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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
QWEST CORPORATION D/B/A  
CENTURYLINK- QC ("CENTURYLINK") 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

**THE UNITED STATES  
DEPARTMENT OF DEFENSE  
AND ALL OTHER FEDERAL  
EXECUTIVE AGENCIES'  
NOTICE OF FILING DIRECT  
TESTIMONY**

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"), hereby files the Direct Testimony and associated Exhibits AHA-1 <sup>SSM</sup> ~~and AHA-2 (Confidential)~~ of August H. Ankum, Ph.D. on behalf of DoD/FEA. This filing is made pursuant to the January 17,

2012 Procedural Order as amended by the March 4, 2012 Procedural Order in the above-captioned proceeding.

Respectfully submitted,



Stephen S. Melnikoff

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Regulatory Law Office (JALS-RL/IP)  
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Fort Belvoir, VA 22060-5546

For  
The United States Department of Defense  
And  
All Other Federal Executive Agencies

Dated: March 15, 2012

Due: March 16, 2012

Original and thirteen (13) copies of  
the foregoing sent OVERNIGHT UPS  
this 15<sup>th</sup> day of March 2012 to:

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

Copy of the foregoing shall be sent via email and U.S. Mail on the 16<sup>th</sup> day of March 2012 to:

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By:   
Stephen S. Melnikoff

(3/15/2012)

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**GARY PIERCE**  
Chairman

**BOB STUMP**  
Commissioner

**SANDRA D. KENNEDY**  
Commissioner

**PAUL NEWMAN**  
Commissioner

**BRENDA BURNS**  
Commissioner

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**IN THE MATTER OF THE APPLICATION OF )**  
**QWEST CORPORATION D/B/A CENTURYLINK )**  
**QC ("CENTURYLINK") TO CLASSIFY AND )**  
**REGULATE RETAIL LOCAL EXCHANGE ) DOCKET NO. T-01051B-11-0378**  
**TELECOMMUNICATIONS SERVICES AS )**  
**COMPETITIVE, AND TO CLASSIFY AND )**  
**DEREGULATE CERTAIN SERVICES AS NON- )**  
**ESSENTIAL )**

---

**DIRECT TESTIMONY**

**OF**

**AUGUST H. ANKUM, Ph.D.**

**On Behalf of**

**THE U.S. DEPARTMENT OF DEFENSE**

**and**

**ALL OTHER FEDERAL EXECUTIVE AGENCIES**

**MARCH 16, 2012**

**PUBLIC VERSION**

**[There Is No Un-Redacted Version  
All Confidential Data Can Be Viewed On Pages In Exhibit AHA-2 (Confidential).]**

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**EXHIBITS**

Exhibit AHA-1: Curriculum Vitae of August Ankum, Ph.D.

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is August H. Ankum. I currently serve as Senior Vice President and Chief  
4 Economist of QSI Consulting, Inc. My business address is 1520 Spruce Street, Suite 306,  
5 Philadelphia, Pennsylvania 19102.

6 **Q. PLEASE DESCRIBE QSI CONSULTING, INC. AND ITS AREAS OF**  
7 **EXPERTISE.**

8 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulatory and litigation  
9 support in regulated network industries, with a special emphasis in the  
10 telecommunications sector. QSI's primary areas of expertise include economic and  
11 financial analysis, cost of service modeling, regulatory compliance, and public policy  
12 development. Since its inception, QSI has assisted industry stakeholders on issues  
13 affecting local competitive entry, including network interconnection, unbundled network  
14 element ("UNE") access and pricing, contract negotiation and arbitration, intercarrier  
15 compensation, alternative forms of regulation, market dominance, customer migration,  
16 service quality, and service reclassification. QSI's clients include telecommunications  
17 carriers providing services (*e.g.*, wireline local exchange carriers, cable companies and  
18 wireless carriers), customers who purchase those services and those who represent the  
19 public interest (*e.g.*, Department of Defense/Federal Executive Agencies, consumer  
20 counsels, attorneys general), and agencies that regulate carriers and services (*e.g.*,  
21 Colorado Public Utilities Commission, New Mexico Public Regulation Commission).  
22 QSI has a professional staff of nine full-time consultants, including Ph.D. economists, a  
23 Certified Public Accountant, as well as cost and regulatory analysts. QSI has more than

1 175 years of combined experience in the telecommunications industry and QSI's  
2 consultants have testified as experts in hundreds of proceedings before almost all state  
3 regulatory commissions and the Federal Communications Commission ("FCC"). I co-  
4 founded QSI in 1999.

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**  
6 **EXPERIENCE.**

7 A. I have been employed as an expert consultant in the telecommunications industry for the  
8 past 15 years. Prior to practicing as a telecommunications consultant, I worked for MCI  
9 Telecommunications Corporation ("MCI") as a senior economist. At MCI, I provided  
10 expert witness testimony and conducted economic analyses for corporate decision-  
11 making purposes. Before I joined MCI in early 1995, I worked for Teleport  
12 Communications Group, Inc. ("TCG"), as a Manager in the Regulatory and External  
13 Affairs Division. In this capacity, I testified on behalf of TCG in proceedings concerning  
14 local exchange competition issues. From 1987 until 1994, I was employed as an  
15 economist by the Public Utility Commission of Texas ("PUCT") where I worked on a  
16 variety of electric power and telecommunications issues and testified as an expert witness  
17 in litigated proceedings. During my last year at the PUCT, I held the position of Chief  
18 Economist. Prior to joining the PUCT, I taught undergraduate courses in economics as  
19 an Assistant Instructor at the University of Texas from 1984 to 1986. I received a Ph.D.  
20 in Economics from the University of Texas at Austin in 1992, an M.A. in Economics  
21 from the University of Texas at Austin in 1987, and a B.A. in Economics from Quincy  
22 College, Illinois, in 1982.

1       **Q.     ARE THERE ANY EXHIBITS TO YOUR DIRECT TESTIMONY?**

2       A.     Yes, there are two. Exhibit AHA-1 consists of my curriculum vitae, including a list of  
3       the cases in which I have testified as an expert witness. Exhibit AHA-2 (Confidential)  
4       consists of the confidential information discussed in my testimony. Rather than  
5       submitting two versions of my testimony (public and confidential), I have redacted the  
6       confidential information from this testimony and reproduced the Q&As containing  
7       confidential information in Exhibit AHA-2. There is no un-redacted version of this  
8       testimony, and all confidential information discussed in this testimony can be found in  
9       Exhibit AHA-2 (Confidential).

10      **Q.     HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE ARIZONA**  
11      **CORPORATION COMMISSION (HEREAFTER “COMMISSION”)?**

12      A.     Yes. I testified as an expert witness in the recent Qwest/CenturyLink merger proceeding  
13      (Docket No. T-01051B-10-0194, *et al.*).

14      **Q.     DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?**

15      A.     Yes. I have been involved in telecommunications since 1988. Over the course of my  
16      career, I have testified as an expert on virtually all issues pertaining to the regulation of  
17      incumbent local exchange companies (“ILECs”), including the degree of competition in  
18      ILEC service territories, market dominance and the proper classification of services. My  
19      expert testimony in the recent Qwest/CenturyLink merger proceedings in the states of  
20      Arizona, Colorado, Iowa, Minnesota, Montana, Oregon, Utah and Washington are recent  
21      examples. Other examples include: expert reports filed before the FCC regarding  
22      petitions of Qwest and Verizon for forbearance from dominant carrier regulations (WC

1 Docket Nos. 07-97, 06-172, 08-24, *et al.*); expert testimony in Illinois regarding effective  
2 competition and reclassification of services in AT&T-Illinois' service territory (Docket  
3 Nos. 94-0146, 95-0315); expert testimony in Texas regarding market dominance (Docket  
4 Nos. 7790 and 31831); expert testimony in Maine regarding the rural exemption under  
5 §251(f)(1) of the Telecommunications Act (Docket Nos. 2007-611, *et al.*); expert  
6 testimony in numerous states related to the FCC's Triennial Review proceedings  
7 (Maryland Case No. 8988, Massachusetts Case D.T.E. 03-60, New Jersey Docket No.  
8 TO03090705, Rhode Island Docket Nos. 3550/2861); and expert testimony in Wisconsin  
9 regarding standards for effective competition (Cause No. 05-TI-138).

10 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

11 A. I am appearing on behalf of the consumer interests of the U.S. Department of Defense  
12 ("DoD") and all other Federal Executive Agencies ("FEA") in Arizona.

13 **Q. WHY HAS DoD/FEA INTERVENED IN THIS CASE?**

14 A. The Department of Defense and other Federal Executive Agencies have a substantial  
15 presence in the State of Arizona. Several major military installations are located in  
16 Arizona, including Fort Huachuca, Davis-Monthan Air Force Base, Yuma Proving  
17 Ground and Luke Air Force Base. In addition, there are major facilities such as the  
18 Department of Veteran Affairs Medical Centers in Phoenix and Tucson, and Federal  
19 Buildings and Courthouses in Phoenix and Tucson. There are also numerous and  
20 widespread small-business sized offices in the CenturyLink Arizona service territory,  
21 such as Armed Forces recruiters, Social Security offices, and offices housing Fish and  
22 Wildlife Service, National Parks, USDA Forest Service and Farm Service/Agricultural

1 employees and agents. Federal employment (Civilian and Active Duty Military) in  
2 Arizona exceeds 60,000 persons.

3 In the aggregate, the DoD/FEA is one of the largest users of telecommunications services  
4 in Arizona; it also obtains a broad variety of services. Individual customer locations  
5 cover a wide range of sizes, employing the full panoply of telecommunications services  
6 from single-line business service to complex, multi-location and specially designed  
7 networks. As such, it is important to DoD/FEA that services in Arizona are provided  
8 competitively, in an efficient manner, at reasonable cost, and with the highest service  
9 quality and performance. In view of this, DoD/FEA is concerned that a change in the  
10 regulatory framework concerning CenturyLink's retail services could directly and  
11 adversely impact the consumer interests of DoD/FEA.

12 A majority of DoD/FEA telecommunications services are procured under contract  
13 through competitive bidding. As part of that competitive bidding process, the DoD/FEA  
14 relies heavily on the availability of retail tariffs in order to evaluate the attractiveness of  
15 the bids it receives and the expected costs of telecommunications services, as well as a  
16 price-constraining safety net. Therefore, the effectiveness of the competitive  
17 procurement process is dependent not only upon there being a number of financially  
18 strong and technically capable entities that can submit bids but, in the absence of such  
19 competitors, on the presence of tariffed rates, terms and conditions.

20 As one of the state's largest and most diverse users of telecommunications services,  
21 DoD/FEA is uniquely positioned to speak to the merit of CenturyLink's application.

