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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

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

IN THE MATTER OF THE APPLICATION OF  
QWEST CORPORATION DBA  
CENTURYLINK-QC TO CLASSIFY AND  
REGULATE RETAIL LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES AS  
COMPETITIVE AND TO CLASSIFY AND  
DEREGULATE CERTAIN SERVICES AS  
NON-ESSENTIAL

DOCKET NO. T-01051B-11-0378

**STAFF'S NOTICE OF FILING  
DIRECT TESTIMONY**

Staff of the Arizona Corporation Commission ("Staff") hereby files the Direct Testimony of  
Elijah O. Abinah and Armando F. Fimbres of the Utilities Division in the above matter.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of March 2012.

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Original and thirteen (13) copies  
of the foregoing filed this  
16<sup>th</sup> day of March 2012 with:

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

Arizona Corporation Commission

**DOCKETED**

MAR 16 2012

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AZ CORP COMMISSION  
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25   
26 \_\_\_\_\_  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

GARY PIERCE  
Chairman

BOB STUMP  
Commissioner

SANDRA D. KENNEDY  
Commissioner

PAUL NEWMAN  
Commissioner

BRENDA BURNS  
Commissioner

IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION DBA CENTURYLINK-) )  
QC TO CLASSIFY AND REGULATE RETAIL )  
LOCAL EXCHANGE TELECOMMUNICATIONS) )  
SERVICES AS COMPETITIVE AND TO )  
CLASSIFY AND DEREGULATE CERTAIN )  
SERVICES AS NON-ESSENTIAL )  
\_\_\_\_\_ )

DOCKET NO. T-01051B-11-0378

DIRECT

TESTIMONY

OF

ELIJAH ABINAH

ASSISTANT DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

MARCH 16, 2012

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**EXECUTIVE SUMMARY**  
**QWEST CORPORATION DBA CENTURYLINK-QC**  
**DOCKET NO. T-01051B-11-0378**

Staff recommends the following:

*Residential, Small and Medium Business Markets:*

- A. That CenturyLink's services provided to Residential, Small Business and Medium Business be classified as Emerging Competitive,
- B. That CenturyLink be authorized to establish maximum rates that are 125 percent of the current actual rates for services provided to Residential customers over a three year period from the date of the Commission's decision approving maximum rates for Consumer services.
- C. That the rates that are actually charged to Residential or Consumer customers increase by no more than 10 percent annually.
- D. That CenturyLink be authorized to establish maximum rates that are 130 percent of the current actual rates for services provided to Small and Medium Business customers over a three year period from the date of the Commission's Decision approving maximum rates for these services,
- E. That the rates that are actually charged to Small and Medium business customers increase by no more than 15 percent annually,
- F. That after the Commission issues its Decision in this matter, CenturyLink shall be required to give its customers notice of any subsequent filing to set maximum rates consistent with the Commission's decision for Residential, Small, Medium and Large Business customers.
- G. The notice shall be approved by the Administrative Law Judge and shall inform customers that they have an opportunity to provide comment or request a hearing on the proposed maximum rates for the Commission's consideration,
- H. That CenturyLink may not file a request to increase maximum rates established by the Commission in this Decision until the expiration of a 30 month period from the date of the Commission's Decision approving maximum rates for services provided to Residential and Small and Medium Business customers as recommended by Staff in this Decision.
- F. That any telecommunications service classified by the Commission as emerging competitive may subsequently be reclassified as noncompetitive after due process if the Commission determines that reclassification would protect the public interest.

*Large or Enterprise Business Services*

- I. That services provided to Large Business be classified as competitive, and as such, CenturyLink shall file an application, by December 31, 2012, for maximum rates under A.A.C R14-2-1110, and file tariffs for any requested current rate change,
- J. That classification of CenturyLink's services as "emerging competitive" and "competitive" shall relieve the Company of the obligation to file an application pursuant to A.A.C. R14-2-103 for services provided to Residential, Small, Medium and Large Business customers unless the Commission reclassifies these services as non-competitive.

*Wholesale Services*

- K. That Wholesale Services continue to be treated under the same terms and conditions as they are currently treated as Basket 4 Services in the Renewed Price Cap Plan. Prices will be capped at the tariffed or contract price levels for the term of the 2012 CenturyLink Regulatory Plan, or until contracts are renegotiated, or the Federal Communications Commission, the Commission or the courts determine that other prices are appropriate,

*Deregulated Services*

- L. That the services listed in Staff Witness Armando Fimbres' Exhibits 3 and 4 be found to be neither essential nor integral to the public service provided by CenturyLink and that they are henceforth deregulated,

*Miscellaneous*

- M. That CenturyLink file annually, beginning September 1, 2013, a report that describes how and whether the 2012 CenturyLink Emerging Competitive and Competitive Classification is functioning as expected and if CenturyLink believes such classification is in the public interest, and
- K. That at any time, the Commission may open a proceeding to suspend, terminate or modify the 2012 CenturyLink Regulatory Plan if it determines that such action is required to ensure protection of the public interest.

1 **INTRODUCTION**

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

3 A. My name is Elijah 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 Arizona Corporation Commission ("ACC" or "Commission") of the  
8 Utilities Division ("Staff") as the 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 professional 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 the Assistant Director, I review submissions that are filed with the Commission and  
22 make policy recommendations to the Director regarding those filings.

23  
24 **Q. Have you previously submitted testimony before the Commission?**

25 A. Yes.

26

1    **BACKGROUND**

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

3    A.    The purpose of my testimony is to provide Staff's positions regarding Qwest Corporation  
4           dba CenturyLink-QC's ("Qwest" or "CenturyLink" or "Company") Application from a  
5           policy perspective. I will address the changes that have occurred in the  
6           telecommunications industry, the customer notification that has taken place and the  
7           benefits to the customer of Staff's recommendations. In addition, my testimony will  
8           address certain policy issues that arose during Staff's review and analysis of the  
9           application.

10

11   **Q.    What is CenturyLink requesting in its Application?**

12   A.    In its application, CenturyLink asks the Commission to determine that all of its  
13           Commission-regulated retail services be classified as competitive pursuant to Arizona  
14           Administrative Code ("A.A.C.") R14-2-1108 and for a determination, pursuant to Arizona  
15           Revised Statutes ("A.R.S.") §40-281(E), that certain of its retail services are neither  
16           essential nor integral to the public service provided and should no longer be regulated by  
17           the Commission.

18

19   **Q.    Are other witnesses presenting testimony in this proceeding on behalf of Staff?**

20   A.    Yes. Staff witness Armando Fimbres has also filed testimony in this matter. His  
21           testimony addresses the technical analyses that were performed and the results of those  
22           analyses.

23

1 **COMMISSION RESPONSE TO CHANGES IN THE TELECOMMUNICATIONS**  
2 **INDUSTRY**

3 **Q. When did the Commission first transition from traditional rate base rate of return**  
4 **regulation for CenturyLink?**

5 A. The Commission first began its move away from traditional rate base rate of return  
6 (“RoR”) regulation for CenturyLink with its approval of the Price Cap Plan for Qwest in  
7 Decision No. 63487, dated March 30, 2001. In that decision, the Commission approved a  
8 Settlement Agreement that resulted in implementation of a Price Cap Plan.

9  
10 **Q. What reasons did Staff give for implementing the Price Cap Plan.**

11 A. In its Price Cap Regulation Testimony, Staff Consultant Harry M. Shooshan stated that the  
12 Price Cap Plan would achieve many of the same objectives as traditional regulation. The  
13 price Cap Plan relies on direct regulation of prices, has the beneficial effect of providing  
14 Qwest with the incentives to become more efficient and more innovative, and to make  
15 new investments more rapidly. Staff further testified that in all of these respects, price cap  
16 regulation more closely mirrors the effects of a fully competitive market which should be  
17 the goal of regulation.<sup>1</sup>

18  
19 **Q. Could you highlight the components of that Plan?**

20 A. The Price Cap Plan divided Qwest's services into "baskets". Basket 1 consisted of Basic/  
21 Essential Non-competitive Services, such as basic residential service and basic business  
22 service, among others. Basket 2 consisted of wholesale services, and Basket 3 consisted  
23 of flexibly-priced “competitive” services. The Settlement Agreement provided that the

---

<sup>1</sup> Testimony of Harry M. Shooshan In Support Of the Proposed Settlement Agreement, *In The Matter Of the Application Of US West Communications, Inc. A Colorado Corporation, For A Hearing To Determine The Earnings Of The Company, The Fair Value Of The Company For Ratemaking Purposes, To Fix A Just And Reasonable Rate Of Return Thereon And To Approve Rate Schedules Designed To Develop Such Return.* October 27, 2000, Page 2, Lines 2 – 7.

1 revenue requirement would be recovered through decreases in rates for services in Basket  
2 1 amounting to a total reduction of \$14.4 million and the opportunity to recover \$42.7  
3 million from the flexibly priced competitive services in Basket 3. Qwest and Staff also  
4 agreed that rates for Intrastate Switched Access Service, part of Basket 2, would be  
5 reduced by \$5 million in each year of the Plan. Revenues from Basket 3 services were  
6 allowed to increase by \$5 million in each year of the Plan to correspond to the reduction in  
7 access revenues. The Price Cap Plan provided that Basket 1 Services would be capped  
8 and subject to an "Inflation minus Productivity" indexing mechanism, i.e. when  
9 productivity exceeded inflation, rates for Basket 1 Services would decrease. The  
10 Productivity Factor for the initial term of the Plan was 4.2 percent, which includes a 0.5  
11 percent consumer dividend.

12  
13 **Q. Have any changes to that Price Cap Plan been made by the Commission?**

14 A. Yes. In the Decision No. 68604, dated March 23, 2006, the Commission approved the  
15 Renewed Price Cap Plan.

16  
17 **Q. Could you briefly describe the Renewed Price Cap Plan?**

18 A. The Renewed Price Cap Plan was changed to consist of three retail baskets and one  
19 wholesale basket. Basket 1 consists of Hard-Capped Retail Services whose prices may  
20 not be increased while the Renewed Price Cap Plan is in effect. These prices are  
21 described as "hard-capped." The Basket 1 prices for services are hard-capped at their then  
22 existing price levels for the duration of the Renewed Price Cap Plan, and until the  
23 Commission approves a new or modified Plan or terminates the existing Plan. The  
24 existing Price Cap Plan productivity/inflation indexing mechanism for Basket 1 was  
25 eliminated in the Renewed Price Cap Plan. Qwest agreed to implement, as part of the

1 Renewed Price Cap Plan, certain consumer benefits in lieu of the productivity/inflation  
2 indexing mechanism.

3  
4 Basket 2 consists of Limited Pricing Flexibility Retail Services. Increases in individual  
5 service prices for Basket 2 services may not exceed 25 percent in any 12 month period.  
6 Qwest submits information with each price change which demonstrates that overall Basket  
7 revenue changes caused by price changes, at then current sales volume levels, do not  
8 exceed the allowed revenue increase amounts provided for in the Settlement Agreement.  
9 Specifically, the additional revenue level for purposes of increased prices in Basket 2 is  
10 capped at \$ 13.8 Million, for the term of the Renewed Price Cap Plan and until such time  
11 as the Commission approves a new or revised Price Cap Plan, or terminates the Renewed  
12 Price Cap Plan. For the full first year of the Renewed Price Cap Plan, however, Qwest  
13 was to subtract the \$12 Million from the allowed revenue increase in Basket 2.

14  
15 Basket 3 consists of Flexibly-Priced Competitive Services. Qwest submits information  
16 with each price change which demonstrates that overall Basket revenue changes caused by  
17 price changes, at then current sales volume levels, do not exceed the allowed revenue  
18 increase amounts provided for in the Settlement Agreement. Specifically, the additional  
19 revenue level for purposes of limiting price increases in Basket 3 shall be capped at \$30.0  
20 Million plus the remainder of the \$13.8 Million not used for Basket 2 for the term of the  
21 Renewed Price Cap Plan, and until such time as the Commission approves a new or  
22 revised Price Cap Plan, or terminates the Renewed Price Cap Plan.

