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BEFORE THE ARIZONA CORPORAT

Arizona Corporation Commission

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JAN 18 2011

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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

COMMISSION STAFF'S POST-HEARING
BRIEF

I. INTRODUCTION.

On May 13, 2010, a Joint Application was filed by Qwest Corporation ("Qwest") and CenturyTel Solutions, LLC ("CenturyTel") for approval of the proposed merger of their parent corporations, Qwest Communications International Inc. and ("QCI") and CenturyTel, Inc. (now "CenturyLink"). Staff recommended denial of the application unless all of Staff's conditions were adopted.

On November 26, 2010, a Settlement Agreement between the Joint Applicants, the Utilities Division Staff and the Residential Utility Consumer Office ("RUCO") was filed with Docket Control. Hearings were held on the Settlement Agreement and the underlying transaction on November 30, 2010, December 13 and 20, 2010.

Staff recommends approval of the proposed merger. 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 Arizona Corporation Commission ("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

1 proposed merger of CenturyLink and Qwest is in the public interest and should be approved by the
2 Commission.

3 **II. DISCUSSION.**

4 **A. The Settlement Agreement was the Product of an Open and Fair Process.**

5 The Settlement Agreement between Staff, RUCO, CenturyLink and Qwest was the result of a
6 fair and open process. All intervenors in the case were invited to participate in the discussions.
7 Many intervenors did participate or were present including Cox Arizona Telcom, L.L.C. (“Cox”), tw
8 telecom of arizona llc (“tw”), Level 3 Communications (“Level 3”) and PAETEC Communications,
9 Inc. {“PAETEC”). Several other intervenors did not participate because they had already reached
10 their own settlement agreement with the Joint Applicants. These included 360networks (USA) inc.
11 (“360networks”), Integra Telecom (“Integra”), Communications Workers of America (“CWA”) and
12 United States Department of Defense (“DoD”).

13 After reviewing the Application, Staff had proposed conditions that it believed necessary for
14 the transaction to be found to be in the public interest. Those conditions were attached to the direct
15 testimony of Armando Fimbres. The conditions were categorized as follows: Regulatory, Financial,
16 Retail, Wholesale, Conservation of Commission Resources, Merger Costs and Reporting. It was
17 these conditions and the Joint Applicants’ response to them that formed the basis for the discussions.

18 The parties went condition by condition with all parties (including all intervenors) having an
19 opportunity to offer comment. Thus, all parties who participated in the negotiations had input into
20 the agreements reached involving the Staff conditions. The participants also raised their specific
21 issues and considerable discussion was held regarding all the issues raised. In addition, the Joint
22 Applicants agreed to meet with any of the intervenors individually to discuss their issues and see if
23 resolution could be reached.

24 The negotiation process lasted a week and in the end, Staff and RUCO were able to come to
25 agreement with the Joint Applicants on the conditions for merger approval in Arizona. The agreed
26 upon provisions were the result of many hours of negotiation and a lot of give and take on the part of
27 the parties involved. The Settlement Agreement reflects the negotiated resolution of all contested
28 issues in this Docket. While several CLECs did not believe certain agreements between Staff and the

1 Joint Applicants went far enough, these CLECs will still benefit significantly by the Settlement
2 Agreement between Staff, RUCO and the Joint Applicants.

3 **B. The Merger, With The Conditions Agreed Upon In The Settlement Agreement**
4 **Between Staff And The Companies, Is In The Public Interest.**

5 **1. The Public Interest Standard.**

6 The Affiliated Interest Rules define the “public interest” standard in part. Under these rules,
7 the standard of review is to determine if the transaction and/or diversification activity would impair
8 the financial status of the public utility, or impair the ability of the public utility to provide safe,
9 reasonable and adequate service.¹

10 While the Commission should always consider the financial health of the public service
11 corporations it regulates, Rule 803 (C) does not limit the Commission’s public interest analysis . The
12 Commission is entitled to exercise its full constitutional and statutory authority in making its
13 determination of whether a transaction is in the public interest.

14 The Commission addressed the standard of review *In the Matter of UniSource Energy*
15 *Corporation* (“Unisource”).² In reviewing a proposed merger by Unisource and KKR, the
16 Commission held:

17 Although Rule 803(C) establishes a minimum standard for Commission
18 consideration of affiliate transactions, it is not the only applicable
19 standard of review. The Commission has a constitutional duty to make
20 and enforce reasonable rules, regulations and orders to protect the
21 convenience, comfort, safety and health of employees and patrons of
22 public service corporations. Ariz. Const. Art. 15 § 3. The Commission
23 must act in the public interest. *James P. Paul Water Co. v. Arizona*
24 *Corporation Commission*, 137 Ariz. 426, 429, 671 P.2d 404, 407
(1983). The inquiry into the public interest is broad and the
25 Commission should examine all the evidence available in determining
26 what is in the public interest. *See Pueblo Del Sol Water*, 160 Ariz. at
27 286.³

28 The Commission’s duty to consider and act in the interest of the public is derived from the
authority granted by the Arizona Constitution. Article 15 sec 3 vests the Commission with the duty

¹ See R14-2-803.A, 804.A and 805.A.

² Decision No. 67454 (January 4, 2005); Docket No. E-04230A-03-0933.

³ *Id.* at 28.

1 to make and enforce reasonable orders “for the convenience, comfort and safety, and the preservation
2 of the health of the employees and patrons” of regulated utilities.