1 **II. PURPOSE AND SUMMARY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. I will respond to CenturyLink's Application seeking Commission approval to reclassify  
4 certain retail telecommunications services as competitive and to deregulate certain retail  
5 telecommunications services as non-essential,<sup>1</sup> and also respond to the testimony of Mr.  
6 Robert Brigham filed in support of CenturyLink's Application.<sup>2</sup>

7 **Q. BRIEFLY DESCRIBE CENTURYLINK'S APPLICATION.**

8 A. On October 13, 2011, CenturyLink filed a petition with the Commission seeking:

- 9 • a determination pursuant to A.C.C. R14-2-1108 that all Commission-  
10 regulated retail local exchange services CenturyLink provides are  
11 competitive telecommunications services, and  
12 • a determination pursuant to A.R.S. §40-281(E) that services in Baskets 2  
13 and 3 of the current revised Price Cap Plan be deregulated.<sup>3</sup>

14 CenturyLink asserts that the state of competition in Arizona is such that the time is right  
15 to adopt regulatory parity for all telecommunications providers in the CenturyLink  
16 service area.<sup>4</sup> CenturyLink claims that regulatory parity benefits Arizona consumers by  
17 reducing unneeded regulatory burdens and allowing CenturyLink to better respond to  
18 competitive market conditions.<sup>5</sup>

19 **Q. PLEASE SUMMARIZE YOUR FINDINGS AND CONCLUSIONS.**

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<sup>1</sup> Application of Qwest Corporation d/b/a CenturyLink-QC ("CenturyLink") 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, October 13, 2011 (hereafter "Application").

<sup>2</sup> Direct Testimony of Robert Brigham on behalf of CenturyLink, Docket No. T-01051B-11-0378, January 25, 2012 (hereafter "Brigham Direct").

<sup>3</sup> Application, pp. 1, 4. The basket structure of the revised Price Cap Plan is discussed below.

<sup>4</sup> Application, ¶ 2. See also, Brigham Direct, p. 8, lines 11-13.

<sup>5</sup> Application, ¶ 6.

1 A. CenturyLink's Application represents a sea change in regulation of telecommunications  
2 services in Arizona. In a nutshell, CenturyLink seeks reclassification of 31 services as  
3 competitive and deregulation of 158 services in four separate retail tariffs; in essence, this  
4 application impacts all of its retail services.

5 My overarching conclusion is that CenturyLink's application and supporting testimony is  
6 insufficient and should be denied as filed. Specifically, the analysis and information  
7 submitted by CenturyLink in relation to its Application is glaringly devoid of the  
8 requisite analytical rigor and economic underpinnings for the Commission to approve  
9 CenturyLink's request. Before the Commission approves such a request, it must ensure  
10 that CenturyLink faces *effective* competition for the specific services subject to the  
11 Application – or in other words, CenturyLink's market power is constrained by  
12 functionally equivalent, price-constraining substitutes. CenturyLink lumps all retail  
13 services together and attempts to reclassify or deregulate them in one fell swoop for its  
14 entire serving territory in Arizona as if competitive alternatives were uniformly and  
15 ubiquitously present across all of Arizona. Obviously this is incorrect, and as will be  
16 shown below, it is specifically misguided with respect to DoD/GSA's<sup>6</sup> services in  
17 Arizona. In fact, as will be demonstrated, CenturyLink has failed to properly define the  
18 geographic and product dimensions of markets in Arizona, and as a result greatly  
19 overstates the degree to which competitive alternatives curtail its market power. While it  
20 may be appealing on the surface to rely on the proliferation of newer technologies such as  
21 wireless devices and Voice over Internet Protocol ("VoIP") as indicia of a competitive

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<sup>6</sup> The General Services Administration ("GSA") in most instances arranges for the procurement of telecommunications services for most non-military federal government users in Arizona. Because of that, the term DoD/GSA is used interchangeably with the term DoD/FEA in this testimony.

1 telecommunications market, these trends must be analyzed in more detail and with more  
2 rigor than what CenturyLink provides to determine whether and where they are providing  
3 market disciplining effects. By analogy, CenturyLink's application is like pointing to a  
4 river that is on average one foot deep and ignoring that this in no way precludes  
5 hazardous portions that can drown man and horse.

6 Less than two years ago, the FCC rejected Qwest's claim that "Qwest is subject to  
7 effective competition in the Phoenix MSA" – a Metropolitan Statistical Area that covers  
8 almost half (48%) of the Qwest/CenturyLink's wire centers in Arizona, and is arguably  
9 the most competitive geographic areas in the State. Since that time, Qwest has merged  
10 with another large incumbent LEC (CenturyTel/Embarq), a merger which, according to  
11 CenturyLink's statements before the Arizona Commission, will allow the merged entity  
12 to take advantage of increased economies of scale and scope<sup>7</sup> as well as "create a stronger  
13 competitor" that is "better situated, both financially and operationally"<sup>8</sup> to compete in the  
14 telecommunications market. In other words, it is likely that CenturyLink's market power  
15 has *increased* since the time the FCC found a lack of effective competition in Arizona.  
16 And since CenturyLink will not complete the process of integrating Qwest's and  
17 CenturyLink's operations for a number of years,<sup>9</sup> the actual impacts on market power and  
18 competition stemming from the merger may not be evident for quite some time. This is a  
19 factor not addressed by CenturyLink in its Application or testimony, and which could

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<sup>7</sup> Direct Testimony of James Campbell, ACC Docket No. T-01051B-10-0194, *et al.*, May 24, 2010, p. 13.

<sup>8</sup> Direct Testimony of Kristen McMillan on behalf of CenturyLink, ACC Docket No. T-01051B-10-0194, *et al.*, May 24, 2010, p. 10, lines 19-22.

<sup>9</sup> CenturyLink projected a three-to-five year time period for post-merger integration activities. See, *e.g.*, Direct Testimony of Jeff Glover, Docket No. T-01051B-10-0194, *et al.*, May 24, 2010, p. 6, lines 5-6. Since the merger closed on April 1, 2011, the merged entity will be conducting post-merger integration activities for approximately two to four more years.

1 have a significant impact on CenturyLink's market power and barriers to entry in  
2 Arizona.

3 I recommend that the Commission deny CenturyLink's Application unless and until  
4 CenturyLink rectifies the methodological and analytical flaws in its analysis, and  
5 provides information showing the presence of effective, price-constraining competition in  
6 Arizona for the particular services at issue. Until such a showing is made by  
7 CenturyLink and accepted by the Commission, the current regulatory regime applicable  
8 to CenturyLink's retail services should remain in place.<sup>10</sup>

9 **III. OVERVIEW OF CENTURYLINK'S APPLICATION**

10 **Q. YOU MENTION ABOVE "BASKETS" OF SERVICES THAT WERE**  
11 **ESTABLISHED IN THE REVISED PRICE CAP PLAN IN ARIZONA. PLEASE**  
12 **DESCRIBE THE SERVICE BASKETS.**

13 A. CenturyLink's revised Price Cap Plan was established in the Commission's March 23,  
14 2006 Opinion and Order in Docket No. T-01051B-03-0454 (Decision No. 68604), which  
15 adopted a Settlement Agreement setting out the structure and terms of the revised Price  
16 Cap Plan.<sup>11</sup> The revised Price Cap Plan grouped certain services into "baskets," which  
17 then determines whether and to what extent CenturyLink is permitted to raise rates for

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<sup>10</sup> See, footnote 11.

<sup>11</sup> The Settlement Agreement adopted in Decision No. 68604 was executed by Arizona Staff, Qwest, Department of Defense, MCI, Time Warner Telecom, Arizona Utilities Investors Association, XO Communications Services, and Cox Telecom of Arizona, some of whom are parties in the instant proceeding. The Commission established the present revised Price Cap Plan having a term of three years, and continuing until the Commission approves a renewed or revised plan, or until the Commission terminates the Settlement Plan. Decision No. 68604, Section 17, p. 10.

1 services. There are three baskets containing retail services and one basket containing  
2 wholesale services:

- 3     ▪ Basket 1: contains **Hard-Capped Retail Services** whose prices are capped at  
4 levels existing at the time of the Commission's Decision No. 68604 (March  
5 23, 2006) and may not be increased for the duration of the renewed price cap  
6 plan.
- 7     ▪ Basket 2: contains **Limited Pricing Flexibility Retail Services** whose  
8 individual prices shall not be increased by more than 25% in any 12 month  
9 period, and whose prices on the aggregate shall not be increased such that the  
10 overall basket revenue change exceeds the allowable revenue increase. The  
11 maximum revenue level for purposes of increased prices in Basket 2 was  
12 established at \$13.8 million for the duration of the renewed price cap plan.
- 13     ▪ Basket 3: contains **Flexibly-Priced Competitive Services** whose prices on  
14 the aggregate may be increased to yield at most an additional revenue of \$30  
15 million plus the remainder of the \$13.8 million not used for Basket 2 for the  
16 duration of the renewed price cap plan.
- 17     ▪ Basket 4: contains **Wholesale Services** whose prices are capped at tariffed or  
18 contract price levels for the term of the Settlement Plan adopted in Decision  
19 No. 68604 or until contracts are re-negotiated or the FCC or Commission or  
20 courts determine that other prices are appropriate.

21 CenturyLink's Application affects all retail services in Baskets 1, 2 and 3, but does not  
22 affect the wholesale services in Basket 4.<sup>12</sup>

23 **Q. PLEASE IDENTIFY THE SERVICES FOR WHICH CENTURYLINK IS**  
24 **SEEKING RECLASSIFICATION AS COMPETITIVE.**

25 A. The services for which CenturyLink seeks competitive reclassification are listed in  
26 Exhibit RHB-10 to Mr. Brigham's direct testimony.<sup>13</sup> This list includes 31 individual  
27 services. All but 5 of these services are Hard-Capped Retail Services in Basket 1, which  
28 currently reside in the *Exchange and Network Services Price Cap Tariff*. Of the

<sup>12</sup> Brigham Direct, p. 73, lines 3-9, indicating that CenturyLink is not seeking deregulation or competitive classification for services listed in Basket 4.

<sup>13</sup> Exhibit RHB-10 modifies the list of services originally provided as Attachment A to CenturyLink's Application.

1 remaining five services, three services (Flat Rate (PBX) Trunks, Touchtone Calling, and  
2 Intercept Services) are Limited Pricing Flexibility Retail Services in Basket 2 and two  
3 services (Switched Transport and Switched Access Services Virtual EI (Expanded  
4 Interconnection)) are Flexibly-Priced Competitive Services in Basket 3.<sup>14</sup>

5 **Q. WHAT INFORMATION MUST CENTURYLINK PROVIDE IN CONJUNCTION**  
6 **WITH ITS REQUEST TO RECLASSIFY THESE 31 SERVICES AS**  
7 **COMPETITIVE?**

8 A. CenturyLink is requesting reclassification of these services as competitive under A.C.C.  
9 R14-2-1108. A.C.C. R14-2-1108(B) requires a telecommunications carrier seeking to  
10 reclassify services as competitive to provide, at a minimum, six categories of  
11 information:

- 12 B. The petition for competitive classification shall set forth the  
13 conditions within the relevant market that demonstrate that the  
14 telecommunications service is competitive, providing, at a  
15 minimum, the following information:
- 16 1. A description of the general economic conditions that exist  
17 which make the relevant market for the service one that is  
18 competitive;
  - 19 2. The number of alternative providers of the service;
  - 20 3. The estimated market share held by each alternative  
21 provider of the service;
  - 22 4. The names and addresses of any alternative providers of the  
23 service that are also affiliates of the telecommunications  
24 company, as defined in R14-2-801;
  - 25 5. The ability of alternative providers to make functionally  
26 equivalent or substitute services readily available at  
27 competitive rates, terms, and conditions; and
  - 28 6. Other indicators of market power, which may include  
29 growth and shifts in market share, ease of entry and exit,

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<sup>14</sup> CenturyLink response to Staff data requests STF 3.2, STF 3.3, and STF 3.4. See also, Exhibit RHB-10.