23  
24 Basket 4 of the Renewed Price Cap Plan consists of Wholesale Services. Wholesale  
25 Service prices are capped at the tariffed or contract price levels for the term of the  
26 Renewed Price Cap Plan, or until contracts are renegotiated, or the Federal

1           Communications Commission, the Commission or the courts determine that other prices  
2           are appropriate.

3  
4           **Q.    Had there been any changes in the telecommunications industry that justified the**  
5           **changes to the Price Cap Plan?**

6           A.    Yes. There were a number of changes in the telecommunications industry put forth by the  
7           parties to the case to support revisions to the 2001 Price Cap Plan.

8  
9           **Q.    Have there been changes in the telecom market in Arizona that suggest that the**  
10           **parameters of regulation for CenturyLink should be further revised?**

11          A.    Yes. Between the time that the Commission approved the Renewed Price Cap Plan and  
12          today, customers have continued to take advantage of the telecom services provided by  
13          carriers other than CenturyLink. Cox Arizona Telcom, L.L.C.'s ("Cox's") share of the  
14          local exchange market where it operates has grown. Even though Cox's share has grown,  
15          the growth in wireline access lines has declined dramatically, which suggest that the  
16          substitution of wireline service with wireless service, cable company and internet-based  
17          services is growing.

18  
19          **THE APPLICATION**

20          **Q.    Have you reviewed the Application tha is the subject of this proceeding**

21          A.    Yes.

22  
23          **Q.    Are you familiar with Arizona Administrative Code R14-2-1108 as it relates to the**  
24          **requirements for a determination that a services should be classified as competitive?**

25          A.    Yes.

26

1 **Q. Have you reviewed Mr. Brigham's ("the Company Witness's") Testimony as it**  
2 **relates to CenturyLink's request to classify services as competitive?**

3 A. Yes, I have.  
4

5 **Q. Does Staff agree with the Mr. Brigham's testimony as it relates to the classification of**  
6 **all of CenturyLink's services as competitive?**

7 A. No.  
8

9 **Q. What does Staff believe is the appropriate analysis to uses in determining whether a**  
10 **service should be classified as competitive pursuant to the Commission's Competitive**  
11 **Telecommunications Services Rule A.A.C. R14-2-1108?**

12 A. Staff believes that it is appropriate to perform an analysis that allows decision makers to  
13 assess the level of competition that exists in a market for a service. A market that has a  
14 numerous providers in all areas of the state justifies one level of pricing flexibility.  
15 However, a market for an essential service that has few competitors requires price  
16 limitations.  
17

18 **Q. What was Staff's approach to the analysis of the request for competitive service**  
19 **classification?**

20 A. The analysis that Staff under took looked not only at the competitive alternatives that are  
21 available to customers in CenturyLink's service area but also at the alternatives that are  
22 available to customers by class of customer and by geographic area. It is clear that certain  
23 services are provided primarily to certain classes of customer, and that other services are  
24 provided to all classes of customers. In addition, services that are readily available from  
25 alternative sources of providers for one class of customers are not readily available to  
26 other classes of customers. Using the results of the analyses conducted by Mr. Fimbres,

1 Staff concluded that certain services could not be classified as competitive for all classes  
2 of customers, however, they could be classified as competitive for a subset of customers.  
3 By classifying the subset of customers as competitive, CenturyLink will be able to  
4 compete in the market on the same basis as other providers, while at the same time  
5 providing some higher level of Commission oversight for services for which customers  
6 have few, if any, alternatives.  
7

8 **Q. Does Staff agree that all of CenturyLink's retail services should be classified as**  
9 **competitive as requested?**

10 A. For reasons that are more fully explained in the testimony of Staff Witness Fimbres, Staff  
11 does not agree. Staff conducted an analysis that looked comprehensively at the services  
12 provided by CenturyLink and the alternatives available to customers located throughout  
13 CenturyLink's service territory and concluded that Staff cannot support statewide  
14 competitive classification for services provided to Residential or Small and Medium  
15 Business customers. Staff does not believe that the alternatives available to these  
16 customers are robust enough to justify competitive services classification. As more fully  
17 described in Mr. Fimbres' Testimony, these markets are Highly Concentrated under the  
18 Herfindahl-Hirschman Index ("HHI") and the alternatives available to customers are not  
19 available to all customers across the State. Staff does believe, however, that services  
20 provided to Enterprise or Large Business customers are sufficiently competitive to  
21 conclude that the services should be classified as competitive. That market is not Highly  
22 Concentrated and the Enterprise or Large Business customers have a number of  
23 alternatives available in Arizona.  
24

1 **Q. What conclusions has Staff reached as a result of its analysis of CenturyLink's**  
2 **request to classify all of its services as Competitive?**

3 A. Staff cannot support statewide competitive classification for services provided to  
4 Residential or Small and Medium Business customers. That analysis and discussion is  
5 provided in Mr. Fimbres' Testimony. In those areas where Cox or another cable company  
6 provides service, there is an alternative provider of wireline service, but the market is  
7 Highly Concentrated. Essentially, CenturyLink, Cox and, to some extent, wireless and  
8 VoIP companies are alternative providers of service.

9  
10 Staff is able to support statewide competitive classification of services offered to Large  
11 Business or Enterprise customers. The supporting information is provided in Mr.  
12 Fimbres' Testimony. The results of the analysis indicate that the market for services  
13 provided to this category of customers should be classified as competitive and that  
14 CenturyLink is not the dominant player in this market.

15  
16 **Q. Do you agree that the services that CenturyLink has identified should be**  
17 **deregulated?**

18 A. No. Again, for reasons that are more fully explained in the testimony of Staff Witness  
19 Fimbres, Staff does not agree. Staff conducted an analysis that looked comprehensively at  
20 the services provided by CenturyLink, to evaluate the extent to which the service are  
21 neither essential nor integral to the public service provided by CenturyLink. Staff's  
22 analysis resulted in a recommendation that only the services listed in Staff Witness  
23 Armando Fimbres' Exhibits 3 and 4 should be found to be neither essential nor integral to  
24 the public service provided by CenturyLink and that they not be subject to regulation by  
25 the Commission.

26

1 **Q. What does Staff believe is the appropriate analysis to use in determining whether a**  
2 **service should be deregulated?**

3 A. As more fully described in Mr. Fimbres' Testimony, Staff believes that that A.R.S. 40-  
4 281(E) contains the appropriate framework for any analysis used to determine whether a  
5 service should be deregulated. A.R.S. 40-281(E) states:

6  
7 E. When the commission determines after notice and hearing that any  
8 product or service of a telecommunications corporation is neither  
9 essential nor integral to the public service rendered by such  
10 corporation, it shall declare that such product or service is not subject  
11 to regulation by the commission. (Emphasis added.)

12  
13 **Q. What is Staff interpretation of the test that is required as a result of this statute?**

14 A. Staff believes that if a service is not essential to the public services rendered and is not  
15 integral to the public service, it should be declared to be deregulated.

16  
17 **Q. Were there any other factors that were considered in making a determination as to**  
18 **whether to recommend that services be deregulated?**

19 A. Yes. In its analysis, Staff considered the following:

- 20  
21 a) Whether the service is public health and safety related (whether  
22 public health and safety would be adversely affected if the service  
23 were to be deregulated.),  
24 b) The number of customers subscribing to the service, and  
25 c) The size of the customers subscribing to the service.

26

1 **STAFF RECOMMENDATIONS**

2 **Q. Since Staff cannot support statewide Competitive Classification for services provided**  
3 **to Residential or Small and Medium Business customers, what does Staff recommend**  
4 **to the Commission on how these services should be treated in the future?**

5 A. Staff recognizes that CenturyLink needs to be able react to what competition exists in the  
6 market for these customer segments. However, because the market is Highly  
7 Concentrated and because the market for residential or small and medium business wire  
8 line services is essentially a duopoly, Staff recommends that CenturyLink be given  
9 additional pricing flexibility with limits on its ability to raise prices. Staff recommends  
10 that the Commission categorize these services as called "Emerging Competitive Services"  
11 which would be made up of services provided to Residential or Small and Medium  
12 business across the State. To affect a gradual transition to a fully competitive  
13 environment, Staff recommends that the maximum tariff rates for the services provided to  
14 Residential or Consumer customers included in this category be no higher than 125  
15 percent of the current actual rates over a 30 month period from the date the Commission  
16 approves maximum rates for these services. Staff further recommends that the current  
17 maximum rates for the services included in this category provided to Small and Medium  
18 Business customers be no higher than 130 percent of the current actual rates over a 30  
19 month period from the date the Commission approves maximum rates for these services.

20  
21 **Q. Does Staff recommend any further limits on CenturyLink's ability to raise prices for**  
22 **Emerging Competitive Services during the term of the 2012 CenturyLink Regulatory**  
23 **Plan?**

24 A. Yes. Staff further recommends that the rates CenturyLink actually charges to residential  
25 customers increase by no more than 10 percent annually and that the rates that are actually

1 charged to small and medium business customers increase by no more than 15 percent  
2 annually.

3  
4 **Q. What notice to Customers will CenturyLink be required to give customers prior to**  
5 **any rate increase?**

6 A. In addition to any other requirements, CenturyLink must comply with R14-2-504 which  
7 requires each utility to make available within 60 days prior to the change, a summary of  
8 any tariff (rate) changes affecting those customers.

9  
10 **Q. How did Staff determine the degree of pricing flexibility for the Consumer and Small**  
11 **and Medium Business markets?**

12 A. Staff believes that the 25% increase for Consumer rates and the 30% increase for Small  
13 and Medium Business rates over a three year period are reasonable, with the additional  
14 restriction that rates may not increase more than 10% per year. First, the services at issue  
15 are recognized to be emerging competitive. Rates for services subject to competition are  
16 not set according to rate of return regulation. Staff obtained information from  
17 CenturyLink's annual report regarding its net book value or fair value rate base and  
18 revenues. Compared to the rates charged by its competitors, CenturyLink's Consumer  
19 rates, even with a 25% increase, are reasonable and comparable to other service providers.  
20 The same is true for Small and Medium Business rates. Moreover the starting points for  
21 the increases were rates based upon cost. While CenturyLink's fair value rate base was  
22 considered by Staff it was not given substantial weight because of Staff's findings that  
23 these rates are emerging competitive.  
24

1 **Q. Does Staff have a recommendation regarding revisiting the Classification of**  
2 **Emerging Competitive Services?**

3 A. Yes. Staff recommends that 30 months from the date of a Commission Decision in this  
4 matter, CenturyLink be authorized file a request to increase rates for services provided to  
5 Residential and Small and Medium Business Customers, or to seek competitive  
6 classification. Staff believes that the passage of that time would allow the Commission to  
7 evaluate the effect of the new classification on CenturyLink's ability to participate in the  
8 market, retain to ability to react quickly to market changes and take note of any further  
9 changes in the market which would suggest that the Commission should classify the  
10 services as Competitive under Rule 1108.