3 Determining what is in the public interest is not as simple as some mathematical formula.
4 Instead, it is a broad consideration, on the part of the Commission, of all the evidence presented in
5 each varied case. The Settlement Agreement provides for significant financial protections and Staff
6 recommends approval of the transaction.

7 As discussed below, Staff believes that with the conditions agreed upon by Staff, RUCO,
8 CenturyLink and Qwest, the transaction is in the public interest and the Commission should approve
9 it.

10 Staff witness Elijah Abinah testified that the Settlement is fair, balanced and in the public
11 interest.⁴ Mr. Abinah further states because competition may be preserved, the merged company will
12 be financially stable, local exchange rates will remain stable and the Joint Applicant’s commitment to
13 make a good faith effort to resolve existing litigation, and the benefits that flow from the settlement
14 and merger are in the public interest.⁵

15 Staff witness Abinah also identified the following benefits in his testimony in support of the
16 Settlement Agreement:

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

⁴ Ex. S-1 at 7.

⁵ *Id.*

1 e. Commits the Joint Applicants to investment in Broadband infrastructure in an
2 amount not less than \$70 million within the State of Arizona over a five year
3 period beginning January 1, 2011.

4 The various merger conditions contained in the Settlement Agreement are briefly summarized
5 below.

6 **a. Merger Costs.**

7 There are three conditions related to merger costs in the proposed Settlement Agreement. The
8 first condition prohibits the Merged Company from seeking to recover through wholesale or retail
9 rates any transaction related costs. In addition the Merged Company agrees to not recover any
10 acquisition premium paid by CenturyLink for QCI or increased management costs resulting from the
11 transaction in rates paid by either retail or wholesale customers. In conditions 2 and 3, the Merged
12 Company agrees to provide the Commission with access to its books of account and all documents
13 and records that pertain to the proposed merger for any financial or other review that the Commission
14 may deem necessary.

15 **b. Regulatory Conditions.**

16 The regulatory conditions are designed to ensure that the Merged Company continues to
17 comply with important and relevant orders of the Commission relating to Qwest's Section 271
18 obligations in particular. They also require the Merged Company to maintain its books and records in
19 accordance with the Uniform System of Accounts ("USOA") and to provide the Commission with
20 financial data on a separated intrastate basis for as long as required by the Commission. Finally, the
21 Merged Company agrees that Qwest or any successor entity will provide the Commission with access
22 to its books and records in a form acceptable to the Commission when deemed necessary to ensure
23 the provision of service at just and reasonable rates in the future.

24 **c. Retail Operations.**

25 The retail conditions are designed to ensure that retail customers are not harmed by the
26 proposed transaction. The retail conditions also contain important benefits for retail customers.
27 Under condition 10, the first retail condition, the Merged Company agrees to not request any changes
28 to the Qwest current Service Quality Tariff for a period of two years. Other provisions require that
the Merged Company not file to obtain Arizona Universal Service Funds ("AUSF") until there is a

1 final Commission order issued in Docket No. RT-00000H-97-0137, or three years from merger close,
2 whichever comes first. The Merged Company also agrees to maintain or improve its pre-merger
3 complaint levels in the Qwest Arizona service territory. Another important condition requires the
4 Merged Company to ensure that retail support centers are sufficiently staffed with adequately trained
5 personnel who will provide a level of service not less than and functionally equivalent to that
6 provided in the Qwest services areas prior to the merger. The Merged Company is also required to
7 provide Staff for a set time period, and at designated times, a report showing integration plans
8 describing the integration plans explaining the scheduling and scoping of major systems conversions
9 that may impact Arizona customers including business office and trouble reporting call centers,
10 maintenance systems that monitor central office and transport equipment, engineering systems,
11 outside plant record systems, billing systems, and wholesale OSS. The information is to be submitted
12 confidentially to the Commissioners, the Director of the Utilities Division and the Director of RUCO
13 at least 90 days before any of the above changes occur and with notice of such submittal filed in
14 Docket Control.

15 **d. Financial.**

16 There are several financial conditions beginning at page 12 of the Settlement Agreement. The
17 first financial condition, condition 32 of the Settlement Agreement, requires the Merged Company to
18 report to the Commission and RUCO any of the following events for a period of three years:

- 19 (a) default on any loan by CenturyLink, Inc. or any of its Arizona
20 subsidiaries;
- 21 (b) a delisting of CenturyLink from trading on a major trading exchange;
- 22 (c) CenturyLink, Inc.'s equity-to-total capital ratio falls below 40% and
- 23 (d) CenturyLink or any of its Arizona ILEC subsidiaries is rated with a
24 non-investment rate grading by any of the three rating agencies.

25 Condition 33 reiterates that CenturyLink will not seek to recover any acquisition adjustment
26 paid for Qwest.

27 ...

28 ...

1 **e. Wholesale Operations.**

2 Because of Qwest's Section 271 obligations, the wholesale provisions of the Settlement
3 Agreement were some of the most highly contested and strongly negotiated provisions of the
4 Agreement. Without the Integra Settlement Agreement, the Joint Applicant's Agreement with Staff
5 and RUCO likely would not have been possible. The Integra Settlement Agreement formed the basis
6 for many of the agreements reached between Staff, RUCO and the Joint Applicants with respect to
7 the wholesale conditions.

8 Many of the wholesale contained in Staff's original list of conditions, were also contained in
9 the Integra Settlement Agreement. However, some of the conditions of the Integra Settlement
10 Agreement were much more detailed than some of the conditions contained in the Staff's original list
11 of conditions.