1 and any affiliation between and among alternative  
2 providers of the services.

3 In addition, A.C.C. R14-2-1108(D) states that the telecommunications carrier(s) seeking  
4 reclassification of services as competitive bears the burden of proof:

5 D. In any competitive classification proceeding, the  
6 telecommunications company filing the petition, and any  
7 telecommunications company supporting the petition, shall have  
8 the burden of demonstrating that the service at issue is competitive.  
9 Classification of the petitioners' service as competitive does not  
10 constitute classification of any service provided by another  
11 telecommunications company as competitive, unless expressly  
12 ordered by the Commission.

13 **Q. PLEASE IDENTIFY THE SERVICES FOR WHICH CENTURYLINK IS**  
14 **SEEKING DEREGULATION.**

15 A. The services for which CenturyLink seeks deregulation are listed in Exhibit RHB-11 to  
16 Mr. Brigham's direct testimony.<sup>15</sup> This list includes 158 individual services, of which 35  
17 are Limited Pricing Flexibility Retail Services in Basket 2 and the remaining 123 are  
18 Flexibly-Priced Competitive Services in Basket 3. In short, CenturyLink is seeking  
19 deregulation of all services in the *Competitive Exchange and Network Services Tariff*,  
20 *Competitive Private Line Transport Services Tariff*, and *Competitive Advanced*  
21 *Communications Services Tariff*, with the exception of the five Basket 2 and Basket 3  
22 services for which competitive reclassification is requested.<sup>16</sup>

23 **Q. ON WHAT BASIS DOES CENTURYLINK SEEK DEREGULATION OF THESE**  
24 **158 SERVICES?**

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<sup>15</sup> Exhibit RHB-11 modifies the list of services originally provided as Attachment B to CenturyLink's Application.

<sup>16</sup> CenturyLink response to Staff data requests STF 3.3 and 3.4.

1 A. CenturyLink is requesting deregulation of these services pursuant to A.R.S. §40-281(E),  
2 which states:

3 E. When the commission determines after notice and hearing that any  
4 product or service of a telecommunications corporation is neither  
5 essential nor integral to the public service rendered by such  
6 corporation, it shall declare that such product or service is not  
7 subject to regulation by the commission.

8 CenturyLink also indicates that the legal basis for deregulating telecommunications  
9 services in Arizona is Article 15, §2 of the Arizona Constitution and the judicial  
10 decisions interpreting it. Section 2 of Article 15 is the definition of “Public Service  
11 Corporations” which states:

12 **All corporations other than municipal engaged** in furnishing gas, oil, or  
13 electricity for light, fuel, or power; or in furnishing water for irrigation,  
14 fire protection, or other public purposes; or in furnishing, for profit, hot or  
15 cold air or steam for heating or cooling purposes; or engaged in collecting,  
16 transporting, treating, purifying and disposing of sewage through a system,  
17 for profit; or **in transmitting messages or furnishing public telegraph**  
18 **or telephone service, and all corporations other than municipal,**  
19 **operating as common carriers, shall be deemed public service**  
20 **corporations.** (emphasis added)

21 CenturyLink and Mr. Brigham conclude without a stated reasonable basis that the A.R.S.  
22 §40-281(E), Article 15 § 2 of the Arizona Constitution, and judicial decisions lead to the  
23 following four criteria for deregulating retail services:

- 24 1. Whether the service constitutes “transmitting messages or furnishing  
25 public telegraph or telephone service” under Article 15, §2;
- 26 2. Whether the service is presently an essential and integral part of  
27 “transmitting public telegraph or telephone service”;
- 28 3. Whether the service is clothed with a public interest, such as to make  
29 the rates, charges, and methods of provision a matter of public  
30 concern; and
- 31 4. Whether the service is a common carriage operation.

1 Mr. Brigham calls these the “four deregulation criteria.”<sup>17</sup> According to CenturyLink,  
2 “[a]ll four questions must be answered in the affirmative for the Commission to have the  
3 authority to regulate a service.”<sup>18</sup> Mr. Brigham without a stated basis reaches a similar  
4 conclusion but modifies the mandatory language of the Application from “must” to  
5 “should.”<sup>19</sup>

6 **Q. IS CENTURYLINK’S REQUEST FOR RECLASSIFICATION AND**  
7 **DEREGULATION LIMITED TO JUST THE RATES FOR RETAIL SERVICES?**

8 A. No. CenturyLink’s Application applies not only to rates but also to the terms and  
9 conditions by which CenturyLink makes these services available to retail customers.  
10 This would include terms and conditions related to indemnification and liability,<sup>20</sup> refusal  
11 and discontinuance of service,<sup>21</sup> ordering and payment,<sup>22</sup> damages,<sup>23</sup> and many others. In  
12 effect, approving CenturyLink’s Application would result in CenturyLink withdrawing  
13 three of its retail tariffs: *Competitive Exchange and Network Services Tariff*, *Competitive*  
14 *Private Line Transport Services Tariff*, and *Competitive Advanced Communications*  
15 *Services Tariff*. These tariffs would no longer exist and CenturyLink would be in  
16 complete control (*i.e.*, no Commission oversight) over the rates, terms and conditions

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<sup>17</sup> Brigham Direct, p. 62 and Application, p. 9, ¶ 16.

<sup>18</sup> Application, p. 9, ¶ 16. (emphasis added)

<sup>19</sup> Brigham Direct, p. 63, lines 9-10 (“I agree with the statement in the Application that all of the criteria should be answered in the affirmative before rate regulation *should* apply.”) (emphasis added, italics in original)

<sup>20</sup> Competitive Private Line Transport Services, Section 2.1.3; Competitive Advanced Communications Services, Section 2.1.3.

<sup>21</sup> Competitive Private Line Transport Services, Section 2.1.7; Competitive Advanced Communications Services, Section 2.1.7.

<sup>22</sup> Competitive Private Line Transport Services, Section 2.3.1; Competitive Advanced Communications Services, Section 2.3.1.

<sup>23</sup> Competitive Private Line Transport Services, Section 2.3.8; Competitive Advanced Communications Services, Section 2.3.8.

1 governing these services – and whether the services are provided at all. The remaining  
2 retail tariff, the *Exchange and Network Services Price Cap Tariff*, would be classified as  
3 competitive under CenturyLink’s Application, thereby allowing CenturyLink to make  
4 changes to the rates, terms and conditions with less Commission oversight.

5 **IV. CENTURYLINK HAS NOT SHOWN THAT ITS PROPOSALS WILL NOT**  
6 **NEGATIVELY AFFECT THE RESULTS OF DoD/GSA’S**  
7 **TELECOMMUNICATIONS SERVICES PURCHASES**

8 **Q. WHAT TYPES OF TELECOMMUNICATIONS SERVICES DOES DoD/GSA**  
9 **PURCHASE IN ARIZONA?**

10 A. The DoD/GSA represents a wide range of entities of different sizes purchasing a large  
11 variety of telecommunications services in Arizona. For example, numerous military  
12 bases in Arizona fall under the DoD, such as the U.S. Army’s Yuma Proving Ground  
13 (one of the largest military installations in the world), Fort Huachuca Army Base, Davis-  
14 Monthan Air Force Base, and Luke Air Force Base. These military bases typically  
15 purchase Integrated Services Digital Network Primary Rate Interface (“ISDN-PRI”)  
16 service, commercial subscriber line service and associated optional features, foreign  
17 exchange lines, exchange access trunks, transport services, data point-to-point circuits,  
18 Direct-Inward-Dial numbers (“DIDs”), and others. The particular services and amounts  
19 vary based on the official communications needs of each military installation. Without  
20 the important national security mission involved, these military installations might look  
21 much like large business/enterprise customers in terms of the telecommunications  
22 services they purchase. DoD also provides telecommunications procurement for many  
23 military recruiting offices (as well as other military entities) throughout Arizona, which

1 are often store-front offices in strip mall locations. These offices typically purchase a  
2 few local subscriber lines, much like small business customers. The GSA also generally  
3 procures telecommunications services for federal government customers, such as the  
4 Department of Veteran Affairs Medical Centers in Phoenix and Tucson, Federal  
5 Buildings and Courthouses in Phoenix and Tucson, Social Security offices, and offices  
6 housing Fish and Wildlife Service, National Parks, USDA Forest Service and Farm  
7 Service/Agricultural employees and agents. These entities buy a large variety of services  
8 and, depending on their size and needs, may operate under small contracts or large  
9 contracts, with possibly hundreds of access lines and associated features and services.  
10 These federal government customers generally might be viewed as akin to medium to  
11 large sized business customers in terms of their telecommunications' needs.

12 **Q. PLEASE EXPLAIN HOW THE DoD/GSA PROCURES LOCAL SERVICES IN**  
13 **ARIZONA?**

14 A. For the most part, DoD/GSA customers procure local services for official  
15 communications consistent with a federal requirement that contracts be awarded as a  
16 result of an open and, to the largest extent possible, competitive bidding process. This  
17 process is generally consistent with the procurement of telecommunications services by  
18 non-governmental entities in that it starts with a detailing of technical specifications  
19 based on specific telecommunications needs. The specifications are released to the  
20 public to attract the maximum possible number of qualified bids from  
21 telecommunications vendors. To facilitate the bidding and to draw in as many possible  
22 bidders, the issuing entities may often hold pre-bidding conferences to answer questions  
23 and further explain the technical specifications of a contract. Once bid proposals are

1 received and the window for responses closes, the bids are evaluated on a number of  
2 criteria, including price, reliability, technical qualifications, past performance, etc. As  
3 will be discussed below, while the process is structured to elicit the maximum number of  
4 competitive responses, most of the time in Arizona, the responding companies are few  
5 and not infrequently the sole bid proposal is from the incumbent. This is often a function  
6 of the incumbent having the necessary local facilities in place to meet the technical  
7 specifications, which is more difficult for alternative providers who may need to build  
8 from scratch or lease facilities.

9 **Q. DOES CENTURYLINK'S APPLICATION AFFECT THE TYPES OF SERVICES**  
10 **USED BY THE DoD/GSA IN ARIZONA?**

11 A. Yes. Some of the primary services used by the military installations discussed above  
12 include ISDN-PRIs, basic business lines and associated vertical features. These are all  
13 services for which CenturyLink is seeking either deregulation or reclassification.