11  
12 **Q. What are Staff's recommendations on the classifications of CenturyLink's services?**

13 A. Staff recommends the following:

14  
15 *Residential, Small and Medium Business Markets:*

- 16  
17 1. That CenturyLink's services provided to Residential, Small Business and Medium  
18 Business be classified as Emerging Competitive,  
19  
20 2. That CenturyLink be authorized to establish maximum rates that are 125% of the  
21 current actual rates for services provided to Residential customers over a three year  
22 period from the date of the Commission's decision approving maximum rates for  
23 Consumer services. That CenturyLink be authorized to establish maximum rates  
24 that are 130% of the current actual rates for services provided to Small and  
25 Medium Business customers over a three year period from the date of the  
26 Commission's Decision approving maximum rates for these services,,  
27  
28 3. That the rates that are actually charged to Residential or Consumer customers  
29 increase by no more than 10 percent annually, and that the rates that are actually  
30 charged to Small and Medium business customers increase by no more than 15  
31 percent annually,  
32  
33 4. That after the Commission issues its Decision in this matter, CenturyLink shall be  
34 required to give its customers notice of any subsequent filing to set maximum rates

1 consistent with the Commission's decision for Residential, Small, Medium and  
2 Large Business customers. The notice shall be approved by the Administrative  
3 Law Judge and shall inform customers that they have an opportunity to provide  
4 comment or request a hearing on the proposed maximum rates for the  
5 Commission's consideration,  
6

7 5. That CenturyLink may not file a request to increase maximum rates established by  
8 the Commission until the expiration of a 30 month period from the date of the  
9 Commission's Decision approving maximum rates for services provided to  
10 Residential and Small and Medium Business customers.  
11

12 6. That any telecommunications service classified by the Commission as emerging  
13 competitive may subsequently be reclassified as noncompetitive if the Commission  
14 determines after due process that reclassification would protect the public interest  
15

16 *Large or Enterprise Business Services*

17  
18 7. That services provided to Large Business be classified as competitive, and as such,  
19 CenturyLink shall file , by December 31, 2012, an application for maximum rates  
20 under A.A.C R14-2-1110, and file tariffs for any requested current rate change,  
21

22 8. That classification of CenturyLink's services as "emerging competitive" and  
23 "competitive" shall relieve the Company of the obligation to file an application  
24 pursuant to A.A.C. R14-2-103 with the request to increase rates for services  
25 provided to Residential, Small, Medium and Large Business customers unless the  
26 Commission reclassifies these services as non-competitive.  
27

28 **Q. Does Staff have any other recommendations relating to these services?**

29 A. CenturyLink should be required to file annually, beginning March 30, 2014, a report that  
30 describes how and whether the classifications and maximum rates eventually established  
31 by the Commission are working by allowing CenturyLink to compete more effectively in  
32 the market. The report should also state if and why CenturyLink believes the  
33 classification and rates remain in the public interest.  
34

1 Staff further recommends a condition allowing the Commission to open a proceeding to  
2 suspended, terminate or modified the 2012 CenturyLink Regulatory Plan if it determines  
3 that such action is required to protect the public interest.

4

5 **Q. What are Staff's recommendations regarding the services now contained in Basket 4**  
6 **of the current Price Cap Plan?**

7 A. The Wholesale Services category of services should continue to be treated under the same  
8 terms and conditions as they are currently treated as Basket 4 Services in the Renewed  
9 Price Cap Plan. Prices will continue to be capped at the tariffed or contract price levels  
10 for the term of the 2012 CenturyLink Regulatory Plan, or until contracts are renegotiated,  
11 or the FCC, the Commission or the courts determine that other prices are appropriate,

12

13 **Q. What is Staff's conclusion regarding the tests that the Company's Witness suggests**  
14 **are appropriate to determine whether a service ought to be deregulated?**

15 A. As discussed in greater detail in Mr. Fimbres' Testimony, Staff does not agree that the any  
16 additional tests beyond those contained in A.R.S. § 40-281 are appropriate. This issue  
17 will be discussed more in Staff's brief on this matter.

18

19 **Q. If the Commission approves Staff's recommendation to classify ~~residential~~ and**  
20 **Enterprise or Large Business customer service, will CenturyLink have the ability to**  
21 **change prices for these services upon Commission issuance of a decision in this**  
22 **matter.**

23 A. No. Commission classification of Enterprise services as competitive allows CenturyLink  
24 to take advantage of streamlined rate increase procedure contained in A.A.C. R14-2-1110  
25 which provides the following:

26

**R14-2-1110. Competitive Telecommunications Services -- Procedures for Rate Change**

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- A. Telecommunications companies governed by this Article may apply to the Commission for an increase in any rate for a competitive service using the procedures set forth below. All applications and supporting information shall be submitted with 10 copies and filed with Docket Control Center.
  - B. In order to increase the maximum tariffed rate for a competitive telecommunications service, the applicant shall submit an application to the Commission containing the following information:
    - 1. A statement setting forth the reasons for which a rate increase is required;
    - 2. A schedule of current rates and proposed rates and the additional revenues to be derived from the proposed rates;
    - 3. An affidavit verifying that appropriate notice of the proposed rate increase has been provided to customers of the service;
    - 4. The Commission or staff may request any additional information in support of the application.
  - C. The Commission may, at its discretion, act on the requested rate increase with or without an evidentiary hearing; in an expeditious manner.

26 Pursuant to A.A.C. R14-2-1110, CenturyLink is required to submit another filing for  
27 Commission approval if it wants to increase the currently existing maximum rates for any  
28 of the services that are to be classified as competitive or emerging competitive. For  
29 emerging competitive services, additional streamlined information will also be requested  
30 to meet any legal requirements as determined by Staff.

31  
32 **Q. Does this conclude your Testimony?**

33 A. Yes.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

GARY PIERCE  
Chairman

BOB STUMP  
Commissioner

SANDRA D. KENNEDY  
Commissioner

PAUL NEWMAN  
Commissioner

BRENDA BURNS  
Commissioner

IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION DBA CENTURYLINK-) )  
QC TO CLASSIFY AND REGULATRE RETAIL )  
LOCAL EXCHANGE TELECOMMUNICATIONS) )  
SERVICES AS COMPETITIVE, AND TO )  
CLASSIFY AND DEREGULATE CERTAIN )  
SERVICES AS NON-ESSENTIAL )  
\_\_\_\_\_ )

DOCKET NO. T-01051B-11-0378

DIRECT

TESTIMONY

OF

ARMANDO FIMBRES

PUBLIC UTILITIES ANALYST V

ON BEHALF OF

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

MARCH 16, 2012

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**EXECUTIVE SUMMARY**  
**QWEST CORPORATION DBA CENTURYLINK-QC**  
**DOCKET NO. T-01051B-11-0378**

Qwest Corporation dba CenturyLink-QC (“CenturyLink”) is seeking a determination by the Arizona Corporation Commission (“Commission”) that all of its retail local exchange services should be classified as competitive services pursuant to A.A.C. R14-2-1108. CenturyLink is also seeking a determination that certain of its retail services be deregulated pursuant to A.R.S. § 40-281(E).

*For Competitive Classification pursuant to Rule 1108*

Staff believes the information filed by CenturyLink supports an “emerging competitive” classification for the Consumer, Small Business and Medium Business Segments.

Staff recommends statewide competitive classification of the Large or Enterprise Business segment under Rule 1108.

*For Deregulation pursuant to A.R.S. § 40-281(E)*

Staff supports deregulation for 40 tariff sections listed in Revised Attachment B of the Company Witness’s testimony.

1 **INTRODUCTION**

2 **Q. Please state your name, occupation, and Business address.**

3 A. My name is Armando Fimbres. I am a Public Utilities Analyst V employed by the  
4 Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division  
5 ("Staff"). My Business address is 1200 West Washington Street, Phoenix, Arizona 85007.  
6

7 **Q. Briefly describe your responsibilities as a Public Utilities Analyst V.**

8 A. I provide information, analysis and support on telecommunications tariff filings,  
9 Applications for Certificates of Convenience and Necessity ("CC&N"), complaints  
10 against service providers, transfer of control Applications by service providers services,  
11 financing Applications and a variety of industry matters, such as the Application in this  
12 matter.  
13

14 **Q. Please describe your educational background and professional experience.**

15 A. I received a Bachelor of Science degree from the University of Arizona in 1972 and have  
16 taken Business and management courses at Seattle University, Northwestern University  
17 and the University of Southern California. I was employed for twenty-nine years in Bell  
18 System or Bell System-derived companies, such as Western Electric, Pacific Northwest  
19 Bell, U S WEST and Qwest. The last twenty years of my Bell System  
20 telecommunications experience were in operations planning, corporate planning, or  
21 strategic planning roles with a special emphasis from 1990 to 2000 on competitive and  
22 strategic analysis for U S WEST, Inc. Strategic Planning, the Consumer Services  
23 Marketing division of U S WEST Communications and for Qwest from 2000 to 2001. I  
24 have been with the Commission's Utilities Division since April 2004.  
25

1 **BACKGROUND**

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

3 A. My testimony will present Staff's position regarding the Application filed by Qwest  
4 Corporation dba CenturyLink-QC ("CenturyLink" or "Company") on October 13, 2011  
5 seeking to classify selected retail local exchange services as competitive pursuant to the  
6 A.A.C. R14-2-1108 and to obtain deregulation of selected services pursuant to A.R.S. §  
7 40-281(E).

8  
9 **Q. Have you previously submitted testimony before the Commission?**

10 A. Yes. I have submitted testimony on the behalf of the Utilities Division of the Commission  
11 in many dockets. I have also testified on behalf of the Utilities Division at numerous  
12 hearings pertaining to CC&N Applications and provided all the quantitative analytical  
13 support for filings made at the Federal Communications Commission ("FCC") by the  
14 Commission related to forbearance petitions by CenturyLink's predecessor, Qwest. A list  
15 of major dockets in which I have participated is attached as Appendix 1.

16  
17 **Q. Have you reviewed the CenturyLink Application?**

18 A. Yes.

19  
20 **Q. Are you familiar with A.A.C. R14-2-1108 ("Rule 1108")?**

21 A. Yes.

22  
23 **Q. What does Rule 1108 provide?**

24 A. Rule 1108 allows a telecommunications company to petition the Commission to classify  
25 as competitive any service or group of services provided by the Company.  
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Under Subpart B, the Company is required to provided the conditions within the relevant market which demonstrate the service is competitive. At a minimum, the Company must provide the following information:

1. A description of the general economic conditions that exist which make the relevant market for the service one that is competitive;
2. The number of alternative providers of the service;
3. The estimated market share held by each alternative provider of the service;
4. The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801;
5. The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
6. Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the services.

**THE PROPOSED APPLICATION**

**Q. Please summarize your understanding of the Application filed by CenturyLink on October 13, 2011.**

A. CenturyLink is seeking a determination by the Commission that all of its retail local exchange services should be classified as competitive services pursuant to A.A.C. R14-2-1108. CenturyLink is also seeking a determination that certain of its retail services be deregulated pursuant to A.R.S. § 40-281(E). The corresponding services were identified in Attachments A and B of the Application filed by CenturyLink.

1 **Q. Does CenturyLink propose changes to tariffed rates or terms and conditions**  
2 **corresponding to any retail local exchange services in its Application?**

3 A. No. Based on the response to Staff's data request, CenturyLink stated that any change to  
4 rates is premature.<sup>1</sup> If CenturyLink determines maximum rate increases are needed at a  
5 future time, the Company will file for approval pursuant to A.A.C. R14-2-1110.

6  
7 **Q. Does the CenturyLink Application seek competitive or deregulation classifications**  
8 **other than statewide.?**

9 A. No.

10  
11 **Q. What was CenturyLink's rationale for its request to classify all its retail local**  
12 **exchange services as competitive services pursuant to Rule 1108?**

13 A. CenturyLink's rationale for seeking to classify all its retail local exchange services as  
14 competitive pursuant to Rule 1108 is the state of the telecommunications environment in  
15 Arizona. CenturyLink states in its Application that "... competition for all forms of  
16 communications services has exploded throughout Arizona over the past decade. Local  
17 telephone service providers such as CenturyLink now must compete for customers with  
18 Wireless, cable telephony and Voice over Internet Protocol ("VoIP") providers as well as  
19 other wireline providers e.g., Competitive Local Exchange Carriers ("CLECs"). In  
20 addition, the voice services of CenturyLink and other providers face competition from  
21 non-voice forms of communication, such as e-mail, text messaging, and even social  
22 media."<sup>2</sup>

23  

---

<sup>1</sup> CenturyLink response to STF 2.1 and STF 6.1

<sup>2</sup> In the Matter of the Application of Qwest Corporation dba CenturyLink QC to Classify and Regulate Retail Local Exchange Telecommunications Services as Competitive, and to Classify and Deregulate Certain Services as Non-Essential, T-01051B-11-0378, page 2.