12 Not all of the wholesale conditions contained in the Integra Settlement Agreement were
13 accepted verbatim by Staff. Certain conditions were changed to include additional Staff conditions
14 that were not in the Integra Settlement Agreement. The wording in several other conditions was
15 changed as well.

16 In general, the wholesale conditions contain very important commitments by the Joint
17 Applicants pertaining to any integration of the wholesale operations of CenturyLink and Qwest, the
18 Qwest Performance Assurance Plan ("QPAP") for wholesale customers, and the Change
19 Management Process ("CMP"). The wholesale conditions also contain important commitments
20 regarding the extension of existing interconnection agreements, commercial agreements, wholesale
21 agreements and tariffs. These commitments will go along way in ensuring that the merger will not
22 adversely impact the level of service provided to the CLECs post-merger.

23 Staff believes that provisions of the Settlement Agreement contain a balanced and fair
24 resolution of the wholesale issues presented in this case.

25 **f. Conservation of Commission Resources.**

26 In this section of the Settlement Agreement, the Joint Applicants have agreed to evaluate the
27 following three cases and make a good faith effort to resolve the issues without further litigation: 1)
28 McLeodUSA v. ACC, Arizona District Court Case No. CV07-2145-PHX-HRH, (2) Qwest v. ACC,

1 Arizona District Court Case No. CV08-2374-PHX-JAT, and (3) Pac-West/Level 3 VNXX Remand
2 Proceeding, ACC Docket Nos. T-01051B-05-0495 et al. and T-01051B-05-0415 et al. As Mr.
3 Abinah testified:

4
5 These are cases which have involved the expenditure of significant
6 resources by the Commission Staff, Qwest and individual CLECs.
7 Staff believes that resolution of the issues outside of litigation is
8 possible in each of these cases and would be beneficial since these
9 resources could then be devoted to improving customer service in
10 Arizona.⁶

11
12 **g. Reporting.**

13 The reporting conditions contain commitments by the Joint Applicants to provide the
14 Commission with information on activities relating to integrating Qwest's operations with
15 CenturyLink, as well as achieving the synergies identified as a result of the transaction. They also
16 include reporting on organizational and staffing changes, cost savings, capital expenditures and
17 operating expense information, information on improvements in the Merged Company's complaint
18 level in Arizona, new services made available to customers, improvement in service quality
19 measures, infrastructure improvements, expanded broadband coverage and other impacts on Arizona
20 operations and customers. Mr. Abinah testified that "this information is important for the
21 Commission to be able to track changes resulting from the merger that may affect Qwest's wholesale
22 and retail customers and to determine whether important synergies and cost savings identified by the
23 Joint Applicants as a benefit of the merger actually transpire."⁷

24
25 **C. The Additional CLEC Conditions are not necessary for the Commission to find**
26 **that the Settlement Agreement is in the Public Interest.**

27
28 Several CLECs including twt, PAETEC and Level 3 raised concerns regarding certain
provisions of the Settlement Agreement and their belief that those conditions did not go far enough.
Mr. Gates presented testimony on behalf of these three CLECs with respect to the Settlement

⁶ Direct Testimony of Elijah O. Abinah in Support of the Settlement Agreement, at 12.

⁷ *Id.* at 8.

1 Agreement entered into between Staff, RUCO and the Joint Applicants. Perhaps most telling,
2 however, is the fact that the desired conditions are not contained in any of the settlement agreements
3 entered into between the various State commission staffs and the Joint Applicants or in any State
4 commission order approving the transaction to-date. Mr. Gates testified that he was not aware of any
5 settlement agreement between the Joint Applicants and state commission staffs that contained the
6 additional conditions sought by twt, PAETEC and Level 3.⁸

7 **1. PAETEC's concerns are sufficiently addressed by the language of the**
8 **Settlement Agreement.**

9 Staff believes that PAETEC's concerns are already addressed by the language of the
10 Settlement Agreement. PAETEC wants more assurances built into the Settlement Agreement that its
11 back office systems will not be affected by the merger.

12 However, it would not be reasonable to require as PAETEC suggests that Qwest and
13 CenturyLink make no changes if those changes have an impact on CLEC back-end systems, however
14 slight. The Companies must have the ability to make improvements to their systems, despite the fact
15 that they may impact CLEC back-office systems. There is no requirement that Staff is aware of
16 which would prohibit OSS changes by a BOC where those changes may have some impact on CLEC
17 back-office systems. The following exchange (between Ms. Scott and Mr. Hunsucker) reiterates this
18 point.

19
20 Q.Is there anything in the federal act or FCC orders, to your
21 knowledge that would prohibit Qwest or CenturyLink from making
appropriate changes to its OSS systems if a CLEC's back office
systems were going to be impacted in some way?

22 A. I am not aware of any FCC or state commission decision or regulation
23 that says that we have to always consider the impact on our customers.
24 Certainly we do that. But, you know, Qwest and CenturyLink are free
25 to make changes today to their OSS, and many times do. That's -
Qwest goes through the CMP process to do that. There is no guarantee
26 that that's not going to impact a CLEC's ability.⁹

26 ...

27 ⁸ Tr. at 79-80.

28 ⁹ Mr. Haas agreed in the following exchange: Q. I just wanted to make sure it is not your position that Qwest can't make any changes to its OSS if it impacts a CLEC's back office systems in any way. A. They can make changes to their OSS through the change management process. Tr. at p. 485-86.