14 **Q. PLEASE EXPLAIN HOW THE DoD/GSA WOULD BE AFFECTED IF**  
15 **CENTURYLINK'S APPLICATION IS APPROVED.**

16 A. While, as described previously, the bidding process is structured to elicit competitive  
17 responses, DoD/GSA customers in Arizona remain critically dependent on CenturyLink's  
18 local offerings and network. Indeed, there is little actual competition for the federal  
19 telecommunications services contracts covering local services, and the level of  
20 competition has decreased in recent years. Qwest/CenturyLink is the vendor for local  
21 services for both major Army installations in Arizona, Qwest/CenturyLink holds three of  
22 the five local service contracts covering Air Force installations in Arizona, and is one of

1           only two awardees<sup>24</sup> for the GSA overarching contract for local services in Arizona. For  
2           some of these contracts, Qwest/CenturyLink was the only bidder and none of these  
3           contracts had more than two vendors submit a bid.<sup>25</sup> This means that in the absence of  
4           intense competition (and a multitude of qualified competitive bids), the “hard cap” of  
5           CenturyLink’s tariff offerings, which would be significantly eliminated if the  
6           CenturyLink Application is approved, serves as an essential backstop, an ultimate  
7           protection against unreasonable bids and price increases. But CenturyLink’s tariffs play  
8           another important role: DoD/GSA’s contracting officers rely on CenturyLink’s existing  
9           tariffs to *evaluate* the merit of new bids by CenturyLink for new contracts or contract  
10          renewals. That is, in the absence of true competition (and a multitude of qualified  
11          competitive bids), tariffs are essential in setting benchmarks for reasonableness, not just  
12          in terms of price but also terms, conditions and quality.

13       **Q.    THE DoD/FEA REACHED A SETTLEMENT AGREEMENT WITH**  
14       **CENTURYLINK IN CONJUNCTION WITH THE QWEST/CENTURYLINK**  
15       **MERGER. DOES THAT SETTLEMENT AGREEMENT PROTECT THE**  
16       **DoD/FEA FROM THE POTENTIAL HARMS OF PREMATURELY**  
17       **APPROVING CENTURYLINK’S APPLICATION?**

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<sup>24</sup> These two awardees do not actually compete for all non-military contracts in Arizona.

<sup>25</sup> CenturyLink’s recent response to data request DoD/FEA-CTL II.1 identifies “COX” as a competitor for the local services contract for Luke Air Force Base and “Time Warner” as a competitor for the local services contract for Davis-Monthan Air Force Base. It is my understanding that these carriers either did not submit bids or did not submit timely bids for these contracts. Bid proposals that are submitted after the posted deadline are not accepted or considered.

1 A. No. The merger Settlement Agreement between CenturyLink and DoD/FEA (adopted by  
2 the Commission<sup>26</sup>) conditionally places a cap on certain services for a period of three  
3 years<sup>27</sup> in Arizona. Those services are: retail Business Lines with or without Qwest  
4 Packages (single or multi-line), Centrex, Qwest Utility Line™, and PBX trunks. This  
5 Settlement Agreement covers a limited amount of services for a limited time (with  
6 approximately two years remaining on the three-year term). Although it is my  
7 understanding that the Settlement Agreement is not impacted by CenturyLink's  
8 Application, the Settlement Agreement does not provide the same level of protection and  
9 assurances to DoD/FEA that are provided by the Commission's current regulatory  
10 oversight or would be provided by actual price-constraining competition.

11 **Q. IF DoD/GSA PURCHASES TELECOMMUNICATIONS SERVICES FROM A**  
12 **CONTRACT, AREN'T THEY INSULATED FROM THE IMPACT OF**  
13 **APPROVING CENTURYLINK'S APPLICATION?**

14 A. No; they would be protected only in a truly competitive market, but telecommunications  
15 markets in Arizona are not ubiquitously competitive. As discussed, often DoD/GSA  
16 customers receive only one or two responses to their requests for proposals, leaving them  
17 without the protection of competitive markets and not infrequently at the mercy of the  
18 incumbent, CenturyLink.

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<sup>26</sup> Decision No. 72232 (March 9, 2011), p. 57, approving the merger between Qwest and CenturyLink subject to various settlement agreements, including a settlement agreement between Qwest/CenturyLink and DoD/FEA.

<sup>27</sup> The three year term can be extended based on the mutual consent of both parties, but may be cancelled after the three-year term on 60 days notice.

1 **V. CENTURYLINK'S SHOWING IS FATALLY FLAWED AND INCOMPLETE,**  
2 **FAILING TO DEMONSTRATE THAT IT LACKS MARKET POWER; ITS**  
3 **COMPETITIVE RECLASSIFICATION REQUEST SHOULD BE DENIED**

4 **Q. HAVE YOU REVIEWED CENTURYLINK'S APPLICATION AND MR.**  
5 **BRIGHAM'S TESTIMONY AND EXHIBITS?**

6 A. Yes.

7 **Q. DO YOU HAVE ANY CONCERNS ABOUT CENTURYLINK'S APPLICATION?**

8 A. Yes. CenturyLink has not provided information sufficient for the Commission to either  
9 reclassify the services listed in Exhibit RHB-10 as competitive or to deregulate the  
10 services listed in Exhibit RHB-11. I will address the request to reclassify services as  
11 competitive in this section of my testimony, and will address the request for deregulation  
12 in Section VI below.

13 **Q. PLEASE ELABORATE ON YOUR CONCERNS ABOUT CENTURYLINK'S**  
14 **REQUEST TO RECLASSIFY CERTAIN SERVICES AS COMPETITIVE.**

15 A. Before the Commission can approve CenturyLink's request to reclassify services in  
16 Exhibit RHB-10 as competitive, it must conclude that CenturyLink's market power is  
17 constrained by effective, price-constraining competition in the "relevant market." If the  
18 Application is approved before the presence of effective competition is established,  
19 CenturyLink will have the ability to exert market power and raise the prices for the  
20 reclassified services to supracompetitive levels.<sup>28</sup> Such an outcome would harm Arizona

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<sup>28</sup> I refer to "supracompetitive" rate levels to mean prices that exceed those which would be established and sustained by market forces in an effective competitive market.

1 consumers by forcing them to pay more for telecommunications services and without the  
2 ability to switch to an alternative service provider to avoid the higher prices.

3 **Q. WHAT IS MARKET POWER?**

4 A. For the purposes of my testimony, I will refer to market power as the ability of a firm to  
5 raise prices, reduce output, diminish innovation, or otherwise harm consumers as a result  
6 of the lack of competitive constraints or incentives.<sup>29</sup> A firm possessing market power  
7 can unilaterally raise and sustain prices profitably above a competitive level.

8 **Q. SHOULD MARKET POWER BE ANALYZED IN EVALUATING**  
9 **CENTURYLINK'S REQUEST TO RECLASSIFY SERVICES AS**  
10 **COMPETITIVE?**

11 A. Yes. Market power is a key component of the criteria for reclassifying services under  
12 Rule 1108.B.6, and Mr. Brigham recognizes the importance of constraints on  
13 CenturyLink's market power repeatedly throughout his testimony.<sup>30</sup>

14 **Q. HOW HAS MARKET POWER IN TELECOMMUNICATIONS MARKETS BEEN**  
15 **ANALYZED IN THE PAST?**

16 A. Market power has been analyzed by the Federal Trade Commission ("FTC") and  
17 Department of Justice ("DoJ") as well as the FCC in the past by using a market power  
18 analysis. A traditional market power analysis is conducted by first establishing *product*  
19 and *geographic* markets, and then evaluating the competitive alternatives available in  
20 those markets to which consumers would be willing and able to switch in response to a

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<sup>29</sup> See, e.g., United States Department of Justice, *Horizontal Merger Guidelines* (2010), p. 2.

<sup>30</sup> Brigham Direct, p. 5, lines 14-15; p. 7, lines 9-11; p. 11, lines 23-25; p. 20, line 18; p. 21, line 22 – p. 22, line 1; p. 24, line 6; p. 53, lines 18-20; p. 53, lines 18-23; and p. 59, lines 18-19.

1 price increase. This is the analytical framework that the FTC/DoJ has used consistently  
2 for evaluating impacts on market power stemming from mergers and acquisitions  
3 involving actual or potential competitors under the federal antitrust laws.<sup>31</sup> The FCC has  
4 also used this framework for various purposes, including applications to transfer control  
5 of licenses and for petitions for forbearance from dominant carrier regulations.<sup>32</sup> The  
6 FCC explained the purpose of the market power analysis as follows: "...the  
7 Commission's market power analysis was designed to identify when competition is  
8 sufficient to constrain carriers from imposing unjust, unreasonable, or unjustly or  
9 unreasonably discriminatory rates, terms, and conditions, or from acting in an  
10 anticompetitive manner."<sup>33</sup>

11 **A. Defining the Relevant Market**

12 **Q. WHAT DO ARIZONA REGULATIONS SAY ABOUT DEFINING THE**  
13 **"RELEVANT MARKET"?**

14 A. Rule 1108 states that a telecommunications company petitioning the Commission to  
15 reclassify services as competitive must "set forth the conditions within the *relevant*  
16 *market* that demonstrates that the telecommunications service is competitive." (emphasis  
17 added). The term "relevant market" is defined in Arizona regulations as follows:

18 Where buyers and sellers of a specific service or product, or a group of  
19 services or products, come together to engage in transactions. For

<sup>31</sup> *Horizontal Merger Guidelines* (2010), §1.

<sup>32</sup> *In the Matter of Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporation); (Transferors) and EchoStar Communications Corporation (a Delaware Corporation); (Transferee);* CS Docket No. 01-38, 17 FCC Rcd 20559; FCC 02-284, October 18, 2002 ("EchoStar Order"). See also, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, FCC 10-113, June 22, 2010 ("FCC Phoenix Forbearance Order").

<sup>33</sup> FCC Phoenix Forbearance Order, ¶ 37.

1 telecommunications services, the relevant market may be identified on a  
2 service-by-service basis, a group basis, and/or by geographic location.<sup>34</sup>

3 **Q. HOW SHOULD “RELEVANT MARKET” BE DEFINED IN THIS**  
4 **PROCEEDING?**

5 A. The relevant market should be defined for these purposes as it has been defined for  
6 traditional market power analyses – in terms of both a product market and geographic  
7 market.<sup>35</sup> This is the best way to evaluate whether and to what extent alternative  
8 providers and products are reasonably available to consumers. The FTC/DoJ *Horizontal*  
9 *Merger Guidelines* explain that product *and* geographic market definitions are used to  
10 identify market participants and measure market shares/concentration<sup>36</sup> - both of which  
11 are relevant to evaluating market power.

12 **Q. WHAT IS A PRODUCT MARKET, AS THAT TERM IS USED IN A**  
13 **TRADITIONAL MARKET POWER ANALYSIS?**

14 A. The product market has been defined as a group of competing products for which a  
15 hypothetical monopoly provider of the products would profitably impose at least a small  
16 but significant and nontransitory increase in price.<sup>37</sup> When defining the product market,  
17 the focus is on a consumer’s ability and willingness to substitute away from one product  
18 to another in response to a price increase.<sup>38</sup> As such, the product markets defined in the

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<sup>34</sup> A.A.C. R14-2-1102(12).