1 *Requirements of Commission Rule R14-2-1108*

2 **Q. Is Staff in agreement that the Company has complied with Rule 1108.B subsection 1 -**  
3 **A which requires a description of the general economic conditions that exist which**  
4 **make the relevant market for the service one that is competitive?**

5 A. Yes. The Company Witness's testimony provides a description of the general economic  
6 conditions that exist for the various markets. The Company states that "the  
7 telecommunications market in Arizona is exceptionally competitive, and the mix of  
8 competitive telecommunications alternatives continues to grow and evolve."<sup>3</sup> The  
9 Company's Witness presents information on several categories of competitors  
10 contributing to the current environment and as well as the resulting impact on  
11 CenturyLink's operations since 2001.

12  
13 **Q. Does Staff agree that the categories of competitors provided by CenturyLink, are**  
14 **CenturyLink's competitors in Arizona?**

15 A. Yes. Staff's analysis indicates that CLECs, Wireless Providers and VoIP providers are  
16 alternative providers in the Consumer Segment. CLECs are alternative providers in the  
17 other market segments.

18  
19 **Q. Does Staff agree with Company Witness Brigham's description regarding the impact**  
20 **the various types of competitors described above have had on CenturyLink's**  
21 **operations since 2001?**

22 A. Yes. Although Staff has not performed an audit of CenturyLink's customer counts and  
23 other information submitted by CenturyLink in this Application, the information is  
24 consistent information submitted by CenturyLink in other proceedings and with

---

<sup>3</sup> Page 11

1 CenturyLink's confidential annual reports. Staff agrees that CenturyLink's access line  
2 loss since 2001 has been significant.

3  
4 **Q. Is Staff in agreement that the Company has complied with Rule 1108.B subsection 2**  
5 **– which requires CenturyLink to provide the number of alternative providers of the**  
6 **service?**

7 A. Yes.

8  
9 **Q. Is Staff in agreement that the Company has complied with Rule 1108.B subsection 3**  
10 **– which requires CenturyLink to provide the estimated market share held by each**  
11 **alternative provider of the service?**

12 A. No. Based on Staff's review of the additional information filed by Company's  
13 Witness CenturyLink is not in full compliance with subsection 3. However, in response to  
14 a Staff Data Request, on March 13, 2012 CenturyLink provided information that Staff  
15 believes complies with subsection 3. In its response to Staff's Eighth Data Request,  
16 CenturyLink submitted confidential Consumer voice market share estimates by Wireless  
17 competitor. The confidential total Wireless market share estimate remained the same.

18  
19 **Q. What estimated market share did Company Witness Brigham submit in his**  
20 **testimony for each alternative provider of the service?**

21 A. Company Witness Brigham presented Consumer market share information in Confidential  
22 Exhibit RHB-1 for categories of competitors, such as Cable Telephony, but information  
23 specific to "each alternative provider" as explicitly required by Rule 1108.B subsection 3  
24 is presented for only a few alternative providers – Cox Arizona Telecom, L.L.C. ("Cox"),  
25 Comcast, CableOne and Mediacom. Consumer market share information is not presented  
26 for any competitors in the categories for VoIP, CLECs and Wireless. Confidential

1 Exhibits RHB-3 & RHB-4 illustrate competitive presence but at a level that does not  
2 satisfy Rule 1108.B subsection 3. Confidential Exhibit RHB-2 does present sufficient  
3 information for the Small Business and Medium Business segments to satisfy Rule 1108.B  
4 subsection 3. Market share information for several key competitors in the Large Business  
5 segment is contained on page 22 of Company Witness's testimony.

6  
7 **Q. Is Staff in agreement that the Company has complied with Rule 1108.B subsection 4**  
8 **– which requires that CenturyLink provide the names and addresses of any**  
9 **alternative providers of the service that are also affiliates of the telecommunications**  
10 **company, as defined in R14-2-801?**

11 A. Yes.

12  
13 **Q. Is Staff in agreement that the Company has complied with Rule 1108.B subsection 5**  
14 **– which requires CenturyLink to provide information regarding the ability of**  
15 **alternative providers to make functionally equivalent or substitute services readily**  
16 **available at competitive rates, terms, and conditions?**

17 A. Yes. Company Witness presents rate information regarding functionally equivalent or  
18 substitute services by alternative providers in his testimony.

19

1 **Q. Does Staff believe that the information presented by the Company satisfies Rule**  
2 **1108.B subsection 6 – which requires CenturyLink to provide other indicators of**  
3 **market power, which may include growth and shifts in market share, ease of entry**  
4 **and exit, and any affiliation between and among alternative providers of the**  
5 **services?**

6 A. Yes. CenturyLink has satisfied this requirement but Staff does not fully agree with  
7 CenturyLink's conclusion. The most meaningful point presented in Company Witness's  
8 testimony is that the market entry and exit of alternative providers are essentially  
9 unrestricted by state regulation. While cable providers, VoIP providers and Wireless  
10 providers must comply with FCC regulations, the entry and exit requirements are fewer  
11 than for those regulated by the Commission. Staff does not fully agree with Company  
12 Witness that "Economic and regulatory barriers to entry have been eliminated ..." <sup>4</sup> as will  
13 be discussed in my following testimony.

14  
15 *Requirements of A.R.S. § 40-281(E)*

16 **Q. Did you review CenturyLink's request for deregulation of 158 services<sup>5</sup> pursuant to**  
17 **A.R.S. § 40-281(E)?**

18 A. Yes.

19  
20 **Q. What does A.R.S. § 40-281(E) provide with respect to deregulation of a service?**

21 A. The statute provides in relevant part as follows: "E. When the commission determines after  
22 notice and hearing that any product or service of a telecommunications corporation is  
23 neither essential nor integral to the public service rendered by such corporation, it shall  
24 declare that such product or service is not subject to regulation by the commission."

<sup>4</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 7

<sup>5</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, Revised Confidential Exhibit B

1 **Q. Has the Company met its burden of proof that these 158 services are no longer**  
2 **essential and integral to its public service offering?**

3 A. No.  
4

5 **STAFF ANALYSIS**

6 *CenturyLink's request for Competitive Classification pursuant to Rule 1108*

7 **Q. For how many services does CenturyLink seek competitive classification?**

8 A. The Revised Attachment A submitted with Company Witness Brigham's testimony  
9 consists of 31 services. However, CenturyLink has also stated that it is seeking a  
10 competitive classification for all retail local exchange services, with the exception of those  
11 for which a deregulated classification is being sought and those included in Basket 4.  
12

13 Revised Attachment A to Company Witness Brigham's testimony essentially consists of  
14 those services now contained in Basket 1 of the Company's current Renewed Price Cap  
15 Plan.<sup>6</sup>  
16

17 **Q. Were some of CenturyLink's services designated as competitive in the Price Cap**  
18 **proceeding?<sup>7</sup>**

19 A. Yes. The Price Cap proceeding separated CenturyLink's services into four (4) baskets –  
20 Basket 1 consists of services in the Exchange and Network Services Price Cap Tariff,  
21 which include in part retail local exchange access lines.. Baskets 2 and 3 contain services  
22 in the remaining three tariffs. The services in Baskets 2 included limited pricing flexibly  
23 retail services. The services in Basket 3 consist of flexibly priced competitive services. .  
24 Basket 4 contains the wholesale services and must not be impacted by any decision in this  
25 matter. However, classification of services as "competitive" under the Price Cap Plan was

---

<sup>6</sup> In the matter of Qwest Corporation's filing of Renewed Price Regulation Plan, T-01051B-03-0454.

<sup>7</sup> In the matter of Qwest Corporation's filing of Renewed Price Regulation Plan, T-01051B-03-0454.

1 not based on Rule 1108. For the purposes of the determination in this matter, CenturyLink  
2 is requesting a “competitive classification” under Rule 1108.<sup>8</sup>

3  
4 **Q. How many rates would be impacted by the competitive classification of the entire**  
5 **Exchange and Network Services Price Cap Tariff?**

6 A. Of the 31 services listed in Revised Attachment A, 26 are in the Exchange and Network  
7 Services Price Cap Tariff. Those services comprise approximately 222 rates that would be  
8 impacted. The entire tariff consists of 418 pages. Rather than consider the competitive  
9 classification as pertaining to 26 services in the Exchange and Network Services Price Cap  
10 Tariff, the more appropriate context is considering the competitive classification as  
11 pertaining to the entire 418 pages which contain all the rates and terms and conditions by  
12 which all services in the Exchange and Network Services Price Cap Tariff will be  
13 provisioned.

14  
15 **Q. What approach has Staff taken in evaluating the competitive classification requested**  
16 **by CenturyLink?**

17 A. Staff believes that many of the retail local exchange services now contained in Baskets 1,  
18 2, and 3 could be classified as competitive to the degree that they are dependent on or  
19 inextricably linked to ‘core retail local exchange services’ that are first determined to be  
20 competitive services. In other words, Staff would recommend that if a basic local  
21 exchange service is found to be “competitive” under Rule 1108, services that are used in  
22 conjunction with it be classified in a similar fashion.

23  

---

<sup>8</sup> Decision 68604; March 23, 2006.

1 **Q. How will the Terms and Conditions in CenturyLink's tariffs be impacted by**  
2 **competitive classification?**

3 A. It is possible that the Company may want to change certain Terms and Conditions in  
4 addition to Rates. However, the Company would have to file the tariffs containing these  
5 revised Terms and Conditions with the Commission for approval.

6  
7 **Q. What is Staff's evaluation of the competitive situation information filed by**  
8 **CenturyLink?**

9 A. Company Witness Brigham offers detailed information pertaining to (1) Consumer, (2)  
10 Small Business, (3) Medium Business and (4) Large Business segments<sup>9</sup> which the  
11 Commission should fully consider. The information indicates that while the  
12 telecommunications market has evolved into four (4) segments, the Local Exchange  
13 Services in Section 5 of the Exchange and Network Services Price Cap Tariff are based on  
14 two (2) categories of separation – Consumer (or Residence) and Business.

15  
16 **Q. What is Staff's evaluation of the Consumer competitive situation information filed in**  
17 **the Company Witness's testimony?**

18 A. Much of the market information presented by the Company's Witness pertains to the  
19 Consumer segment. CenturyLink states that it has experienced a 54 percent access line  
20 decline from 2001 through 2010<sup>10</sup>. A considerable amount of the loss can be reasonably  
21 assumed to be in the Consumer segment given the size of the Consumer market compared  
22 to the Business market. The Arizona population increase of 24.3 percent during a similar

---

<sup>9</sup> Defined in the Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 21;  
"SmallBusinessSmall Business is defined as firms spending <\$1,500 / month (ex-Wireless) and Mid Markets are  
firms spending  
between \$1,500 and \$5,000/ month (ex-Wireless)"

<sup>10</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 12.

1 time period can also be attributed to the Consumer market.<sup>11</sup> Staff does not take exception  
2 to this information.

3  
4 **Q. What is Staff's response to the voice market share information beginning on page 15  
5 of Company Witness's testimony?**

6 A. Staff agrees with the general point of the information – the ILEC wireline share has  
7 declined significantly since 2001 and continues to drop. Staff is not aware of any  
8 information suggesting a reversal in this trend. End-users, particularly consumers, have  
9 several alternative technology options for communications – wireline voice, VoIP,  
10 Wireless voice, Wireless texting and broadband emailing.