1 Moreover, PAETEC witness Haas testified that with respect to the December 10th letter from
2 PAETEC to the FCC attached to PAETEC's testimony, some of their concerns have been resolved
3 now.¹⁰ In addition, Mr. Haas testified that the Settlement Agreement between Staff, RUCO and the
4 Joint Applicants sets a higher standard with respect to what can be done to the wholesale OSS
5 systems by Qwest and CenturyLink than the Integra Settlement Agreement.¹¹ Finally, Mr. Haas
6 testified that any changes that could impact to a CLEC's back office systems would go through CMP,
7 would have to pass a nondiscrimination standard, and would have to comport with the requirements
8 of the ICA, which according to Mr. Haas specifically mentions what Qwest is going to make
9 available.¹²

10 CenturyLink witness Hunsucker testified that he believed that the language of the Settlement
11 Agreement sufficiently addresses PAETEC's concerns. Staff believes that it does as well.

12 Section 19 of the Settlement Agreement provides in relevant part:

13 In Qwest ILEC service territory, after the Closing Date, the Merged Company will use
14 and offer to wholesale customers the legacy Qwest Operational Support Systems
15 ("OSS") for at least two years, or until July 1, 2013, whichever is later, and thereafter
16 provide a level of wholesale service quality that is **not less than that provided by
Qwest prior to the Closing Date, with functionality equivalent support, data,
functionality, performance, electronic flow through, and electronic bonding.**

17 CenturyLink witness Hunsucker testified as follows in response to questions by Ms.
18 Scott:

19 A. Well, I think what I said regarding the level of service, where this said
20 not materially less, that the commitment we made was it will not be less
than.

21 Q. So in the Arizona settlement, that's one of the important changes here?

22 A. That is one of the important changes that was requested and that we
23 agreed to as part of the settlement, yes.

24 Q. And it is, the other change in the first paragraph, is the reference to
25 functionally equivalent, support data functionality, performance,
electronic flow-through and electronic bonding, correct?

26 A. Correct.

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28 ¹⁰ Tr. at 483.

¹¹ Tr. at 484.

¹² Tr. at 484-486.

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- Q. And let's go back to a couple of the questions then that you received from Mr. Merz regarding PAETEC's concerns.
- A. Okay.
- Q. First of all, CenturyLink has not determined at this point in time what the particular integration of the two OSS systems will look like, is that correct?
- A. Yeah, from the wholesale OSS we have not made that decision, yes.
- Q. And that will be closely evaluated by experts from both companies, is that correct?
- A. That is my understanding, yes.
- Q. With respect to -- let's take one of the examples that Mr. Merz gave you. Right now PAETEC apparently has more electronic interfaces in its back office systems and depends more upon electronic flow-through. The language in the first paragraph of 19, where it refers to not less than and functionally equivalent support data and functionality, in your opinion is that intended, where there already is electronic flow-through, to preserve that level of electronic interface between the companies?
- A. It is intended to preserve electronic flow-through, yes.
- Q. So, in other words, I think PAETEC's concern that the electronic interfaces may somehow be converted by CenturyLink into manual interfaces which require human intervention, is that something that would pass muster under this paragraph?
- A. No, it would not. And certainly as we move to integrate the systems, and I know there has been a lot of comparison of what EASE can do today to what the Qwest systems can do, what we are committing to here is that preserve that functionality, that electronic forward with the decision.
- Q. Okay. And, I want to ask you another question, because the CenturyLink personnel or witnesses oftentimes refer to best in class. Is that correct?
- A. Yes. I have heard that term used.
- Q. And that's something that's very important to the company, is it not?
- A. Yes. Yes, it very much is as far as our -- the service quality that we provided to our customers, whether they are retail or whether they are wholesale.
- Q. And so if your personnel, give you a hypothetical, look at the various systems that are involved here in the CenturyLink system and the Qwest OSS interfaces and make a determination that, for instance, Qwest's interface is superior to CenturyLink's, is it likely that the company is then going to go and adopt CenturyLink's interface.

1 A. You know, my personal opinion is I don't think that we would adopt
2 the CenturyLink. We are going to look for what creates internal
3 efficiencies for us as well as our customers.

4 But that's a decision that those folks will go through and look at a
5 number of factors before they make that decision. But obviously that is
6 a critical factor in making the final determination on OSS.

7 Q. And another critical factor would also be 271 requirements; is that not
8 correct as well?

9 A. Certainly we will ensure that we conform and meet any of the 271
10 obligations.¹³

11 Staff believes that language of the Settlement Agreement is sufficient and should be
12 approved.

13 **2. Contrary to twt's assertions, the time periods contained in the Settlement
14 Agreement are not discriminatory or in violation of the Qwest
15 Forbearance Order.**

16 twt's primary concern is that the time periods contained in the Settlement Agreement with
17 respect to wholesale and commercial agreements should be extended from 18 months to 3 years.¹⁴
18 Staff believes that the Settlement Agreement's terms are reasonable as is. First, the 18 months to 3
19 years is consistent with other settlement agreements between the Joint Applicants and other parties
20 where such terms have been included. Second, Staff original list of conditions did not even have a
21 condition pertaining to wholesale and commercial agreements. Nonetheless, CenturyLink agreed to
22 the addition of this provision into the Settlement Agreement. Third, some of the services included in
23 wholesale and commercial contracts are interstate in nature and not subject to the Commission's
24 jurisdiction. With respect to interstate services, the Company can voluntarily make concessions with
25 respect to these services. Beyond that it may become problematic to order the Company to make
26 additional concessions with respect to interstate services. Finally, Mr. Gates' testimony that these
27 provisions in the Settlement Agreement are discriminatory or in violation of the Qwest Forbearance
28 Order¹⁵ are simply without merit. There is nothing in the Qwest Forbearance Order that would

¹³ Tr. at 345-48.