<sup>35</sup> *Horizontal Merger Guidelines* (2010), § 4 (“Although discussed separately for simplicity of exposition, the principles described in Sections 4.1 and 4.2 are combined to define a relevant market, which has both a product and a geographic dimension.”) See also, FCC Phoenix Forbearance Order, ¶ 42 (“our market power analysis begins by defining the relevant product and geographic markets and by identifying the market participants.”)

<sup>36</sup> *Horizontal Merger Guidelines* (2010), §4. “Market participants” is defined in the HMG to include “[a]ll firms that currently earn revenues in the relevant market.” (§5.1)

<sup>37</sup> FCC Phoenix Forbearance Order, footnote 141, citing *Horizontal Merger Guidelines*, §§ 1.11, 1.12.

<sup>38</sup> *Horizontal Merger Guidelines* (2010), §4.

1 telecommunications industry typically recognize distinctions between various customer  
2 categories – e.g., mass market, small/medium business and large business/enterprise –  
3 because those customers purchase different types of telecommunications services. In  
4 simple terms, if a consumer is able and willing to substitute away from product X to  
5 product Y in response to a price increase for product X, then products X and Y should  
6 likely be included in the same product market. And if a consumer is *not* able and willing  
7 to substitute away from product X to product Y in response to a price increase for product  
8 X, then products X and Y should *not* be included in the same product market.

9 **Q. WHAT IS A GEOGRAPHIC MARKET, AS THAT TERM IS USED IN A**  
10 **TRADITIONAL MARKET POWER ANALYSIS?**

11 A. The geographic market has been defined “as the region where a hypothetical monopolist  
12 that is the only producer of the relevant product in the region would profitably impose at  
13 least a ‘small but significant and nontransitory’ increase in the price of the relevant  
14 product, assuming that the prices of all products provided elsewhere do not change.”<sup>39</sup> In  
15 simple terms, the geographic market should be defined as the region where alternative  
16 providers and products are available and to which consumers can migrate in response to a  
17 price increase. If there are ample competitive providers and products in City A but not  
18 City B, the Cities A and B should not be included in the same geographic market. The  
19 same rationale applies to other geographic boundaries, such as wire centers, MSAs, or the  
20 state as a whole.

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<sup>39</sup> FCC Phoenix Forbearance Order, footnote 142, citing *Horizontal Merger Guidelines*, §§ 1.21.

1     **Q.    IS THERE A WAY TO MEASURE CONSUMERS' ABILITY AND**  
2     **WILLINGNESS TO SUBSTITUTE AWAY FROM ONE PRODUCT TO**  
3     **ANOTHER IN RESPONSE TO A PRICE INCREASE?**

4     A.    Yes. This behavior is measured by the elasticity of demand.

5     **Q.    DID CENTURYLINK OR MR. BRIGHAM RELY ON ANY DEMAND**  
6     **ELASTICITY STUDIES IN SUPPORT OF CENTURYLINK'S DIRECT CASE?**

7     A.    No.

8     **Q.    ARE THERE OTHER INDICATORS OF THE EXTENT TO WHICH**  
9     **CENTURYLINK'S PRICES ARE CONSTRAINED BY COMPETITION?**

10    A.    Yes. Competitive pressures tend to drive prices toward cost. Therefore, the margin  
11    between CenturyLink's retail prices and the underlying costs of those services provides  
12    insight into the level of competitive pressure exerted on those services. The greater the  
13    competitive pressures, the smaller the margin between price and cost will be – and vice  
14    versa. To analyze this issue, the DoD/FEA issued data request DoD/FEA-CTL II.15  
15    seeking the most recent incremental cost studies related to the services for which  
16    CenturyLink is seeking reclassification and deregulation. CenturyLink responded that it  
17    does not have cost studies responsive to the request. However, the absence of this cost  
18    information eliminates another opportunity to determine whether and to what extent  
19    CenturyLink is facing price-constraining competition in Arizona.

20    **Q.    WHAT ARE THE RISKS OF DEFINING A RELEVANT MARKET**  
21    **INCORRECTLY?**

1 A. There are two errors that can occur when defining the relevant market: (1) defining a  
2 market too narrowly and (2) defining a market too broadly – each of which can lead to  
3 erroneous results. If a market is defined too narrowly, it will exclude alternative  
4 providers and products that should actually be counted and to which customers could  
5 choose as a substitute in response to a price increase. A market defined too narrowly  
6 would also result in artificially high market shares for the market because it excludes  
7 other firms over which the total market share should be distributed. This could result in  
8 an erroneous finding that market power exists, when it actually does not.

9 A market defined too broadly has the exact opposite impacts. It will include alternative  
10 providers and products that should *not* actually be counted and to which customers could  
11 *not* choose as a substitute in response to a price increase. In its most extreme, consider  
12 that if the market is defined as a national market, then one may inadvertently count as a  
13 potential competitor to CenturyLink in Arizona a competitive local exchange carrier  
14 (“CLEC”) that operates, say, exclusively on the East Coast. Obviously, that would be  
15 erroneous. A market defined too broadly would also result in artificially low market  
16 shares for the market because total market share would be distributed over firms that  
17 should not be included. This could result in an erroneous finding that market power does  
18 not exist, when it actually does.

19 **B. *CenturyLink Fails to Properly Define the Relevant Market Which Exaggerates***  
20 ***The Level of Competition in Arizona***

21 **Q. HOW HAS CENTURYLINK DEFINED THE “RELEVANT MARKET”?**

1 A. CenturyLink was asked about this issue in discovery because the answer to this question  
2 is not evident from CenturyLink's Application or Mr. Brigham's testimony. Data  
3 Request DoD/FEA-CTL II.7 asked the following:

4 Did Mr. Brigham define a "product market" for the analysis in his  
5 testimony? If so, describe the product market used. If not, explain why  
6 no product market was defined.

7 Mr. Brigham responded as follows:

8 CenturyLink asks the Commission to classify the services listed on  
9 Attachment A of its Application as competitive. Those services are  
10 related to the provision of voice communications service. As described in  
11 Mr. Brigham's testimony, cable companies, CLECs, wireless providers  
12 and VoIP providers compete with CenturyLink by offering a wide variety  
13 of voice services and features throughout the state.

14 I interpret Mr. Brigham's response as CenturyLink defining the product market as "voice  
15 communications service."

16 Staff asked CenturyLink about the definition of the "relevant market" in data request  
17 STF1.2. CenturyLink replied that it was proposing to define the "relevant market" as the  
18 "CenturyLink QC serving area in the state of Arizona, including all CenturyLink QC  
19 exchanges in the state..." Stated differently, there is a single geographic market  
20 proposed by CenturyLink which encompasses all 132 CenturyLink Arizona wire centers.  
21 When asked why this definition was being proposed by CenturyLink instead of a smaller  
22 geographic scope (data request DoD/FEA-CTL II.6), CenturyLink responded, in part, that  
23 it "is facing competition throughout its serving area in the state" and that "the  
24 telecommunications market today is not constrained by wire center boundaries."

25 **Q. DO YOU AGREE WITH THE WAY IN WHICH CENTURYLINK HAS**  
26 **DEFINED THE RELEVANT MARKET?**

1 A. No. CenturyLink defines both the product and geographic dimensions too broadly.

2 **Q. PLEASE ELABORATE ON THE FLAWS IN CENTURYLINK'S PRODUCT**  
3 **MARKET DEFINITION.**

4 A. CenturyLink lumps all services on Attachment A together into the same "voice  
5 communications services" product market. One problem with this approach is that  
6 numerous services on Attachment A are not providing voice services. For example, Pole  
7 Attachments (E 11.2) are one of these services, which allow an entity to attach wires to  
8 CenturyLink's poles where such attachments are feasible by self-provisioning brackets  
9 and insulators.<sup>40</sup> Pole Attachments do not provide voice services. Moreover, it is  
10 incorrect to suggest that the existence of mobile wireless service or VoIP-based services  
11 provide an alternative – let alone a price-constraining substitute – to CenturyLink's Pole  
12 Attachments service. The same goes for other services listed on Attachment A, including  
13 Returned Check Charge (E 2.3.2), Termination of Service (E 2.2.9), Temporary  
14 Suspension of Service (E 2.2.10), Assigning and Changing of Telephone Numbers (E  
15 2.2.7), Telephone Assistance Programs (E 5.2.6), and others. Because of the flaw in  
16 CenturyLink's product market definition, CenturyLink has failed to show whether any  
17 price-constraining substitutes exist for the retail services it seeks to reclassify.

18 **Q. IS THERE ANOTHER FLAW WITH CENTURYLINK'S PRODUCT MARKET**  
19 **DEFINITION.**

20 A. Yes. CenturyLink's proposed product market assumes that all services on Attachment A  
21 are substitutes for one other. Recall that for services to properly be in the same product

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<sup>40</sup> Exchange and Network Services Price Cap Tariff, § 11.

1 market, consumers must be willing and able to substitute to Product Y in response to a  
2 price increase for Product X. By way of example, CenturyLink is proposing to reclassify  
3 as competitive Flat Rate Service (E 5.2.4), which “entitles customers to an unlimited  
4 number of calls within the local calling area” for a flat monthly rate (\$13.18 per month  
5 for residence customers and \$30.40 per month for business customers).<sup>41</sup> If CenturyLink  
6 were to increase the prices for this service, consumers would obviously not switch to  
7 some other services on Attachment A, such as Emergency Transport Backup (“ETB”)  
8 (which provides dedicated trunks/lines for another routing path from the caller to the  
9 PSAP for 911 calls) or DS1/DS3 switched transport (which provides transmission  
10 facilities between the customer’s premises and end office switches). Nor would  
11 consumers likely switch to mobile wireless service or VoIP services, for example, in  
12 response to price increases for ETB or DS1/DS3 switched transport services.

13 In sum, the product market definition proposed by CenturyLink is too broad and needs to  
14 be narrowed in order for reasonably available substitute services to be identified. This  
15 requires analyzing each service on Attachment A individually, and including in the  
16 product market only those services that are reasonable substitutes. This type of analysis  
17 is critical to determining whether alternatives are reasonably available to Arizona  
18 consumers.

19 **Q. PLEASE ELABORATE ON THE FLAWS IN CENTURYLINK’S GEOGRAPHIC**  
20 **DEFINITION.**

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<sup>41</sup> Exchange and Network Services Price Cap Tariff, § 5.2.4. There is Flat Rate Service for both residential and business customers. A non-recurring charge also applies.

