex billings.

requirements ordered by any commission shall be applicable to service provided to the U.S. Government and its agencies under this Agreement.

This provision ensures that the Federal Agencies will “share” in the benefits of the service quality and performance reporting and enforcement requirements applicable in Arizona.⁹ We favorably note that condition 11 of the Staff/RUCO Agreement prohibits Applicants from filing to make changes to Qwest’s Service Quality Tariff for two years (unless recommended by the Staff or the Commission), thus providing further protection to DoD/FEA and other retail customers in this regard. Additionally, Staff/RUCO Agreement conditions 13 and 14 provide retail service quality enhancements—*i.e.*, the post-merger Company must maintain or improve both its pre-merger complaint status and the adequacy of its retail support center staffing, respectively.

DoD/FEA’s concern about the effect of the transaction on security clearances for Applicants’ personnel working on contracted service provided to the Federal Agencies is based on a statement in CenturyLink’s second quarter 2010 SEC Form 10-Q. There, CenturyLink, in the “risks” section, stated that it may be unable to obtain security clearances so that it can perform certain government contracts to which Qwest is a party. This would be the unsatisfactory outcome if CenturyLink personnel replaced Qwest personnel but then were unable to obtain the required clearances.

The DoD/FEA Agreement ensures that government contracts are not jeopardized by the absence of employees holding the requisite security clearances. The applicable provision states in part:

⁹ Although this provision in the DoD/FEA Agreement references “requirements ordered by any commission”, it was, and is, the intent of the Applicants and DoD/FEA that this reference is meant only to apply to the relevant specific commission for each of the three states in which the agreement is filed – not any commission in which Applicants operate or a commission outside the state where the ICB service is provided. Thus, this provision is not a “Most Favored State” (“MFS”) provision, nor will it function as a MFS provision.

CenturyLink and Qwest affirm that no organizational or personnel changes will impair either the post-merger company's ability to perform under existing contracts or its ability to bid on new contracts that require security clearances of company's personnel.

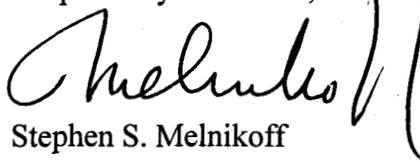
By recognizing the importance of and committing to maintaining staff with the necessary clearances, Applicants have dealt adequately with DoD/FEA's concerns and have obviated the need for Commission action in this regard.

IV. CONCLUSION

The unopposed DoD/FEA Agreement, while the product of "gives" and "takes" of the negotiation process, provides to Applicants, the Commission and ratepayers in general benefits that will enhance the merger of the Applicants and provides safeguards helping to address specific potential harms. Given those benefits, DoD/FEA can now urge the Commission to approve the application and the accompanying DoD/FEA Agreement. From the examples indicated above, other provisions and commitments that Applicants have assumed since the application was filed also lead to the conclusion that approval of the application thus conditioned is in the public interest and should be approved by the Commission.

WHEREFORE, the U.S. Department of Defense and all other Federal Executive Agencies urge the Commission to grant the Application, subject to the conditions set forth in the unopposed DoD/FEA Agreement, as being in the public interest.

Respectfully submitted,



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For
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And
All Other Federal Executive Agencies

Due: January 18, 2011
Dated: January 14, 2011

ATTACHMENT 1

VOLUME AND TERM PRICE PLAN ("Plan"):

- The post-merger company will not increase current (as of the execution date of the Agreement) pricing on retail Business Lines with or without Qwest Packages (single or multi-line), Centrex, Qwest Utility Line™, and PBX trunks for three years after the execution of this Agreement.
- If, at commencement or during the volume and term price plan duration, the rate charged for any Service covered by this Agreement is higher than the price listed in the applicable Tariff, Service Catalog or Price List, then the post-merger company shall reduce the price for such Services to the lower Tariff, Service Catalog or Price List rate, and the price commitment shall apply to such price.
- This Agreement is contingent on the U.S. Government and its agencies in Arizona, Colorado, and Utah maintaining total service levels that result in billings by the post-merger company that are at least 90% of the average quarterly billings for the four quarters preceding the date of this Agreement. If, after notice from the post-merger company, the total service billings remain continuously below the 80% level for 180 days, the Plan may be terminated by the post-merger company. This Agreement is also contingent upon approval of the Agreement and of the CenturyLink/Qwest merger by the applicable state regulatory commission.
- This Plan is being offered to the U.S. Government and its agencies on an individual case basis ("ICB") pursuant to applicable state regulations.
- Customer may move or add Service if the post-merger company commercially offers such options, and Customer agrees to pay all standard applicable charges related to such changes. Services that are added or changed will be covered by this Plan.
- This Plan will be implemented in the post-merger company's local service areas in Arizona, Colorado, and Utah.
- CenturyLink and Qwest commit that all service quality requirements that are part of any commission order relating to the proposed merger, as well as any other service quality requirements ordered by any commission shall be applicable to service provided to the U.S. Government and its agencies under this Agreement.
- This Agreement may be extended with the mutual consent of the parties. After the initial three years, this Agreement may be terminated by either party with 60 days notice.

- Additional standard terms and conditions may be incorporated if the parties reach agreement.
- The Plan does not affect existing Federal Government contracts.

EMPLOYEES HOLDING SECURITY CLEARANCES:

Qwest currently provides services to the U.S. Government under several contracts that require the services of Qwest employees who hold U.S. Government security clearances. Both Qwest and CenturyLink recognize the importance of assuring that the services provided under these contracts are not disrupted by the integration of CenturyLink and Qwest after their merger is finalized. CenturyLink and Qwest therefore commit that the merger of the two companies will not result in a reduction of service quality as a result of the separation from employment of employees who hold security clearances and who are engaged in providing services to the Government that require employees with such clearances, in accordance with contract provisions. CenturyLink and Qwest affirm that no organizational or personnel changes will impair either the post-merger company's ability to perform under existing contracts or its ability to bid on new contracts that require security clearances of company's personnel.

SERVICE QUALITY:

With regard to Utah, the Applicants agree that the post-merger company will not seek waiver from the requirements of R. 746-340, sections 8 and 9, for two years following the date of the close of the merger.

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