¹⁴ Tr. at p. 74.

¹⁵ *In the Matter of Petition of Qwest Corporation for forbearance Pursuant to 47 U.S.C. § 160 (c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order (Rel. June 22, 2010).

1 require CenturyLink to make the same concessions in a merger proceeding for very different types of
2 services. Nor, is there anything discriminatory about the CenturyLink agreeing to different time
3 periods for extending ICAs versus wholesale or commercial agreements.

4 **D. Staff's Responses to ALJ Martin's Questions.**

5
6 **1. The financial aspects of the transaction support approval of the Settlement Agreement and the Merger.**

7 The financial benefits associated with the proposed merger were recognized in the testimony of
8 many witnesses. Mr. Glover testified that the Merged Companies financial position would be
9 improved by the merger of the two companies. Mr. Glover further testified that there are numerous
10 financial benefits to the transaction. According to Mr. Glover :

11
12 The financial benefits of this transaction are numerous. It is an all stock
13 transaction, so no new debt is required in order to finance this
14 transaction. The combined company will have greater amounts of free
15 cash flow in order to repay debt while making additional investments in
16 network infrastructure. Furthermore, the combined company will be
able to readily attract capital from the capital markets at more attractive
rates than Qwest can on a stand-alone basis. The combined company
will also have a strong balance sheet and will be healthier financially,
which will enable it to better adjust to downturns in the economy.¹⁶

17 CenturyLink also detailed its plans for maintaining its equity to debt ratio and for reducing the
18 debt of the combined entities. Mr. Glover testified that there had been significant reductions to
19 combined debt of both companies' by almost \$1 billion.¹⁷ Mr. Glover estimated that the combined
20 companies will have excess capital of approximately \$3.4 billion available to service the debt, pay
21 dividends and make investments in the network.¹⁸ Thus, while some intervenors have expressed
22 concern with this transaction coming on the heels of the Embarq acquisition by CenturyLink, the
23 Company has consistently demonstrated a commitment to sound financial management and debt
24 reduction.

25 ...

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27
28 ¹⁶ Tr. at 18.

¹⁷ Tr. at 51.

¹⁸ Tr. at 52.

1 Staff witness Fox, who adopted the testimony of Pedro Chaves, also testified that the
2 transaction had positive financial benefits for Qwest. The Direct Testimony of Mr. Chaves indicated
3 the following:

4
5 Based on Staff's analysis, Staff concludes that the proposed transaction
6 will benefit QC by providing improved access to the capital markets
7 because the post-merger ultimate parent, CenturyLink Inc. (formerly
8 CenturyTel Inc.), will have a financially prudent capital structure as
9 opposed to QCII's negative equity position.¹⁹

10 Finally, RUCO witness Rigsby also recognized financial benefits from the proposed merger:

11 [T]he Proposed Merger should result in a combined entity which will
12 be financially stronger, be able to mitigate the effects of land-line
13 losses, and be able to provide additional and improved
14 telecommunications products and services to Qwest's Arizona
15 ratepayers. As discussed in further detail, I find the Proposed Merger
16 results in the merged company having a better balanced capital
17 structure and an improved cash flow. Furthermore, the CEO and CFO
18 of CenturyLink have established track records of conservative financial
19 policies.²⁰

20 Conditions 32 through 33 are the financial conditions on which the Joint Applicants, RUCO
21 and Staff reached agreement, require both reporting to the Commission regarding certain financial
22 events such as default or delisting. Further CenturyLink must report to the Commission if its equity
23 total capital ration falls below 40%. Such conditions provide the ability of the Commission to
24 monitor the financial stability of the Merged Company.

25 **2. The risk factors referenced in Rating Agency Reports were satisfactorily
26 addressed by witness testimony.**

27 While there were certain reports from rating agencies that indicated that the Century Tel,
28 Century Link's parent, might be downgraded, both Qwest and CenturyLink testified to the financial
benefits resulting from the merger.

With respect to the potential for a downgrade by the ratings agencies, CenturyLink's parent,
Century Tel has been placed on "watch" status by the rating agency Standard & Poors.²¹ According

¹⁹ Direct Testimony of Pedro M. Chaves, Executive Summary.

²⁰ Direct Testimony of William A. Rigsby at 5.

²¹ See Direct Testimony of Jeff Glover at Ex. JG.

1 to Qwest witness Jim Campbell, the Qwest ILEC is investment grade but it is the Qwest parent
2 company, QC, that is non-investment grade. It is on watch for a potential upgrade as a result of the
3 transaction.²² RUCO witness Rigsby also testified that he could not speculate on what the ratings
4 agencies might do with respect to a downgrade of Century Tel or Qwest Communications, when he
5 looked at the totality of the analyst reports, he concluded that the entities would emerge financially
6 stronger.²³

7 **3. The Merged Company will have the technical expertise to address Bell**
8 **Operating Company (“BOC”) requirements.**

9 With the conditions in the Settlement Agreement, Staff believes that concerns that the Merged
10 Company will not have the technical expertise to address BOC requirements are minimized. In
11 addition, the Merged Company will have available to it many Qwest employees who are very
12 familiar with these requirements and who will provide the necessary technical expertise. Therefore,
13 Staff no longer views this as a legitimate concern.