1 A. CenturyLink's proposed geographic market of the entire CenturyLink Arizona serving  
2 area glosses over important variations in competitive characteristics between geographic  
3 regions within that larger territory. For example, Mr. Brigham discusses in his testimony  
4 and illustrates in Exhibit RHB-5 service areas in the CenturyLink Arizona footprint  
5 without wireless coverage. The competitive characteristics and potential alternatives to  
6 CenturyLink's voice services are different in these areas compared to areas in the  
7 CenturyLink Arizona footprint with wireless coverage. In addition, Mr. Brigham  
8 provides Exhibit RHB-4, which shows that **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]  
9 [REDACTED]  
10 [REDACTED] **END CONFIDENTIAL\*\*\*** Mr. Brigham also discusses in his  
11 testimony that coverage of cable providers varies on a geographic scope smaller than  
12 CenturyLink's Arizona serving territory.<sup>42</sup>

13 **Q. HAS THE ARIZONA COMMISSION PREVIOUSLY ACKNOWLEDGED THAT**  
14 **COMPETITIVE CHARACTERISTICS VARY ON A GEOGRAPHIC SCOPE**  
15 **SMALLER THAN CENTURYLINK ARIZONA'S ENTIRE SERVICE**  
16 **TERRITORY?**

17 A. Yes. When Qwest sought forbearance from dominant carrier regulations at the FCC, the  
18 Arizona Corporation Commission advocated for a geographic market of individual  
19 exchanges (or zip codes) because "the degree of competition is not the same throughout  
20 the Phoenix MSA."<sup>43</sup> If the degree of competition varies among the 64 wire centers that  
21 make up the Phoenix MSA, then the degree of competition certainly is not the same

<sup>42</sup> Brigham Direct, p. 24, lines 16-23.

<sup>43</sup> Reply Comments of the Arizona Corporation Commission, WC Docket No. 09-135, March 2, 2010, p. 6.

1 among the 132 total CenturyLink Arizona wire centers. It is for this reason that  
2 CenturyLink's proposed geographic market is too broad.

3 **Q. IS THERE ANOTHER PROBLEM WITH CENTURYLINK'S PROPOSED**  
4 **GEOGRAPHIC MARKET DEFINITION?**

5 A. Yes. Despite responding to Staff data request STF 1.2 that CenturyLink's proposed  
6 "relevant market" is the CenturyLink QC service area in the state of Arizona,  
7 CenturyLink proposes an entirely different geographic market for analyzing enterprise  
8 customers. Mr. Brigham states that the large business/enterprise market should be  
9 viewed on a larger geographic scale such as multiple states or nationwide.<sup>44</sup> This is  
10 flawed. The reason for not defining the market so broadly is relatively simple: services  
11 available to enterprise customers from other carriers such as AT&T and Verizon in  
12 another state such as New York or California are not necessarily available to enterprise  
13 customers in Arizona. As a result, those services would not and could not serve as  
14 substitutes to enterprise customers in Arizona, and in turn, enterprise customers could not  
15 migrate to those services in response to a price increase for CenturyLink's services.

16 **Q. CAN YOU PROVIDE AN EXAMPLE SHOWING THAT CENTURYLINK'S**  
17 **PROPOSED GEOGRAPHIC MARKET IS TOO BROAD?**

18 A. Yes. One example is the U.S. Army, which has military installations in Yuma (Yuma  
19 Proving Ground) and Sierra Vista (Fort Huachuca). Despite seeking competitive bids for  
20 the provisioning of telecommunications services that provide between \$750,000 and  
21 \$1,000,000 in revenue to the services provider over a five year period, the U.S. Army

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<sup>44</sup> Brigham Direct, p. 22, lines 7-9.

1 received a *single* bid to serve the installation in Yuma, and only *two* bids to serve Fort  
2 Huachuca (both of which were awarded to Qwest/CenturyLink). The competitive  
3 alternatives obviously differed between the two areas within CenturyLink Arizona's  
4 serving territory.

5 **Q. MR. BRIGHAM STATES THAT "CENTURYLINK'S 'MARKET POWER' IS**  
6 **CONSTRAINED BY COMPETITION TODAY, AND THE MARKET POWER OF**  
7 **THE COMBINED COMPANY WILL CONTINUE TO BE CONSTRAINED BY**  
8 **INCREASING COMPETITION IN THE FUTURE."<sup>45</sup> HAS HE PROVIDED THE**  
9 **INFORMATION NEEDED TO SUBSTANTIATE THIS ASSERTION?**

10 A. No. The ability to constrain market power is analyzed by determining whether a  
11 hypothetical profit-maximizing firm that is the only present and future seller of services  
12 in a particular product market likely would impose at least a small but significant and  
13 non-transitory increase in price on at least one product in the market.<sup>46</sup> This involves  
14 properly defining the product and geographic markets, identifying the market  
15 participants, and measuring consumers' ability and willingness to switch to substitutes in  
16 response to the price increase of the hypothetical profit-maximizing firm. **Not only has**  
17 **CenturyLink defined the "relevant market" too broadly, it has not conducted the**  
18 **level of analysis needed (such as presenting price elasticity of demand data) to show**  
19 **that consumers would or could substitute away from CenturyLink's services in**  
20 **response to such a price increase.**

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<sup>45</sup> Brigham Direct, p. 11, lines 23-25.

<sup>46</sup> *Horizontal Merger Guidelines* (2010), §4.1.1. See also, FCC Phoenix Forbearance Order, ¶ 56.

1 **Q. ARE YOU SAYING THAT THE MARKET PARTICIPANTS IDENTIFIED AND**  
2 **MARKET SHARES PRESENTED BY MR. BRIGHAM ARE IRRELEVANT?**

3 A. No, they are not entirely irrelevant. However, under a traditional market power analysis,  
4 the relevant market participants and market shares are a function of the defined “relevant  
5 market.” By defining the “relevant market” too broadly, Mr. Brigham’s conclusions  
6 are biased and, strictly speaking, meaningless. Moreover, identifying competitors  
7 and market shares are just part of the picture. Determining consumers’ ability and  
8 willingness to switch to competitive alternatives in response to a price increase is a  
9 critical component of a market power analysis that is missing in CenturyLink’s  
10 testimony. Absent this critical component, it is impossible to verify CenturyLink’s  
11 assertion that its market power is constrained now and in the future.

12 **Q. HAS CENTURYLINK PROVIDED DATA SHOWING THAT COMPETITION**  
13 **MAY NOT BE CONSTRAINING CENTURYLINK’S RETAIL PRICES?**

14 A. Yes. In data request DoD/FEA-CTL II.14, the DoD/FEA asked CenturyLink to provide a  
15 list of all CenturyLink price changes over the past five years. CenturyLink provided this  
16 data in confidential attachment DOD 2.14A. **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] **END CONFIDENTIAL\*\*\*** This data is not indicative of an

1 “extremely competitive”<sup>47</sup> marketplace, as contended by Mr. Brigham. In fact, it is  
2 indicative of a lack of price-constraining, effective competition.

3 *C. The market participants and market shares identified by CenturyLink are*  
4 *biased because of its improper definition of the relevant market.*

5 **Q. WHAT MARKET PARTICIPANTS ARE IDENTIFIED BY CENTURYLINK IN**  
6 **RELATION TO ITS REQUEST TO RECLASSIFY SERVICES AS**  
7 **COMPETITIVE?**

8 A. Mr. Brigham identifies the following categories of competitors: (1) cable providers; (2)  
9 CLECs; (3) mobile wireless providers; and (4) Voice over Internet Protocol (“VoIP”)  
10 providers.

11 **Q. BEFORE ADDRESSING THESE MARKET PARTICIPANTS, DO YOU HAVE**  
12 **ANY GENERAL COMMENTS ABOUT CENTURYLINK’S TESTIMONY**  
13 **ABOUT THEM?**

14 A. Yes. The primary thrust of Mr. Brigham’s testimony identifies providers with a presence  
15 in Arizona and discusses at a relatively high level some of the services they provide.  
16 CenturyLink does not match up the services of these providers to the CenturyLink  
17 services it seeks to reclassify. This leaves a gaping hole in CenturyLink’s analysis, which  
18 results in the inability to determine whether, in fact, there are true substitutes for these  
19 services that could or would constrain CenturyLink’s market power in the relevant  
20 market. In addition, some of the alternative providers and products identified by  
21 CenturyLink may be closer substitutes for some CenturyLink services than others. For

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<sup>47</sup> Brigham Direct, p. 3, line 17.,

1 example, mobile wireless service may be a closer substitute for Flat Rate Service (E  
2 5.2.4) than for DS1/DS3 switched transport service (Q7.1-7.9). However, by lumping all  
3 services listed on Attachment A into a single “voice communications service” product  
4 market, CenturyLink glosses over these critical distinctions. Finally, CenturyLink does  
5 not provide the information necessary to demonstrate that the alternative providers and  
6 products it has identified provides price-disciplining competition for the services for  
7 which CenturyLink seeks reclassification. These are not just technical shortcomings, but  
8 go to the heart of determining whether effective competition exists in Arizona.

9 **1. Cable Providers Do Not Provide Reasonably Available Alternatives**  
10 **for DoD/GSA**

11 **Q. MR. BRIGHAM IDENTIFIES A HANDFUL OF CABLE TELEPHONY**  
12 **PROVIDERS THAT HE CLAIMS PROVIDES DIRECT SUBSTITUTES TO**  
13 **CENTURYLINK SERVICES.<sup>48</sup> PLEASE RESPOND.**

14 **A.** The extent to which cable telephony providers present a price-constraining substitute to  
15 CenturyLink’s services depends on the services and customer classes at issue. My review  
16 of CenturyLink’s Application and testimony in this proceeding, the public documents  
17 submitted in the FCC’s Phoenix Forbearance proceeding (WC Docket No. 09-135), and  
18 independent research of Cox’s website indicates that Cox has a significant presence in  
19 Arizona. In addition, since cable telephony providers do not typically rely on incumbents  
20 like CenturyLink for the last mile connections, they have a better chance of avoiding the  
21 type of market power abuses that can be exerted over competitors who rely on  
22 CenturyLink’s wholesale services. **The problem is that CenturyLink does not**

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<sup>48</sup> Brigham Direct, pp. 24-30.

1 demonstrate whether or to what extent Cox's (or any other cable provider's)  
2 presence disciplines the prices for CenturyLink's wireline services.

3 **Q. IF WE OVERLOOK THE LACK OF ANALYSIS RELATED TO CABLE**  
4 **TELEPHONY PROVIDERS AS PRICE-CONSTRAINING SUBSTITUTES AND**  
5 **ASSUME THAT THEY ARE A SUBSTITUTE TO CENTURYLINK'S**  
6 **WIRELINE SERVICES, IS IT SAFE TO ASSUME THAT CENTURYLINK'S**  
7 **PRICES WILL BE HELD AT COMPETITIVE LEVELS?**

8 A. Not necessarily. If CenturyLink and a cable company are the only options reasonably  
9 available in a particular market, it could result in an effective duopoly – or a situation in  
10 which two companies own all or nearly all of the market for a given product or service.  
11 Under this scenario, CenturyLink's prices could still reach supracompetitive levels,  
12 thereby harming consumers. The FCC recognized this potential outcome in relation to  
13 Qwest's petition for forbearance from dominant carrier regulations:

14 The potential for supracompetitive prices may be a concern where there is  
15 a duopoly or a market dominated by a few firms and there are high  
16 barriers to entry into the market. Economists, courts, and the Commission  
17 have long recognized that duopolies may present significant risks of  
18 collusion and supracompetitive pricing, which can lead to significant  
19 decreases in consumer welfare.<sup>49</sup>

20 Importantly, I am not suggesting that there would be any type of intentional or illegal  
21 collusive behavior between CenturyLink and any cable company, and indeed, no such  
22 behavior is needed in order for the risks of a duopoly to exist.<sup>50</sup> \*\*\*BEGIN

23 **CONFIDENTIAL** [REDACTED]

<sup>49</sup> FCC Phoenix Forbearance Order, ¶ 29.