11  
12 **Q. What is Staff's response to the Consumer market share information beginning on  
13 page 17 of Company Witness's testimony?**

14 A. The confidential Consumer voice market share information presented on page 19 is  
15 specific to only – Cox – while presenting general information for five (5) categories –  
16 Cable Telephony, other VoIP, CLECs, Wireless Only and Other – not voice. Using the  
17 information on page 19 exactly as presented, assuming one competitor per category, Staff  
18 can calculate an estimated HHI<sup>12</sup> to gauge the market concentration. The result is an HHI  
19 of 3,040 which is well above the measure of 1,800 considered by the U. S. Department of  
20 Justice (“the DOJ”) to indicate a Highly Concentrated Market<sup>13</sup>, i.e. not competitive.

21  

---

<sup>11</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 13.

<sup>12</sup> [http://en.wikipedia.org/wiki/Herfindahl\\_index](http://en.wikipedia.org/wiki/Herfindahl_index): The Herfindahl–Hirschman Index, or HHI, is a measure of the size of firms in relation to the industry and an indicator of the amount of competition among them. It is an economic concept widely applied in competition law, antitrust and also technology management. It is defined as the sum of the squares of the market shares of the 50 Largest firms (or summed over all the firms if there are fewer than 50) within the industry, where the market shares are expressed as fractions.

<sup>13</sup> <http://www.investopedia.com>: The U.S. Department of Justice considers a market with a result of less than 1,000 to be a competitive marketplace; a result of 1,000-1,800 to be a moderately concentrated marketplace; and a result of 1,800 or greater to be a highly concentrated marketplace.

1 **Q. How does the information submitted by CenturyLink in response to Staff's Eighth**  
2 **Data Request change Staff's HHI estimate?**

3 A. Staff's original HHI estimate was overstated because all of the estimated Wireless share  
4 had to be attributed to one Wireless provider because of the manner the information was  
5 submitted in Company Witness's testimony. The difference in Wireless competition  
6 versus that of cable providers, however, is worth noting.

7  
8 With few exceptions, Wireless participants have overlapping service areas. The service  
9 areas are illustrated in Mr. Brigham's Direct Exhibits 5 – 7. Cable providers, however,  
10 operate in franchise areas that do not overlap and should be assumed as 'one' competitor  
11 for the purposes of an HHI estimate. Using the revised confidential market share  
12 information submitted by CenturyLink resulted in a revised HHI of 2,520, still outside the  
13 range used by DOJ to indicate a Moderately Concentrated Market (1,000 to 1,800).

14  
15 Staff agrees that Cox is a significant competitor; however, Staff's HHI estimates suggest  
16 that CenturyLink is still the dominant provider within the Consumer voice market. Using  
17 strictly the information presented by the Company's Witness, Staff has to conclude that  
18 the Consumer voice market must be characterized as having High Market Concentration,  
19 i.e., not competitive. However, the HHI is only one factor Staff considered in its analysis.

20  
21 **Q. What is Staff's evaluation of Confidential Exhibits RHB-1 to RHB-4?**

22 A. Confidential Exhibit RHB-1 is the source for the information on page 19 of Company  
23 Witness Brigham's testimony, which relates to the Consumer market segment. My  
24 testimony above relates to Confidential Exhibit RHB-1.

25

1 Confidential Exhibit RHB-2 pertains to Business and will be discussed later in my  
2 testimony.

3  
4 Confidential Exhibits RHB-3 and RHB-4 contain information that supports competitive  
5 presence but are difficult to evaluate for either the Consumer or Business market. While it  
6 is meaningful that some wire centers in Confidential Exhibit RHB-3 have multiple cable  
7 providers, the franchise nature of cable providers, nonetheless, reduces their impact to  
8 effectively 'one' provider within CenturyLink's wire centers. Additionally, the  
9 information does not show the percentage of any wire center that is covered by any cable  
10 provider. Confidential Exhibit RHB-4 provides information that supports the presence of  
11 competition in a general and perhaps anecdotal manner.

12  
13 The Company's Witness states that Confidential Exhibit RHB-4 "shows the CLECs that  
14 are operating in CenturyLink's Arizona wire centers."<sup>14</sup> Due to the confidential nature of  
15 Confidential Exhibit RHB-4 Staff cannot address specific CLECs or their market share.  
16 Staff can state, however, that "operating" does not necessarily equate to the provision of  
17 retail residential local exchange services or any particular telecommunications service.  
18 "Operating" could mean participating in long distance service, broadband service, or  
19 Wireless service, - retail local exchange service. Confidential Exhibit RHB-4 does not  
20 provide any evidence that the CLECs listed are providing residential retail local exchange  
21 services in CenturyLink's Arizona wire centers. Close examination of the providers  
22 named in Confidential Exhibit RHB-4 even reveals that not all are CLECs or have tariffs  
23 that include rates for basic local exchange services. CenturyLink's Confidential Exhibit  
24 RHB-4 does not specify competitors providing service in the Consumer local exchange  
25 market specifically and the degree of competition.

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<sup>14</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 12.

1 Staff also points out that Confidential Exhibit RHB-4 does not provide any indication of  
2 the competitive areas covered by the CLECs indicated. CenturyLink wire centers are  
3 often of considerable size. It is possible that many CLECs are operating in very small  
4 areas of CenturyLink wire centers, such as selective zip codes, and, as such, are providing  
5 alternative options to relative Small numbers of customers. In addition, some competitors  
6 may operate only in niche markets such as providing Lifeline service to customers.

7  
8 CLECs with their own facilities, however, do not maintain their service information in  
9 accordance with historical wire center definitions. Cox, for example, maintains  
10 information strictly on a zip code basis. CenturyLink did not provide some indication of  
11 CLEC coverage such as homes passed, a common indicator in the cable industry.

12  
13 CenturyLink should have presented the information in Confidential Exhibit RHB-4 in a  
14 manner that would support direct evidence of retail local exchange competition for the  
15 Consumer and Business segments and which would have allowed Staff the ability to  
16 compare information with CLEC data, such as zip codes.

17  
18 **Q. Is Staff able to support the competitive classification of Consumer services in the**  
19 **Exchange and Network Services Price Cap Tariff pursuant to Rule 1108?**

20 **A.** No. Not based on the evidence presented by CenturyLink to-date. If CenturyLink can  
21 provide more meaningful data that supports competitive classification, in the residential  
22 retail local exchange segment, Staff will consider it. But that information has not been  
23 provided to-date.

24

1 **Q. Even though CenturyLink has not shown sufficient competition in the Consumer**  
2 **services market to warrant competitive classification under Rule 1108, do you believe**  
3 **that CenturyLink should receive some regulatory flexibility for this market segment?**

4 **A.** Yes. Clearly, this market is becoming increasingly competitive; and might be  
5 characterized as in a transition stage yet. Consumers are increasingly using Wireless as a  
6 substitute for CenturyLink's land-line service. CenturyLink has a formidable land-line  
7 competitor in this market, Cox. Cox, as a CLEC, has pricing flexibility for its services.

8  
9 CenturyLink's predecessor Qwest and its predecessors started out as the monopoly  
10 provider or ILEC in its service areas in Arizona. In recognition that some of its services  
11 were emerging competitive or competitive in nature, the Commission adopted an  
12 alternative form of regulation for the Company, the Price Cap Plan, which the Company  
13 has been operating under since March 30, 2001. Under the Revised Price Cap Plan,  
14 residential Consumer local exchange rates contained in Basket 1 of the Plan could be  
15 decreased but were subject to a hard cap and could not be increased. Classification as  
16 "emerging competitive" is the next logical step for Consumer services, given Staff's  
17 analysis. With the classification of "emerging competitive", CenturyLink should have  
18 greater pricing flexibility with respect to these services, but not the degree of flexibility  
19 were these services found to be fully competitive pursuant to Rule 1108.

20

1 **Q. What is Staff's evaluation of the Business competitive situation information filed by**  
2 **the Company's Witness?**

3 A. The Company's Witness references at least eleven CLEC competitors in the Business  
4 market – Cox, Integra, XO, tw telecom, Level 3, PAETEC, AT&T, Verizon, Comcast,  
5 Time Warner Cable Information Services (Arizona), LLC, Mediacom<sup>15</sup> – as well as a few  
6 cable telephony providers - Cable One, Suddenlink – and provides a considerable amount  
7 of supporting information.

8  
9 **Q. What is Staff's response to the Small Business market share information beginning**  
10 **on page 20 of Company Witness's testimony?**

11 A. The Company's Witness presents confidential Small Business voice market share  
12 information that is contained in Confidential Exhibit RHB-2. Using the same  
13 methodology described earlier to derive an HHI estimate to gauge the Small Business  
14 competitive market situation, Staff calculated an HHI of 4,183. This figure is well above  
15 the 1,800 HHI threshold used to describe High Market Concentration. Although this is  
16 just an estimate, it strongly suggests that the market is not competitive under Rule 1108.

17  
18 **Q. Is the information in Confidential Exhibit RHB-2 comprehensive?**

19 A. No. The Company's Witness states on page 21 of his testimony that “the Centris SMB  
20 data (in Confidential Exhibit RHB-2) does not include the impact of Wireless services in  
21 the SMB market.”<sup>16</sup> This statement alone is not sufficient, however, for Staff to  
22 meaningfully consider the impact of Wireless services in the SMB market. Again, if,

---

<sup>15</sup> Cox Arizona Telecom, L.L.C, Integra Telecom of Arizona, Inc., XO Communications Services, Inc., tw telecom of Arizona llc, Level 3 Communications, LLC, PAETEC Communications Inc., AT&T Communications of the Mountain States, Inc., Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, Verizon Select Services Inc, Comcast Phone of Arizona, LLC, Time Warner Cable Information Services (Arizona), LLC, MCC Telephony of the West, LLC

<sup>16</sup> Confidential Exhibit RHB-2 includes information for the Small Business and Medium Business segments. ‘SMB’ is assumed to mean Small Business and Medium Business.

1 CenturyLink is able to provide additional information regarding the impact of Wireless  
2 services in this market which indicate that CenturyLink is not dominant the Small  
3 Business voice market, Staff will consider it.

4  
5 Based strictly on the information presented in Confidential Exhibit RHB-2, Staff believes  
6 that CenturyLink is the dominant provider in the Small Business voice market and the  
7 market is Highly Concentrated.

8  
9 **Q. Did CenturyLink's response to Staff's Eighth Data Request include revised market  
10 share information for the Small Business segment?**

11 A. Yes. CenturyLink provided refined confidential information in its DR8 response but did  
12 not include any Wireless market share information. Staff was able to calculate a revised  
13 HHI of 4,159 which is not materially different than the 4,183 calculated with the  
14 confidential information submitted in Company Witness's testimony.

15  
16 **Q. Does the Company present information that the Small Business voice market is  
17 becoming increasingly competitive?**

18 A. No. The two-quarter trend in Confidential Exhibit RHB-2 actually suggests that a steady-  
19 state has been reached. The Small Business voice market competitive situation is far  
20 behind that of the Consumer voice market which itself does not appear to be fully  
21 competitive based on the information filed by CenturyLink. Since local exchange  
22 competition was initiated in 1996 with changes to the 1934 Communications Act, the  
23 Small Business voice market competitive situation has not evolved significantly in the last  
24 15 years. If this trend continues, it may be reasonable to assume that a fully competitive  
25 situation may not be reached for many more years.

1           On the other hand, Staff agrees that there are competitors operating in this market and that  
2           Wireless is also likely to be a factor to some degree to some extent in this market.

3

4           **Q.    What is Staff recommending with respect to the Small Business market?**

5           A.    Staff is recommending that the Small Business market segment be classified as “emerging  
6           competitive”, the same as the Consumer Market. CenturyLink should receive some  
7           pricing flexibility for these services; although not to the same degree as if the services had  
8           been classified as “competitive” under Rule 1108.