14 **4. The lack of concrete integration plans is not a concern if the**
15 **conditions of the Settlement Agreement are adopted.**

16 The Settlement Agreement provides that the Merged Company will continue the use of the
17 legacy Qwest OSS for at least two years of until July 1, 2013, whichever is later. This indicates that
18 there will not be immediate work on the Qwest CenturyLink integration. This time delay will allow
19 CenturyLink to complete the Embarq integration, which is anticipated to be complete by the third
20 quarter of 2011.²⁴ It will also allow the Merged Company to do a thorough evaluation of the Qwest
21 and CenturyLink OSS systems to determine how integration of those systems will proceed.

22 Understandably, much concern has arisen due to the lack of concrete plans formed by
23 CenturyLink yet regarding its various OSS systems and the dearth of information with respect to
24 what the “integrated” system will actually look like once the integration of the CenturyLink and
25 Qwest interfaces are completed.

26
27
28

²² Tr. at 40.

²³ Tr. at 496.

²⁴ Tr. at 150.

1 In many areas, CenturyLink has not yet developed specific plans as to integration of Qwest
2 and CenturyLink, including the certainty of anticipated merger benefits, synergy savings, integration
3 of the OSS systems, allocation of the \$70 million broadband investment, the selection of a billing
4 system and to what extent facilities will be closed or consolidated and employees eliminated or re-
5 assigned. Common sense suggests that CenturyLink will not have sufficient data or experience
6 regarding Qwest to make well-reasoned decisions in these areas until it is able to study and assess
7 Qwest's operations. Waiting to make specific plans until such time as an in-depth understanding of
8 these operations is achieved actually is advantageous to the Merged Company and to Arizona
9 customers, as it indicates that CenturyLink will not make risky changes without careful consideration.

10 Insistence on reviewing key plans before granting approval in this matter could undermine
11 potential benefits by shifting the planning resources allocated by the Applicants. The technology
12 intensive nature of the telecommunications industry does not favor such extended timelines as would
13 be required for key plans to be developed by the Applicants and then reviewed by parties in this
14 matter, by which time the plans could be obsolete.²⁵

15 Moreover, the Commission's knowledge of the Applicants' plans will not increase the
16 certainty that the potential benefits associated with the proposed merger will be realized. Realization
17 of the potential benefits by Arizona customers will be highly dependent on the ability of CenturyLink
18 and Qwest to execute their merger plans in a timely and cost-effective manner; and to realize the
19 projected synergies set forth in their application.²⁶ Although not without some difficulties,
20 CenturyLink has exhibited skill at integration of itself and Embarq in their recent merger which has
21 proceeded as planned and has been a relatively smooth transition.²⁷

22 It is Staff's opinion that denial or delayed approval of the proposed merger pending specific
23 plans is likely to have consequences for Qwest and the Arizona telecommunications environment.
24 The customer and capital market perceptions of a failure to close the proposed merger on reasonable
25 terms will likely not be favorable to Qwest or the Arizona telecommunications environment, resulting
26 in operating and environmental conditions less in the public interest than proceeding cautiously with

27 _____
28 ²⁵ Direct Testimony of Armando Fimbres at 25.

²⁶ Direct Testimony of Armando Fimbres at 25.

²⁷ Direct Testimony of Pamela Genung at 6.

1 proposed merger based on the recommended conditions. Staff believes its recommended conditions
2 balance the need for information with the benefit of expeditious approval of the transaction.²⁸

3 The Settlement Agreement requires the Merged Company to report on the progress of
4 integration; the synergies achieved and the savings related thereto; organizational and staff force
5 changes; the extent to which benefits are achieved, any improvement in the Merged Company's
6 complaint level in Arizona; new services, including bundles available to customers; any improvement
7 in service quality measures; infrastructure improvements; expanded broadband coverage; and any
8 other impacts on Arizona operations and customers.

9 **5. Benefits for Qwest employees were identified in witness testimony.**

10 Qwest witness Jim Campbell testified that in order to maintain a strong viable merged
11 company, there will still be a need for employees, both union and non-union to operate the Merged
12 Company.²⁹ Condition 35 provides for reporting of any proposed layoffs 30 days prior to the
13 effective date, detailing the reasons for the action as well as the efforts to re-deploy the affected
14 employees. The Joint Applicants have executed a settlement agreement with the CWA. According to
15 counsel for the CWA, the CWA reviewed the integration plans regarding the Qwest employees and
16 determined that the merger would affect very few union employees.³⁰

17 While there is the potential for reductions in force of the employees of Qwest, the Settlement
18 Agreement as well as the settlement with the CWA provides protections for the Qwest employees.

19 In addition, a stronger company as most parties predict will emerge from the merger, also has
20 substantial benefits for employees.

21 **6. Benefits for retail customers were identified in witness testimony.**

22 **a. Provisions to Hold Retail Customers Harmless.**

23 **1) Service Quality.**

24 In 2000, when approving the merger of the parent companies of USWest Corporation with
25 Qwest Communications Corporation, this Commission noted the troubled history of USWest in its
26

27 ²⁸ Direct Testimony of Armando Fimbres at 25.

28 ²⁹ Tr. at 241.