<sup>50</sup> The FCC referred to tacit collusion, in which firms behavior is coordinated by firms observing and anticipating their rivals' behavior, rather than through explicit agreement or illegal conduct. FCC Phoenix Forbearance Order, footnote 86.

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[REDACTED]  
[REDACTED]  
[REDACTED] **END**

**CONFIDENTIAL\*\*\***

**Q. MR. BRIGHAM REFERENCES CONTRACTS COX HAS WITH SHEA PROPERTIES AND THE PHOENIX SCHOOL DISTRICT AS SUPPORT FOR HIS STATEMENT THAT COX SERVES BUSINESS AND GOVERNMENT CUSTOMERS.<sup>51</sup> WOULD YOU LIKE TO RESPOND?**

**A.** Yes. Mr. Brigham provides excerpts from Cox’s website describing “case studies” related to these customers to “illustrate Cox’s presence in the Phoenix MSA business market[.]”<sup>52</sup> CenturyLink relied on these same exact case study descriptions at the FCC to “illustrate Cox’s presence in the Phoenix MSA business market[.]”<sup>53</sup> The FCC was not persuaded that these case studies resulted in effective competition for business or government customers. Instead, the FCC found that competitive carriers including Cox had constructed their own last-mile connections to enterprise customers in the Phoenix MSA “[i]n limited situations”<sup>54</sup> and that “Cox’s last-mile network...could not readily serve most of the enterprise businesses...”<sup>55</sup> The Arizona Corporation Commission

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<sup>51</sup> Brigham Direct, pp. 31-33.  
<sup>52</sup> Brigham Direct, pp. 31-33.  
<sup>53</sup> Reply Comments of Qwest Corp., WC Docket No. 09-135, October 21, 2009, pp. 18-20.  
<sup>54</sup> FCC Phoenix Forbearance Order, ¶ 71.  
<sup>55</sup> FCC Phoenix Forbearance Order, ¶ 74.

1 stated in March 2010 that “Cox is not a significant player in the small, medium or large  
2 business market.”<sup>56</sup> The validity of the Commission’s prior conclusion has not changed.

3 **Q. ARE THERE CABLE TELEPHONY PROVIDERS OTHER THAN COX THAT**  
4 **OWN CONSIDERABLE MARKET SHARE IN ARIZONA?**

5 A. No. **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 **END CONFIDENTIAL\*\*\*** CenturyLink did not provide any Arizona-specific market  
14 share data for the large business/enterprise segment, but from DoD/FEA’s perspective  
15 cable telephony providers do not provide effective, price-constraining alternatives for the  
16 large business/enterprise segment.

17 **Q. ARE CABLE TELEPHONY PROVIDERS A REASONABLY AVAILABLE**  
18 **SUBSTITUTE FOR THE DoD/GSA?**

19 A. No. For example, there are two contracts covering the telecommunications services  
20 purchased at the U.S. Army installations and five contracts covering the  
21 telecommunications services purchased at the U.S. Air Force installations in Arizona.

<sup>56</sup> Reply Comments of Arizona Corporation Commission, WC Docket No. 09-135, March 2, 2010, p. 8.

1 Out of these seven contracts, none are currently served by a cable telephony provider, nor  
2 did any cable telephony submit a bid proposal for any of these contracts.<sup>57</sup>

3 **2. Competitive Local Exchange Carriers Do Not Provide Reasonably**  
4 **Available Alternatives for DoD/GSA**

5 **Q. MR. BRIGHAM STATES THAT NUMEROUS COMPETITIVE LOCAL**  
6 **EXCHANGE CARRIERS ARE “ACTIVELY COMPETING” WITH**  
7 **CENTURYLINK.<sup>58</sup> DOES THIS TELL THE ENTIRE STORY REGARDING**  
8 **THE ABILITY OF CLECS TO PROVIDE PRICE-CONSTRAINING**  
9 **COMPETITION TO CENTURYLINK?**

10 **A.** No. Mr. Brigham ignores the fact that CLECs typically rely on CenturyLink’s wholesale  
11 services, such as unbundled loops and local service platforms, in order to provision their  
12 own retail services. This is a key point because CenturyLink can leverage its control over  
13 the wholesale inputs in order to wield influence in the retail market. The FCC has said  
14 with regard to Arizona and elsewhere:

15 ...the Commission has long recognized that a vertically integrated firm  
16 with market power in one market – here upstream wholesale markets  
17 where, as discussed below, Qwest remains dominant – may have the  
18 incentive and ability to discriminate against rivals in downstream retail  
19 markets or raise rivals’ costs.<sup>59</sup>

20 CenturyLink objected to a number of DoD/FEA discovery requests inquiring about the  
21 status of the wholesale market in Arizona on the grounds that the information does not

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<sup>57</sup> Given the recent CenturyLink response to data request DoD/FEA-CTL II.1, I am still in the process of investigating whether and to what extent cable telephony providers serve GSA entities for local services in Arizona. However, I am not aware of any significant use of cable telephony services as an alternative to traditional wireline services by these entities at this time. See also, footnote 25.

<sup>58</sup> Brigham Direct, p. 35, line 19 – p. 36, line 2.

<sup>59</sup> FCC Phoenix Forbearance Order, ¶ 34.

1 bear on whether competition exists for CenturyLink retail services. Such a view ignores  
2 the obvious interplay between wholesale markets and retail markets when a vertically  
3 integrated incumbent like CenturyLink is a market participant. And CenturyLink's  
4 failure to show that any wholesale alternatives exist besides CenturyLink brings into  
5 question the ability of CLECs to become price-constraining alternatives to CenturyLink if  
6 CenturyLink's Application is approved.

7 **Q. MR. BRIGHAM STATES THAT "IN MANY CASES THESE CARRIERS**  
8 **PROVIDE SERVICE USING THEIR OWN FACILITIES AND IN OTHER**  
9 **CASES THEY PROVIDE SERVICE VIA THE LEASING OF CENTURYLINK**  
10 **FACILITIES[.]”<sup>60</sup> WOULD YOU LIKE TO RESPOND?**

11 A. Yes. This statement suggests that there are some CLECs who do not rely at all on  
12 CenturyLink's wholesale services – which is not accurate. Mr. Brigham describes  
13 Integra, tw telecom, XO Communications, AT&T and Verizon as facilities-based CLECs  
14 and discusses attributes of their networks. On information and belief, it is my  
15 understanding that each of these CLECs relies on last-mile facilities (*i.e.*, loops) or other  
16 facilities leased from CenturyLink. Furthermore, the FCC previously found with respect  
17 to the Phoenix MSA that all providers of residential services, except Cox, relied  
18 exclusively upon Qwest wholesale last-mile facilities.<sup>61</sup> While CLECs may utilize their  
19 own facilities, such as fiber transport networks and switches, to serve retail customers,  
20 the fact remains that they still rely on CenturyLink's wholesale services. As a result,

<sup>60</sup> Brigham Direct, p. 36, lines 2-4.

<sup>61</sup> FCC Phoenix Forbearance Order, footnote 143. See also, footnote 209 (“The record does not indicate that any entity other than Qwest and Cox has extensive last-mile connections to residential customers or very small business customers that would enable it to provide wholesale services, nor are we aware of any entity other than Qwest actually providing a wholesale mass market wireline access service.”)

1 CenturyLink still possesses the ability to discriminate against competitors and raise  
2 competitors' costs, which in turn, can raise barriers and have negative impacts on  
3 competition in the downstream retail market.

4 **Q. MR. BRIGHAM ASSERTS THAT CLECS MAY "ENTER THE MARKET BY**  
5 **PURCHASING WHOLESALE FACILITIES FROM OTHER CLECS, OR BY**  
6 **PURCHASING FACILITIES FROM FIBER PROVIDERS SUCH AS SRP**  
7 **TELECOM AND ZAYO GROUP THAT OPERATE IN ARIZONA."<sup>62</sup> HAS THIS**  
8 **ASSERTION BEEN ANALYZED PREVIOUSLY?**

9 A. Yes. Qwest made these same claims to the FCC in the Phoenix forbearance proceeding,  
10 which were rejected. In the FCC proceeding, Mr. Brigham testified that numerous  
11 carriers had deployed fiber networks.<sup>63</sup> Two of the providers discussed by Mr. Brigham  
12 in his FCC declaration, like his testimony here, were SRP Telecom and Zayo (which was,  
13 at that time, AGL Networks).<sup>64</sup> Mr. Brigham testified to the FCC that SRP "has a very  
14 extensive fiber network in the Phoenix MSA that is used to provide dark fiber and carrier  
15 access services to other providers."<sup>65</sup> Mr. Brigham also claimed that "[t]here is no  
16 question that SRP provides a very viable option for carriers that seek an alternative access

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<sup>62</sup> Brigham Direct, p. 42, lines 18-21. I also note that Mr. Brigham's discussion about CLECs being able to compete in the retail market by purchasing wholesale services from other CLECs or fiber from other providers is an implicit recognition that wholesale telecommunications services are indeed relevant to whether competition exists for retail telecommunications services (contrary to CenturyLink's objections to certain DoD/FEA discovery requests).

<sup>63</sup> Declaration of Robert H. Brigham Regarding the Status of Telecommunications Competition in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, March 24 2009, ("Brigham FCC Declaration") ¶¶ 49-63.

<sup>64</sup> Zayo closed its purchase of AGL Networks in July 2010. <http://www.zayo.com/news/zayo-group-closes-its-acquisition-agl-networks>

<sup>65</sup> Brigham FCC Declaration, ¶ 52.

1 solution to the use of Qwest's network in the Phoenix MSA."<sup>66</sup> With regard to Zayo, Mr.  
2 Brigham testified to the FCC that: "Like SRP Telecom, AGL Networks provides 'last  
3 mile' connectivity and transport options that allow carriers to bypass Qwest's network in  
4 the Phoenix MSA."<sup>67</sup>

5 The FCC disagreed, finding that "other than Qwest, there are no significant suppliers of  
6 relevant wholesale loops with coverage throughout the Phoenix MSA, either individually  
7 or in the aggregate...[and] no wholesale suppliers of last-mile connections to *mass market*  
8 end users in the Phoenix MSA other than Qwest[.]" The FCC went on to say that, "the  
9 record evidence does not provide support for Qwest's assertion that 'wholesale customers  
10 have access to a wide range of competitive alternatives,' or that the market for wholesale  
11 services is competitive."<sup>68</sup> The FCC summed it up as follows: "the record reveals that no  
12 carrier besides Qwest provides meaningful wholesale services throughout the Phoenix  
13 marketplace, and that competitors offering business services largely must rely on inputs  
14 purchased from Qwest itself to provide service."<sup>69</sup> Mr. Brigham indicated in response to  
15 data request DoD/FEA-CTL II.11 that "CenturyLink has not performed any other  
16 analysis of wholesale telecommunications services that is specific to Arizona" since the  
17 analysis it submitted to the FCC in the Phoenix forbearance proceeding.