9

10          **Q.    What is Staff’s response to the Medium Business market share information  
11          beginning on page 20 of Company Witness’s testimony?**

12          A.    The Company’s Witness presents confidential Medium Business voice market share  
13          information that is contained in Confidential Exhibit RHB-2. Using the same  
14          methodology described earlier to derive an HHI estimate to gauge the Medium Business  
15          competitive market situation, Staff calculated an HHI of 3,484. This figure is below the  
16          Small Business figure of 4,183 but still well above the 1,800 HHI threshold used to  
17          determine High Market Concentration. Although this is just an estimate, it suggests that  
18          the market is not as competitive as CenturyLink suggests. Of concern to Staff is that the  
19          two-quarter trend presented in Confidential Exhibit RHB-2 suggests the same steady-state  
20          situation for the Medium Business voice market segment.

21

22          **Q.    Is the information in Confidential Exhibit RHB-2 comprehensive?**

23          A.    The Company’s Witness does not make the same statement for Medium Business that is  
24          made for Small Business on page 21 of his testimony - “the Centris SMB (Small Medium  
25          Business) data (in Confidential Exhibit RHB-2) does not include the impact of Wireless  
26          services in the SMB market.” Staff must assume, therefore, that the information in

1 Confidential Exhibit RHB-2 pertaining to Medium Business is more comprehensive than  
2 that for Small Business.

3  
4 However, the information presented by CenturyLink's Witness indicates that there are  
5 many CLECs providing competitive services in this market. Cox also provides services in  
6 the Medium Business Segment. The presence of these competitors should act to constrain  
7 CenturyLink's ability to raise prices to any significant degree.

8  
9 **Q. Did CenturyLink's response to Staff's Eighth Data Request include revised market  
10 share information for the Medium Business segment?**

11 A. Yes. CenturyLink provided refined confidential information in its DR8 response. Staff  
12 was able to calculate a revised HHI of 3,445 which is not materially different than the  
13 3,484 calculated with the confidential information submitted in the Company's testimony.

14  
15 **Q. What is Staff recommending with respect to the Medium Business segment?**

16 A. Staff is recommending that the Medium Business segment be classified as "emerging  
17 competitive" the same as the Consumer and Small Business segments.

18  
19 **Q. What is Staff's response to the Large Business market share information beginning  
20 on page 22 of the Company's Witness testimony?**

21 A. The Company's Witness presents confidential information beginning at page 22 of his  
22 testimony regarding CenturyLink's market position in the Large Business or Enterprise  
23 Market. The information is consistent with Staff's understanding of CenturyLink's  
24 position in this market. CenturyLink is not a dominant provider in the Large Business or  
25 Enterprise Market.  
26

1 **Q. Did CenturyLink's response to Staff's Eighth Data Request include revised market**  
2 **share information for the Large Business segment?**

3 A. No.

4  
5 **Q. Company Witness Brigham states on pages 22 - 23 of his testimony that Staff has**  
6 **"previously determined that that the Enterprise Market in Arizona is competitive".**  
7 **Does Staff agree?**

8 A. First, Staff clarifies that for the purpose of his testimony the Company's Witness defines  
9 'Large Business' as 'Enterprise Business'. Thus Staff will use the two terms  
10 synonymously.

11  
12 The Company's Witness is correct in his statement but Staff clarifies that previous  
13 positions were never findings by the Commission pursuant to Rule 1108 and Staff may not  
14 have supported its statements with quantitative analysis such as HHI calculations. The  
15 issue is in this case whether the market is sufficiently competitive to satisfy Rule 1108.

16  
17 **Q. What are Staff's HHI findings for the Enterprise Market?**

18 A. Staff evaluated the Enterprise Market using the confidential information presented in  
19 Company Witness's testimony. The information indicates that the market is Highly  
20 Concentrated with an HHI of 4,029. However, CenturyLink is not one of the major  
21 providers.

22  
23 **Q. What is Staff recommending with respect to the Large Business or Enterprise**  
24 **Market?**

25 A. Staff is recommending that the Commission classify these CenturyLink's Large Business  
26 services as Competitive pursuant to Rule 1108.

1 **Q. How does Staff respond to Company Witness's general market testimony from pages**  
2 **24 – 60?**

3 A. The Company's testimony is helpful in a general sense because it portrays an environment  
4 in which many providers participate within the CenturyLink service territory. Staff does  
5 not take exception to the information which largely amounts to clarifications of  
6 Confidential Exhibits RHB-3 and RHB-4. However, the discussion does not overcome  
7 the deficiencies identified above with respect to the data presented by CenturyLink to  
8 support competitive classification in the Consumer retail local exchange market and the  
9 Small Business market. In addition, there appear to be some inconsistencies in the  
10 discussion.

11  
12 Regarding Cox, Company Witness states, for example, that:

- 13  
14 – “Cox serves a geographic area within Arizona encompassing 83 CenturyLink  
15 wire centers that account for approximately 81.6% of the CenturyLink retail  
16 access lines in Arizona.”<sup>17</sup>  
17 – “CenturyLink estimates that Cox provides voice services to well over 500,000  
18 residence and Business customers in the state.”<sup>18</sup>  
19 – “...as of the second quarter of 2011, Cox served [confidential] Consumer  
20 voice lines in Arizona, as compared to the 719,000 Consumer lines served by  
21 CenturyLink in Arizona for the same time period.”<sup>19</sup>

22  
23 The Company's Witness also states on page 28 that “There is no basis to regulate  
24 CenturyLink more heavily than Cox, when Cox now holds almost half of the Consumer  
25 voice market in Arizona.” Staff finds this confusing since the Company's Witness stated  
26 on page 20 that “roughly two-thirds of the Consumer households in the CenturyLink  
27 serving area in Arizona are not utilizing CenturyLink for voice services. By inference,

<sup>17</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 26.

<sup>18</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 27.

<sup>19</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 27.

1           Witness Brigham's statement on page 20 means that roughly one-third of the Consumer  
2           households in the CenturyLink serving area in Arizona are utilizing CenturyLink. How  
3           Cox can be estimated to have 'almost half' of the Consumer voice market in Arizona with  
4           'well over 500,000' estimated 'residence and Business' lines while CenturyLink has  
5           roughly one-third or 719,000 'Consumer' lines as of 2Q11 is difficult to understand.<sup>20</sup>  
6           The arguments presented are neither logical nor consistent with the share information in  
7           Confidential Exhibits RHB-1.

8  
9           **Q. Does the Company's Witness discuss the competitive presence of competitors other**  
10           **than Cox?**

11           A. Yes but the attention devoted to Cox far exceeds the attention given other competitors.  
12           The emphasis on Cox. In his 78 page testimony, Company Witness references Cox 123  
13           times on 18 pages. Indeed, if one looks solely at wireline competitors in the residential  
14           Consumer local exchange market, the data suggests only one meaningful competitor, Cox.  
15           This is suggestive of a duopoly, not a fully competitive environment.

16  
17           **Q. How does Staff respond to the Company Witness's testimony regarding the CLECs**  
18           **other than Cox beginning at page 35?**

19           A. The Company Witness provides several statistics and names nine key CLECs<sup>21</sup> but on  
20           page 36 states that "most of these CLECs are primarily focused on serving Business  
21           customers". Staff agrees with this statement statement.

22  

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<sup>20</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 30.

<sup>21</sup> AT&T, Verizon, Integra, PAETEC, XO Communications, Level 3, tw telecom, Granite, 360 Networks

1 **Q. What other information does CenturyLink provide regarding the provision of**  
 2 **competitive services by CLECs in Arizona.**

3 A. Company Witness Brigham states – “CLECs are able to “make functionally equivalent or  
 4 substitute services readily available at competitive rates, terms and conditions” for  
 5 Business and Consumer customers (Rule 1108.B.5)”. CLECs can easily enter and exit the  
 6 market, and can offer services by purchasing UNEs or resold services from CenturyLink,  
 7 or by building their own facilities (Rule 1108.B.6). They may also enter the market by  
 8 purchasing wholesale facilities from other CLECs, or by purchasing facilities from fiber  
 9 providers such as SRP Telecom and Zayo Group that operate in Arizona.” Staff agrees  
 10 with the general nature of the conclusion, however, the following market entry and exit  
 11 data illuminates a disturbing trend:

12  
 13 **Exhibit 1**

	CC&Ns Granted	CC&Ns Canceled
Before 3/30/01	720	0
1/1/98 - 12/31/04	609	130
1/1/05 – 12/31/08	81	76
Since 1/1/09 <sup>22</sup>	45	71

14  
 15 Previous to March 30, 2001, the Arizona telecommunications market can be characterized  
 16 in a high growth stage. There were 720 CC&Ns granted and zero (0) canceled during that  
 17 period. The transition is thereafter obvious. More CC&Ns are now being canceled than  
 18 granted and those granted are far fewer than in earlier years. This suggests that the  
 19 Arizona telecommunications environment regulated by the Commission has reached a  
 20 steady state and may actually be in a state of decline. CLEC competition appears to be  
 21 declining rather than increasing.

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<sup>22</sup> Through February 15, 2011

1 **Q. How does Staff respond to the Company Witness's testimony regarding Wireless**  
2 **competition beginning at page 43?**

3 A. If competition within the overall Arizona telecommunications market is increasing,  
4 categories such as Wireless and VoIP may be the cause since competition from CLECs, as  
5 measured by market entry and exit, has slowed and may be declining.

6  
7 Exhibit RHB-5 illustrates the areas served by CenturyLink in comparison to those served  
8 by at least one Wireless provider. The areas not covered by at least one provider can be  
9 described as rural areas.

10  
11 The Wireless pricing information presented by the Company's Witness is very  
12 comprehensive. He makes a strong case that Wireless carriers provide "functionally  
13 equivalent or substitute services readily available at competitive rates, terms and  
14 conditions," and there are a significant "number of alternative providers of the service,"  
15 meeting the criteria of Rule 1108(B) in Arizona."<sup>23</sup> The Company's Witness goes on to  
16 state that 31.6 percent of U. S. Households have "cut the cord", effectively displacing  
17 wireline local exchange services. However, these figures rely upon surveys that are not  
18 specific to the CenturyLink service area.

19  
20 The Company's Witness subsequently cites a figure of 29.4 percent for Arizona  
21 households that have cut the cord based upon a National Center for Health Statistics  
22 ("NCHS") survey.<sup>24</sup> While the Company's Witness states that Wireless services places  
23 strong competitive pressure on Wireline services, there is no study or survey which  
24 actually demonstrates the degree to which this statement is accurate. Without this, placing

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<sup>23</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 48.

<sup>24</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 50.

1 the information in the appropriate context for use in a determination that may result in  
2 approval pursuant to Rule 1108 is difficult.

3  
4 **Q. How does Staff respond to the Company Witness's testimony regarding the price  
5 constraint factor related to Wireless substitution beginning at page 52?**

6 A. The subject is important. One of the things the Commission needs to consider is whether  
7 approval of competitive classification for all retail Consumer local exchange service, as  
8 requested by CenturyLink, would eventually result in an upward movement of local  
9 exchange wireline rates. In theory, a perfectly competitive telecommunications  
10 environment should keep competitors from raising prices since end-users will be free to  
11 move among providers. However, as I have pointed out at several points in my testimony  
12 Staff does not believe the telecommunications environment in Arizona the evidence on  
13 this point is not always conclusive.

14  
15 **Q. How does Staff respond to the Company Witness's testimony regarding VoIP  
16 competition beginning at page 54?**

17 A. Staff is aware, as is CenturyLink, that VoIP competition exists in Arizona. There is little  
18 factual evidence, however, that is helpful to a determination pursuant to Rule 1108. The  
19 Company's Witness references a figure of 484,000 'non-ILEC' VoIP subscriptions in  
20 Arizona stated in an October 2011 FCC report.<sup>25</sup> The figure seems to make sense in the  
21 presence of increasing broadband deployment as highlighted by the Company's Witness  
22 on page 57. Two aspects of the VoIP subscriptions information, however, do not make  
23 sense to Staff.

24  

---

<sup>25</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 56.

1 First, the 484,000 VoIP figure is within a reasonable range of the "well over 500,000"  
2 estimated by CenturyLink for Cox, which provides fixed VoIP service. The information,  
3 however, is not consistent with market share information presented in Confidential Exhibit  
4 RHB-1. CenturyLink should attempt to clarify this point.