³⁰ See Notice of Filing of Settlement Agreement between Joint Applicants and CWA

1 Company agreed that no merger related costs will be passed on to customers. Condition 1 specifically
2 prohibits Qwest or any successor from recovering from Arizona end-user retail rates:
3 one-time transition, branding, or any other transaction-related costs; b) any acquisition premium paid
4 by CenturyLink for QCI; and c) any increases in overall management costs that result from the
5 transaction, including those incurred by the operating companies. For purposes of this condition,
6 “transaction-related costs” shall be construed to include all Merged Company costs related to or
7 resulting from the transaction and any related transition, conversion, or migration costs and, for
8 example, shall not be limited in time to costs incurred only through the Closing Date.

9 Conditions 2 and 3 require the Merged Company to provide the Commission access to all of
10 its records and permit the Commission to review the same. Staff believes that this will prevent any
11 such costs from being recovered from retail customers.

12 **b. Benefits.**

13 In addition to protecting retail customers from harm, the merger will also present numerous
14 benefits to Qwest’s retail customers. The agreed-upon conditions set forth those benefits and also
15 mandate reporting of the same to the Commission for monitoring and any other action deemed
16 appropriate. Condition 18 requires the Merged Company to meet with Commission Staff and RUCO
17 annually to evaluate the benefits provided to the retail customer, including deployment of broadband.

18
19 **1) Investment in new products and service.**

20 The merger is likely to result in a financially stronger company, as detailed in the testimony in
21 this case. No debt will be created in this stock-for-stock transfer. The Merged Company’s debt will
22 be lower than that of Qwest. The synergies that result from the merger will allow the Merged
23 Company to invest more money in developing new products and services which will then be
24 available to the retail customer, including increased bundles.

25 **2) Broadband.**

26 In Condition 17, the Merged Company has committed to invest at least \$70 million in
27 broadband improvements, which is intended to benefit not only urban customers but also the
28 unserved and underserved rural customers. CenturyLink made this commitment as part of the

1 settlement negotiations as an added benefit to Arizona customers. During those negotiations,
2 CenturyLink indicated that it did intend (where economically feasible) to expand broadband into
3 unserved and underserved markets. CenturyLink was not prepared to make commitments at the time
4 as to what portions of the \$70 million would be spent on which market, since it has done no in-depth
5 analysis yet of the issue.

6 7 3) IPTV.

8 The Merged Company is also committed to developing IPTV in Arizona. IPYV may
9 enhance the Merged Company's ability to compete in Arizona. At the same time, the Merged
10 Company has agreed to condition 18 which requires it to apprise the Commission of its plans to
11 deploy IPTV and thus to prevent the Merged Company from diverting resources away from needed
12 services in favor of IPTV.

13 14 4) Go To Market Model.

15 The Merged Company will follow CenturyLink's "Go-to-Market" model which uses a region
16 organizational structure to bring business closer to the customer by placing leadership in the field and
17 provide a localized approach. One result is more efficient central corporate operation. The focus is
18 then on the local market which allows for the provision of more direct and localized service and a
19 faster response to customers and competition more quickly and on a market-by-market basis.³²

20 21 7. The conditions in the Settlement Agreement from the Integra Agreement 22 are in the public interest and benefit all CLECs operating in Arizona.

23 ALJ Martin also asked parties to comment on why the wholesale provisions of the Integra
24 settlement agreement should be used as a basis for other CLECs? Integra is the largest CLEC
25 operating in Arizona. It has not only an ICA with Qwest, but also has commercial and wholesale
26 agreements with Qwest. It also likely utilizes some of Qwest's tariffed services as well.

27 Because Integra is one of the largest users of Qwest's systems and facilities, including OSS,
28 it is going to be especially concerned with any adverse impact that may occur to operations as a result

³² Direct Testimony of Todd Schafer at p. 9.

1 of the merger. Integra is going to be significantly effected by changes to Qwest's OSS. The
2 provisions of the Integra Agreement related to OSS integration and testing were more detailed than
3 Staff's and contained in Staff's opinion an appropriate level of obligations in this regard. Because a
4 significant amount of its business is done through use of Qwest's UNEs, Integra also has a great
5 interest in the effectiveness of Qwest's Performance Assurance Plan. In Staff's opinion, the Integra
6 Settlement resolved a lot of the most contentious issues involving wholesale services in a fair and
7 reasonable manner. That is why Staff accepted many of the Integra conditions without modification.
8 Even though twt, Level 3 and PAETEC do not believe the language of the Integra or Staff settlements
9 go far enough in isolated instances, there is no mistaking that all three carriers will benefit
10 significantly from these settlement agreements. The sufficiency of both the Integra and Staff
11 settlement agreements with respect to the OSS provisions was underscored in the following passage
12 from Cox witness Garrett's testimony at the hearing:

13 Q. ...One of the concerns that was raised in your underlying testimony had to
14 do with porting and problems that CenturyTel had experienced with
15 porting in one jurisdiction, is that correct?

16 A. Yes.

17 Q. And does Cox do a lot of number porting?

18 A. Yes, it does.

19 Q. Would you say compared to other CLECs in Arizona you utilize that as
20 much or more or do you have –

21 A. I would say more so partly because we serve a large base of customers in
22 the Phoenix and Tucson areas.

23 Q. Okay. So my understanding is, then, from the settlement agreement that
24 you entered into that that, along with the Integra agreement, resolves your
25 concerns in that regard, is that correct?