5  
6 Second, use of the term 'non-ILEC' to define the 484,000 figure, suggests that ILECs  
7 and/or ILEC affiliates may be participating in the telecommunications market with VoIP  
8 technology. If true, this means that ILECs, including CenturyLink, are not disadvantaged  
9 by not being able to compete directly against VoIP providers. CenturyLink provides a  
10 significant amount of broadband and could easily compete using VoIP technology by  
11 itself or through affiliates.

12  
13 Given the confusing information pertaining to VoIP competition and the lack of  
14 information directly applicable to a determination pursuant to Rule 1108, Staff does not  
15 believe VoIP (provided by entities other than Cox) is a significant factor in this  
16 proceeding.

17  
18 **Q. Did CenturyLink ask the Commission to set maximum rates in this proceeding for**  
19 **services found to be competitive?**

20 A. No, it did not. It intends to ask the Commission to establish maximum rates through a  
21 later filing.

22  
23 *CenturyLink's request for Deregulation pursuant to A.R.S. § 40-281(E)*

24 **Q. For how many services does CenturyLink seek deregulation?**

25 A. Revised Attachment B filed with the Company's Witness's testimony lists 158 services in  
26 three tariffs - Competitive Exchange and Network Services Price Cap Tariff No. 2,

1 Competitive Private Line Transport Services Price Cap Tariff and Competitive Advanced  
2 Communications Services Price Cap Tariff.

3  
4 **Q. How does Staff respond to the criteria presented in Company Witness's testimony to**  
5 **satisfy deregulation pursuant to A.R.S. § 40-281(E) - "When the commission**  
6 **determines after notice and hearing that any product or service of a**  
7 **telecommunications corporation is neither essential nor integral to the public service**  
8 **rendered by such corporation, it shall declare that such product or service is not**  
9 **subject to regulation by the commission."?**

10 A. Approval by the Commission pursuant to A.R.S. § 40-281(E) must be based on a service  
11 being "neither essential nor integral to the public service. However, CenturyLink  
12 apparently believes that the "Constitution and case law actually require the Commission to  
13 consider four criteria in determining whether to deregulate a service - (1) Whether the  
14 service constitutes "transmitting messages or furnishing public telegraph or telephone  
15 service" under Article 15, §2 of the Arizona Constitution; (2) Whether the service is  
16 presently an essential and integral part of "transmitting public telegraph or telephone  
17 service;" (3) Whether the service is clothed with a public interest, such as to make the  
18 rates, charges, and methods of provision a matter of public concern; and (4) Whether the  
19 service is a common carriage operation.<sup>26</sup> Mr. Brigham states he is not an attorney<sup>27</sup> but,  
20 nonetheless, cites American Cable Television, Inc. v. Arizona Pub. Serv. Co., 143 Ariz.  
21 273, 693 20 P.2d 928 (Ct. App. 1983)<sup>28</sup>. I would note that this case deals with the  
22 Commission's authority to regulate a service. Its does not address the situation in which  
23 CenturyLink's services are already regulated and it is seeking to deregulate those services

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<sup>26</sup> In the Matter of the Application of Qwest Corporation dba CenturyLink QC to Classify and Regulate Retail Local Exchange Telecommunications Services as Competitive, and to Classify and Deregulate Certain Services as Non-Essential, T-01051B-11-0378, page 9.

<sup>27</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 4.

<sup>28</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 63.

1 in support of these 4 criteria. Many of the services which the Commission regulates are  
2 essential and integral to the public service which CenturyLink provides. It is when those  
3 services are no longer essential and integral to the public service that deregulation is  
4 appropriate. This will be discussed further in Staff's brief.

5  
6 **Q. How is the Company Witness's deregulation analysis organized?**

7 A. Beginning on page 67 of his 78 page testimony, the Company's Witness describes six (6)  
8 groups of services based 'common characteristics of services', for which it seeks  
9 deregulation. The groups are - Ancillary, Value Added, Obsolete, Pricing, Supplemental,  
10 and Toll.

11  
12 **Q. Did Staff find a problem with Company Witness's deregulation information?**

13 A. Yes. The contents of Exhibit RHB-9 are not consistent with the contents of Revised  
14 Attachment B, Exhibit RHB-11. The four (4) elements listed below in Exhibit 2 were  
15 moved to Revised Attachment A, Exhibit RHB-10. These elements, categories as  
16 'Valued-Added' in Exhibit RHB-9 should not be considered for deregulation pursuant to  
17 A.R.S. § 40-281(E). To avoid confusion, CenturyLink should file a Revised Exhibit  
18 RHB-9.

19  
20 **Exhibit 2 – Value Added**

C5.4.2	TOUCHTONE CALLING
C5.8.4	INTERCEPT SERVICES
Q21.4.1	SWITCHED ACCESS SERVICE
Q7.9.1	SWITCHED TRANSPORT

1 **Q. What is Staff's response to the services characterized as "Ancillary" in Company**  
2 **Witness's testimony?**

3 A. Exhibit RHB-9 contains 27 tariff sections categorized as Ancillary. Staff recommends a  
4 deregulation categorization for 23 of the tariff sections (Exhibit 3), because Staff believes  
5 these services are neither essential nor integral to the underlying common carrier services.  
6 Sections C5.7.1 – Listing Services, C6.2.4 – Directory Assistance and Q4.6 – Telecom  
7 Service Priority C5.7.7 – Custom Number Service warrant discussion.

8  
9 In today's technology rich environment when end-users have many options, Listing  
10 Services and Directory Assistance may appear to be 'non-essential' but they are,  
11 nonetheless, 'integral' to retail local exchange services which, even if competitively  
12 classified in this proceeding, will remain regulated for the foreseeable future. Access to  
13 Listing Services and Directory Assistance, for example, are defined as features within  
14 'Basic Local Exchange Telephone Service' by A.A.C. R14-2-1201 – Arizona Universal  
15 Services. It's also worth noting that the tariff description for Listings Services (C5.7.1)  
16 actually includes the word 'essential' – "...Alphabetical listings include information  
17 which is essential to the identification of the listed party and facilitates the use of the  
18 directory." It is also important to note that the information obtained for Listings Services  
19 and Directory Assistance correspond directly to regulated, basic exchange services.

20  
21 Telecom Service Priority is described as "...regulatory ... developed by the Federal  
22 Government to ensure ... restoration of National Security Emergency Preparedness ..."  
23 suggests a service for which regulatory oversight should continue. In other words, it is a  
24 service which continues to be essential and integral to the public service offerings of  
25 CenturyLink.

26

1 **Q. What is Staff's response to the services characterized as "Value Added" in Company**  
2 **Witness's testimony?**

3 A. Exhibit RHB-9 contains 50 tariff sections, excluding the four (4) which were moved to  
4 Revised Attachment A, categorized as Value Added. Staff supports deregulation for 17 of  
5 the tariff sections categorized as Value Added (Exhibit 4), as Staff believes they are no  
6 longer essential and integral. Other services seem highly dependent on central office  
7 assets that are essential and integral for public service. Operator Verification/Interrupt  
8 Service may often be required in urgent situations. Direct Inward Dialing ("DID")  
9 services, when combined with Direct Outward Dialing ("DOD"), is comparable to basic  
10 local exchange services which Staff does not recommend for competitive classification  
11 under Rule 1108 or deregulation. DID and DOD services are regulated by the  
12 Commission. Lower speed services may be provisioned for Small and Business segments  
13 more often than for Large Business. As stated earlier, Staff believes that CenturyLink is  
14 the dominant provider in the Small and Medium Business segments.

15  
16 **Q. What is Staff's response to the services characterized as "Obsolete" in the**  
17 **Company's Witness's testimony?**

18 A. Exhibit RHB-9 contains 50 tariff sections categorized as Obsolete. These services,  
19 correctly described by the Company's Witness as 'grandfathered', should have been  
20 rendered technologically obsolete and should have become increasingly expensive to  
21 provision with the passage of time. Staff agrees that there are alternatives, however, many  
22 of the Obsolete services are integral to the public service as they are local exchange  
23 services. In grandfathering services, there is an implied understanding by the Commission  
24 that such services will continue to be maintained under reasonable terms and conditions  
25 until usage drops to zero (0) or the Commission approves the complete termination of  
26 such services.

1 Staff has supported the obsolete designation for services by many providers with the  
2 understanding that users not be required to terminate their services for at least a reasonable  
3 period of time. In some cases, particularly those in which customer churn has reduced  
4 usage to a low figure, Staff may support giving customers notice that services will be  
5 terminated following a reasonable period of time. Staff is puzzled why CenturyLink  
6 rather than offering marketing incentives for customers to move to alternative services  
7 instead seeks to deregulate such services which have become technologically outdated and  
8 expensive to provision. CenturyLink's response to Staff's data request response discloses  
9 that many of the services still have substantial numbers of users or usage.<sup>29</sup> Unless  
10 CenturyLink can appropriately explain why it now seeks to continue the provision of  
11 services for which CenturyLink once sought an Obsolete classification, Staff recommends  
12 Obsolete services be classified as competitive services to the extent they are not already  
13 classified as competitive.

14  
15 **Q. What is Staff's response to the services characterized as "Pricing" in the Company's**  
16 **Witness's testimony?**

17 A. Exhibit RHB-9 contains 9 tariff sections categorized as Pricing in Company Witness's  
18 testimony. A.R.S § 40-281(E) addresses the means for deregulating a 'product or service'.  
19 The Company's Witness is careful to call the Pricing category of tariff sections 'Pricing  
20 Plans' which A.R.S § 40-281(E) does not address. Deregulation of the Pricing category of  
21 tariff sections is, therefore, in effect deregulation of the underlying products and services  
22 which the Company's Witness states are "otherwise tariffed on a stand-alone basis."<sup>30</sup>  
23

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<sup>29</sup> CenturyLink supplemental responses to STF 3.1

<sup>30</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, pages 70.

1 Staff does not find it logical to support deregulation of tariff sections for pricing reasons  
2 when the underlying services are not themselves deregulated. Pricing does not change  
3 whether a service is neither essential nor integral to the public service. Pricing simply  
4 varies a customer's willingness to buy under the stated rates.

5  
6 Staff believes the correct path for regulation of Pricing tariff sections is to first achieve  
7 deregulation of the underlying products and services. The deregulation of Pricing tariff  
8 sections would then be rendered moot since products and services, individually  
9 deregulated, must logically be defined as deregulated when grouped in various manners  
10 and priced accordingly. Staff will support deregulation of the Pricing tariff sections in  
11 those cases which CenturyLink is able to show that the underlying products and services  
12 are deregulated.

13  
14 At this time, Staff cannot support deregulation for any of the nine (9) tariff sections  
15 categorized as Pricing.

16  
17 **Q. What is Staff's response to the services characterized as Supplemental in Company**  
18 **Witness's testimony?**

19 A. Exhibit RHB-9 contains 15 tariff sections categorized as Supplemental by the Company's  
20 Witness. At this time, Staff cannot support deregulation for any of the fifteen (15) tariff  
21 sections categorized as Supplemental.

22  
23 In response to Staff's data request, CenturyLink provided information that indicates high  
24 users or usage in 9 of the 15 tariff sections. Staff must, therefore, give considerable  
25 weight to the essential nature of these services.

26

1           Until CenturyLink provides more conclusive information to demonstrate that the 15  
2           services categorized Supplemental warrant deregulation, Staff is unable to support a  
3           change in classification.

4  
5           **Q.    What is Staff's response to the services characterized as "Toll" in Company**  
6           **Witness's testimony?**

7           A.    Exhibit RHB-9 contains 6 tariff sections categorized as Toll in Company Witness's. Staff  
8           agrees with competitive nature of long distance. Many long distance service options are  
9           available. The services are competitive and broadly available, nonetheless, do not satisfy  
10          the standards in A.R.S. § 40-281(E). Staff believes that long distance services are  
11          essential and integral to the public service.

12  
13          As telecommunications services have evolved, the distinction between long distance and  
14          local exchange services has become blurred. Wireless dialing has been a major factor in  
15          eliminating the distinction. Most Wireless plans do not distinguish between local Wireless  
16          and long distance Wireless. The use of 1+NPA+NXX+XXXX and 1+NXX+XXXX  
17          dialing in Wireless is essentially non-existent. 1+ dialing, however, is integral to local  
18          exchange services and the PSTN. Existing Commission rules that allow local exchange  
19          users to select intralata and interstate long distance providers suggest that long distance is  
20          not only integral, it is essential for the public service.<sup>31</sup> Were 'Toll' services not integral  
21          and essential to local exchange service, they would not be associated with CenturyLink's  
22          local exchange services and a part of an Application that seeks to reclassify 'retail local  
23          exchange services'.<sup>32</sup> Logic suggests, therefore, that 'Toll' service be deregulated at the  
24          same pace as retail local exchange services. Based on the information filed by

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<sup>31</sup> A.A.C. R14-2-1111, Requirement for IntraLATA Equal Access

<sup>32</sup> Direct Testimony of Robert H. Brigham on Behalf of CenturyLink, January 25, 2012, page 3.

1 CenturyLink to date, Staff does not support the deregulation of basic Consumer and  
2 Business local exchange nor their classification as competitive services.

3  
4 Deregulation of the services categorized as Toll by CenturyLink, without also eliminating  
5 the corresponding Commission rules to access long distance, would have the effect of the  
6 Commission requiring the use of deregulated services in conjunction with regulated local  
7 exchange services. It is worth noting that CenturyLink even offers a service that charges  
8 customers to restrict their long distance -- C25.1, CUSTOMNET SERVICE. Such a  
9 service would not be needed if CenturyLink 1+ dialing were not integral to the PSTN. If  
10 1+ dialing were not integral to the PSTN, customers would not require any toll restriction  
11 since there would be no toll services, as with Wireless service.

12  
13 Until, CenturyLink is able to demonstrate that 1+ dialing is no longer integral or essential  
14 for local exchange customers to call those outside their local exchange areas, Staff is  
15 unable to support deregulation of the services directly dependent on 1+ dialing and  
16 categorized as Toll in the Company Witness's testimony.

17

18 **STAFF'S CONCLUSIONS AND RECOMMENDATIONS**

19 *For Competitive Classification pursuant to Rule 1108*

20 **Q. Does Staff recommend approval of CenturyLink's Application for a competitive**  
21 **classification determination for all services pursuant to Rule 1108?**

22 **A.** No. Staff does not believe the information filed by CenturyLink thus far supports  
23 approval of CenturyLink's request for competitive classification for all of its services.

24

1 **Q. Does Staff recommend any regulatory changes for CenturyLink?**

2 A. Yes. Despite not presenting information that supports a competitive classification  
3 determination as requested in its Application pursuant to Rule 1108, CenturyLink has  
4 presented considerable information regarding the Arizona telecommunications  
5 competitive environment that warrants consideration of significant regulatory changes.  
6 While the information does not support a statewide competitive classification  
7 determination pursuant to Rule 1108, CenturyLink presents information that supports its  
8 request for pricing flexibility for Consumer residential local exchange services including  
9 the ability to increase prices subject to certain conditions.

10

11 **Q. Which regulatory changes does Staff support?**

12 A. Staff believes it appropriate to classify CenturyLinks' Consumer residential local  
13 exchange services as "emerging competitive." This recognizes that while these services  
14 do not yet qualify as "competitive" under Rule 1108, they are subject to a degree of  
15 competition where pricing flexibility is warranted.

16

17 **Q. Does Staff support competitive classification pursuant to Rule 1108 for the Large  
18 Business segment?**

19 A. Yes. CenturyLink presents a compelling case for statewide competitive classification of  
20 the Large Business or Enterprise segment. However, this will require that CenturyLink  
21 separate its Business services and tariff information into those for Large Business and  
22 those for Small and Medium Business. Concurrent with this classification, the  
23 Commission should order that CenturyLink comply with the filing of individual case basis  
24 contracts ("ICBs") pursuant to A.A.C. R14-2-1115(C)3 for services to Large Business.  
25 Tariffs for the Large Business segments should also be revised to indicate that ICBs will  
26 be filed confidentially with the Utilities Division.

1 **Q. What is the Staff position regarding regulatory changes for Small and Medium**  
2 **Business?**

3 A. Staff does not recommend competitive classification pursuant to Rule 1108 for Small and  
4 Medium Business segments.

5  
6 **Q. Does Staff recommend any regulatory changes for Small and Medium Business?**

7 A. Yes. The competitive situations of the Small and Medium Business segments are  
8 sufficiently similar to the Consumer local exchange market segment that Staff  
9 recommends a similar classification as “emerging competitive” with pricing flexibility.

10  
11 *For Deregulation pursuant to A.R.S. § 40-281(E)*

12 **Q. Does Staff recommend approval of CenturyLink’s Application for deregulation for**  
13 **certain services pursuant to A.R.S. § 40-281(E)?**

14 A. No. Staff does not believe the information filed by CenturyLink supports approval of  
15 CenturyLink’s request as filed.

16  
17 **Q. Does Staff recommend any deregulatory changes for CenturyLink?**

18 A. Yes. Despite not presenting information that supports a deregulation classification  
19 determination pursuant to A.R.S. § 40-281(E) for all the services as requested in its  
20 Application, CenturyLink has presented information that warrants consideration of  
21 deregulation for a limited set of services. Staff supports deregulation for 40 tariff sections  
22 listed in Revised Attachment B of Company Witness’s testimony. The 40 tariff sections  
23 are listed in Exhibits 3 and 4.

24  
25 **Q. Does this conclude your Direct Testimony?**

26 A. Yes, it does.

**Armando Fimbres  
Major Dockets**

In the matter of Qwest Corporation's filing of Renewed Price Regulation Plan; T-01051B-03-0454

In the matter of the Application of Qwest Communications Corporation dba Qwest Long Distance for extension of its existing Certificate of Convenience and Necessity to include authority to provide Resold and Facilities-Based Local Exchange and Resold Long Distance Services in addition to its current authority to provide Facilities-Based Long Distance Services, and petition for competitive classification of proposed services within the state of Arizona; T-02811B-04-0313

In the matter of the formal complaint of Accipiter Communications, Inc. against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C., and Cox Arizona Telcom, L.L.C.; T-03471A-05-0064

In the matter of the joint Application of SBC Communications, Inc., AT&T Corp and their Arizona subsidiaries: SBC Long Distance, Inc., SBC Telecom, Inc., Snet America, Inc. dba SBC Long Distance East, AT&T Communications of the Mountain States, Inc., TCG Phoenix, TCG Payphones, Inc., ACC National Long Distance Corp. dba Vista International Communications Notice of Intent concerning the proposed merger of SBC Communications and AT&T Corp.; T-02428A-05-0149

In the matter of the Application of Verizon California Inc., Verizon Select Services Inc, OnePoint Communications - Colorado, L.L.C. dba Verizon Avenue, Bell Atlantic Communications, Inc. dba Verizon Long Distance, NYNEX Long Distance Company dba Verizon Enterprise Solutions, MCI metro Access Transmission Services, L.L.C., MCI WorldCom Network Services, Inc., TTI National, Inc., Teleconnect Long Distance Services and Systems Company dba Telecom\*USA, MCI WorldCom Communications, Inc. and Intermedia Communications, Inc. for approval of a reorganization.; T-01846B-05-0279

In the matter of the Formal Complaint against Cox Arizona Telcom, LLC filed by Qwest Corporation for breach of the parties' Interconnection Agreement.; T-01051B-06-0045

In the matter of the Application of DIECA Communications dba Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, including Approval of Qwest Wire Center Lists.; T-03632A-06-0091

In the matter of the Application of AT&T Inc. for approval of a reorganization Pursuant to A.A.C. R14-2-803 or, alternatively, for a limited waiver of the Commission's Affiliated Interest Rules.; T-02428A-06-0203

## APPENDIX 1

In the matter of the reorganization of Valley telephone Cooperative, Inc., Copper Valley Telephone, Inc., Valley Connections, LLC, and Valley Telecommunications Company, Inc.; T-01847A-07-0392

In the matter of the Application of Arizona Public Service Company and Verizon California, Inc. for approval of a joint petition for the establishment of an underground service area.; T-01846B-07-0663

In the matter of the joint Application of Verizon California, Inc., Verizon Long Distance, LLC; Verizon Enterprises Solutions, LLC, Frontier Communications Corporation, New Communications of the Southwest Inc., and New Communications Online and Long Distance, Inc. for approval of the transfer of Verizon's Local Exchange and Long Distance Business.; T-01846B-09-0274

In the matter of the joint Application of Qwest Corporation, Qwest Communications Company, LLC, Qwest LD Corp. dba Qwest Long Distance, Embarq Communications, Inc., 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. T-04190A-10-0194

In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant To 47 U.S.C. Section 160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas,; WC Docket No. 07-97

In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) In the Phoenix Metropolitan Statistical Area.; WC Docket No. 09-135

EXHIBIT 3 – Ancillary Services  
Recommended for Deregulation

C10.10.4	TRAFFIC DATA REPORTING SERVICE
C13.2	PREMISES WORK CHARGES
C13.2.1	NETWORK PREMISES WORK CHARGES
C13.3	RESIDENCE MAINTENANCE PLANS
C13.4	BUSINESS MAINTENANCE PLANS
C3.1.9	EXPRESS CHANGE CHARGES
Q4.1.1	SERVICE DATE CHANGE
Q4.1.10	MAINTENANCE OF SERVICE
Q4.1.11	ADDITIONAL ENGINEERING
Q4.1.12	ADDITIONAL LABOR
Q4.1.13	ADDITIONAL ENGINEERING AND LABOR CHARGES
Q4.1.14	ACCEPTANCE TESTING
Q4.1.15	TESTING SERVICES
Q4.1.16	TESTING CHARGES
Q4.1.17	DISPATCH CHARGE
Q4.1.2	DESIGN CHANGE
Q4.1.3	CANCELLATION OF APPLICATION FOR SERVICE
Q4.1.4	EXPEDITE
Q4.1.5	DESIGN LAYOUT REPORT
Q4.1.6	SPECIAL CONSTRUCTION
Q4.1.8	MAINTAINING FACILITIES
Q4.4	PROTECTION SERVICE FOR HIGH VOLTAGE ENVIRONMENTS
Q4.1.9	REPAIR OF FACILITIES

EXHIBIT 4 – Value Added  
Recommended For Deregulation

C10.10.1	MESSAGE DELIVERY SERVICE
C10.10.2	MESSAGE WAITING INDICATION
C25.1	CUSTOMIZED SERVICE EQUIPMENT OR SERVICE ARRANGEMENTS
C.10.10.5	CALL EVENT AND MANAGEMENT SIGNALING SERVICE (CEMSS) SUBSCRIBER
C9.4.6	NEXT CONNECTS
C10.5.2	CODE BILLING
C5.4.7	INTRACALL SERVICE
C9.4.4	UNIFORM CALL DISTRIBUTION
C9.4.5	CO-AUTO CALL DISTRIBUTION (CO-ACD)
Q3.2.2	NONRECURRING CHARGES
Q4.3.2	FACILITIES PROTECTION- SPECIAL FACILITIES ROUTING
Q4.5	COMMANDALINK-NETWORK RECONFIGURATION SERVICE
Q5.3	CUSTOM SERVICE ARRANGEMENTS
Q6.2.19	QWAVE SERVICE
Q6.2.5	AUDIO SERVICE
Q6.2.8	EXCHANGE SERVICE EXTENSIONS
Q6.2.9	TELEPHONE ANSWERING SERVICE