26 A. Yes, that's correct; although, we have experienced problems. The
27 conditions that are outlined in the Integra agreement that preserve the
28 existence of the Qwest OSS in Arizona for some period and then provide

1 for notice testing and some acceptance provision as well as the oversight
2 of the Arizona Commission satisfy our issues that we raised in the
3 proceeding.³³

4 **8. The different timeframes relative to contract extensions in the Settlement**
5 **Agreement are not discriminatory or in violation of the Qwest**
6 **Forbearance orders.**

7 This item was discussed above. As discussed above, the different timeframes contained in the
8 Settlement Agreement for the extension of ICAs versus commercial and wholesale agreements is not
9 discriminatory or in violation of the Qwest Forbearance Order.

10 **9. Independent Third Party Testing Is Not Required.**

11 While independent third party testing was required initially by the FCC when Qwest first
12 sought Section 271 approval; it is not required in conjunction with the merger and the integration of
13 the OSS interfaces of both Qwest and CenturyLink. The FCC has stated that “[t]he most probative
14 evidence that OSS functions are operationally ready is actual commercial usage.” Absent actual
15 commercial usage, the FCC deemed independent third party testing to be the next most viable
16 indicator.

17 The most probative evidence that OSS functions are operationally ready is
18 actual commercial usage. [Cite omitted] Absent data on commercial usage,
19 the Commission will consider the results of carrier-to-carrier testing,
20 independent third-party testing. And internal testing in assessing the
21 commercial readiness of a BOC’s OSS. [Cite omitted] We reiterate,
22 however, that the persuasiveness of a third-party and the conditions and
23 scope of the review itself.³⁴

24 Staff believes that in addition to actual commercial usage at this time, the terms of the
25 Settlement Agreement which include carrier-to-carrier testing provide sufficient safeguards to ensure
26 commercial readiness of a BOC’s OSS, such that independent third-party testing is not required.
27 The CLECs have simply not demonstrated that the Settlement Agreement’s provisions in paragraph
28 19 (including provisions for coordinated testing) are not sufficient.

27 ³³ Tr. at 222-223.

28 ³⁴ *In the Matter of the Application of Bell Atlantic New York for Authorization under Section 271 of the Communications Act to provide in-region, interLATA service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order (Rel. December 22, 1999).

1 **10. The Commitments with Respect to Broadband Provide Flexibility for the**
2 **Merged Company.**

3 The Merged Company should be allowed the discretion to make management and business
4 decisions regarding its operations and investments in goods and services. RUCO also supported the
5 notion that the Company be allowed to make its own management decision with respect to the
6 deployment of broadband.³⁵ Both Staff and RUCO, however, believed that the provisions of the
7 Settlement Agreement requiring the Company to report on deployment schedules and plans provided
8 adequate safeguards in this regard.³⁶ Staff witness Abinah testified that if Staff was not satisfied
9 with its deployment in any given year, Staff could also give input in their meetings with the Merged
10 Company.³⁷ But all in all, Mr. Abinah testified that Staff believes that “it is a management decision
11 where to invest, as long as it doesn’t affect the basic telecommunications services.”³⁸

12
13 **11. The Agreement promotes conservation of Commission resources and its**
14 **terms are not vague and ambiguous and are subject to reasonable**
15 **interpretation.**

16 Concerns have been expressed regarding the terminology of some of the agreed-upon
17 conditions which require the Merged Company to maintain or improve certain standards after merger,
18 in particular “sufficiently staffed” (Conditions 14 and 24) and “Functionally equivalent” (Conditions
19 14, 19, and 24). These terms were thoroughly discussed and fiercely negotiated during the settlement
20 process in this case and represent the best efforts of the Applicants, Staff and RUCO to set forth
21 measurements that will be flexible enough to meet industry changes yet clear enough that the Merged
22 Company understands what is expected of it and the Commission has the ability to assure
23 compliance. Staff is of the opinion that the chosen terminology does just that.³⁹

24 The intent of the language is to assure that the level of service remains the same while still
25 allowing the Merged Company to change the types of service in accordance with developing markets

26
27 ³⁵ Tr. at 508.
28 ³⁶ See, e.g. Tr. at 508.
³⁷ Tr. at 559.
³⁸ Tr. at 560.
³⁹ Tr. at 556.

1 and technologies. However, no metrics exist by which to quantify the level of service. In discussions
2 that continued over several days, the terms used were most successful at conveying this notion.

3 If these terms appeared in conditions that addressed pure compliance issues, there could be a
4 risk of increased litigation. In this instance, however, what is anticipated is a dialogue among the
5 Merged Company, Staff, RUCO and the CLECs as the integration of Qwest and CenturyLink is
6 monitored. While the Settlement Agreement sets objectives, i.e., that service quality be maintained or
7 improved, it is for the management of the Merged Company to determine how that can be
8 accomplished, that is, for instance, what staffing is required in service centers to assure that the level
9 of service is not degraded. As technologies change, a reduced staff may be able to provide the same
10 level of service or a current service may be eliminated to allow for other services that are better. Staff
11 will monitor changes as reported by the Merged Company and, if there are concerns about the quality
12 of service, interface with the Merged Company for explanation and possible adjustment of services.
13 Only if the Merged Company and Staff or others ultimately disagree as to whether the level of service
14 has been maintained would there be a potential for litigation.

15 **III. CONCLUSION.**

16 The Commission should approve the Settlement Agreement between Staff, RUCO and the
17 Joint Applicants since it resolves all of the disputed issues in this case in a fair and reasonable manner
18 and is in the public interest.

19 RESPECTFULLY SUBMITTED this 18th day of January, 2011.

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22 

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