18 **Q. MR. BRIGHAM IDENTIFIES AT&T AND VERIZON AS CARRIERS THAT**  
19 **COMPETE WITH CENTURYLINK IN ARIZONA AS WELL AS CARRIERS**

<sup>66</sup> Brigham FCC Declaration, ¶ 53.

<sup>67</sup> Brigham FCC Declaration, ¶ 54.

<sup>68</sup> FCC Phoenix Forbearance Order, ¶ 71.

<sup>69</sup> FCC Phoenix Forbearance Order, ¶ 2. (emphasis added) See also, CompTel Comments, WC Docket No. 09-135, p. 27, indicating that SRP and AGL Networks (Zayo) each serve less than 1% of the buildings in the Phoenix MSA with demand of DS1 or higher.

1           **THAT DOMINATE THE ENTERPRISE SEGMENT.<sup>70</sup>   WHAT IS YOUR**  
2           **RESPONSE?**

3       A.    When Qwest identified AT&T and Verizon as competing carriers in the FCC forbearance  
4           proceeding, the Arizona Commission stated that: "AT&T and MCI, to the best of the  
5           ACC's knowledge, have not been actively marketing any residential services to  
6           customers in the Phoenix MSA for some time."<sup>71</sup> **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]

7           [REDACTED]  
8           [REDACTED]

9           [REDACTED] **END CONFIDENTIAL\*\*\*** In addition,

10          **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]

11          [REDACTED]

12          [REDACTED] **END**

13          **CONFIDENTIAL\*\*\*** CenturyLink did not provide any market share data for the  
14          enterprise market in Arizona.<sup>72</sup>

15          Despite the immediately preceding market share data showing that **\*\*\*BEGIN**

16          **CONFIDENTIAL** [REDACTED]

17          [REDACTED] **END CONFIDENTIAL\*\*\*** CenturyLink indicates in Exhibit

18          RHB-4 that **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]

19          [REDACTED]

20          [REDACTED]

<sup>70</sup> Brigham Direct, pp. 22 and 41-42.

<sup>71</sup> Reply Comments of Arizona Corporation Commission, WC Docket No. 09-135, p. 13.

<sup>72</sup> It is worth noting that the FCC has found that, with respect to the enterprise market in Arizona, there is a lack of significant actual or potential competition for enterprise services by competitors that rely on their own last-mile connections to serve customers. FCC Phoenix Forbearance Order, ¶ 87.

1 [REDACTED]  
2 [REDACTED] **END CONFIDENTIAL\*\*\***<sup>73</sup> This raises serious questions about the  
3 extent to which Exhibit RHB-4 can be relied upon as an indication of the locations at  
4 which CLECs are actually competing with CenturyLink.

5 **Q. DO VERIZON OR AT&T DOMINATE THE ENTERPRISE SEGMENT IN**  
6 **ARIZONA?**

7 A. I have not seen any information to support such a finding. Indeed, the information I have  
8 reviewed indicates that this is not the case. Out of the seven contracts for  
9 telecommunications services to Army and Air Force military installations discussed  
10 above, Qwest is the service provider for five of them.<sup>74</sup> AT&T is the service provider for  
11 two of the contracts. Verizon holds none of these contracts, nor has Verizon submitted  
12 bid proposals for any of these contracts. Out of the total \$2.936 million combined award  
13 amounts for these seven contracts over a five year period, AT&T's two contracts  
14 represents about 16% of that combined revenue, with CenturyLink's contracts  
15 representing the remaining 84%. Thus, CenturyLink's suggestion that AT&T and  
16 Verizon dominate the enterprise market is inaccurate (at least as it pertains to the state of  
17 Arizona).

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<sup>73</sup> Exhibit RHB-4.

<sup>74</sup> Note: Centris' defines small business and medium sized businesses as firms **\*\*\*BEGIN CONFIDENTIAL**  
[REDACTED] **END CONFIDENTIAL\*\*\*** Following these definitions, some of the DoD  
contracts individually would fall under the definition of small or medium sized businesses based on the amounts  
of the contracts.

1       **Q.     ARE THERE OTHER FACTORS THAT SUPPORT A CONCLUSION THAT**  
2       **AT&T AND VERIZON DO NOT DOMINATE THE ENTERPRISE SEGMENT IN**  
3       **ARIZONA?**

4       A.     Yes. In mid-2010, the FCC concluded that “there is insufficient actual and potential  
5       competition to constrain effectively the price of Qwest’s enterprise services.”<sup>75</sup> Qwest  
6       has since merged with CenturyLink, and CenturyLink testified to the Arizona  
7       Commission that the merger would give the “combined company an increased  
8       prominence in the enterprise and government broadband markets.”<sup>76</sup> There is no reason  
9       to conclude that the combined company faces any more potential or actual competition in  
10      the enterprise market now than Qwest did when the FCC made the above-mentioned  
11      finding in June 2010.

12      **Q.     MR. BRIGHAM PROVIDED MARKET SHARE DATA AS SUPPORT FOR HIS**  
13      **ASSERTION THAT VERIZON AND AT&T DOMINATE THE ENTERPRISE**  
14      **SEGMENT.<sup>77</sup> DO YOU HAVE A CONCERN ABOUT MR. BRIGHAM’S**  
15      **RELIANCE ON THIS MARKET SHARE DATA?**

16      A.     Yes. CenturyLink’s market share data for the enterprise market is based on a geographic  
17      market covering the entire United States. For the reasons explained above, this  
18      geographic scope is too broad because enterprise services available from Verizon in New  
19      York, for example, have no price-constraining impact on CenturyLink’s enterprise  
20      services in Arizona. And because the geographic market is defined too broadly, it

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<sup>75</sup> FCC Phoenix Forbearance Order, ¶ 91.

<sup>76</sup> Direct Testimony of Kristen McMillan on behalf of CenturyLink, ACC Docket No. T-01051B-10-0194, *et al.*, May 24, 2010, p. 11, lines 13-14.

<sup>77</sup> Brigham Direct, p. 22.

1 includes alternative providers and services that should *not* actually be counted and to  
2 which customers could *not* choose as a substitute in response to a price increase for  
3 CenturyLink's enterprise services in Arizona. Accordingly, the enterprise segment  
4 market shares for AT&T and Verizon relied upon by Mr. Brigham are artificially high for  
5 the analysis at hand, which is to analyze the extent of effective competition in Arizona.

6 **Q. MR. BRIGHAM CLAIMS THAT THE COMMISSION HAS PREVIOUSLY**  
7 **DETERMINED THAT THE ENTERPRISE MARKET IN ARIZONA IS**  
8 **COMPETITIVE.<sup>78</sup> DO YOU AGREE?**

9 A. No. Mr. Brigham provides a quote from paragraph 58 of Decision No. 68447, which  
10 dealt with Qwest Communications Corporation's request for a certificate to provide  
11 resold and facilities-based local exchange services, as support for his statement that, "the  
12 Commission determined that QCC's entry into the large business market would enhance  
13 competition..." However, paragraph 58 describes Staff's position in that docket (Docket  
14 No. T-02811B-04-0313) – it is not a finding or conclusion of the Commission. In  
15 addition, ordering paragraphs 9 and 10 of Decision No. 68447 (pages 39-40) are copied  
16 below:

17 IT IS FURTHER ORDERED that Qwest Communications Corporation  
18 and Qwest Corporation shall be considered to be one entity for the  
19 purposes of evaluating the local exchange services competitive situation in  
20 future alternative form of regulation or Price Cap proceedings.

21 IT IS FURTHER ORDERED that findings in this proceeding **shall not be**  
22 **construed as a finding with respect to what Baskets any service(s)**  
23 **belong under Qwest Corporation's alternative form of regulation or**  
24 **as a finding with respect to what constitutes a competitive or**  
25 **sufficiently competitive marketplace** for purposes of either Qwest  
26 Corporation's alternative form of regulation proceedings or future

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<sup>78</sup> Brigham Direct, p. 22, line 21 – p. 23, line 3.

1 applications of Qwest Communications Corporation to expand its business  
2 to other markets. (emphasis added)

3 Despite Mr. Brigham's assertion, these ordering paragraphs demonstrate that the  
4 Commission did not determine whether the enterprise market was competitive in that  
5 decision, but instead reserved that question for a future proceeding like this one.<sup>79</sup>

6 **3. Mobile Wireless Providers Do Not Provide Reasonably Available**  
7 **Alternatives for DoD/GSA**

8 **Q. MR. BRIGHAM PRESENTS DATA SHOWING THAT THE ILEC SHARE OF**  
9 **ARIZONA VOICE TELECOMMUNICATIONS CONNECTIONS IS NOW 18.4%**  
10 **AS COMPARED TO 15.6% FOR NON-ILECS AND 65.9% FOR WIRELESS**  
11 **PROVIDERS.<sup>80</sup> WOULD YOU LIKE TO RESPOND?**

12 **A.** Yes. This is an example of an erroneous, overly-broad market definition resulting in a  
13 meaningless market share statistic. Mr. Brigham apparently sums: (a) ILEC end-user  
14 switched access lines and VoIP subscriptions, (b) non-ILEC end-user switched access  
15 lines and VoIP subscriptions, and (c) mobile telephone subscribers. The sum total of  
16 these numbers is what Mr. Brigham considers to be the total "market" from which the  
17 abovementioned market shares was calculated. This methodology assumes that mobile  
18 wireless service and CenturyLink Arizona's wireline service are in the same product  
19 market – a point that CenturyLink has not demonstrated.

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<sup>79</sup> Despite the Commission finding in Decision No. 68447 that Qwest Communications Corporation and Qwest Corporation shall be considered to be one entity for the purposes of evaluating the local exchange services competitive situation, CenturyLink \*\*\*BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL\*\*\* See, Exhibit RHB-4.

<sup>80</sup> Brigham Direct, p. 15, lines 6-9.

1       **Q.    HAS MR. BRIGHAM PROVIDED A SIMILAR MARKET SHARE ANALYSIS IN**  
2       **THE PAST?**

3       A.    Yes. Mr. Brigham provided a market share analysis of the “voice market data for  
4       Arizona” in his declaration in the FCC Phoenix forbearance proceeding that is very  
5       similar to the market share analysis discussed in the immediately preceding Q&A.<sup>81</sup> The  
6       conclusion from both analyses is the market share possessed by mobile wireless service  
7       providers significantly exceeds the market share of CenturyLink’s wireline services in the  
8       “voice market.”

9       **Q.    DID THE FCC FIND MR. BRIGHAM’S MARKET SHARE ANALYSIS**  
10       **ACCEPTABLE?**

11       A.    No. The FCC found that CenturyLink had failed to demonstrate that mobile wireless is in  
12       the same product market as CenturyLink’s wireline services. In other words, the FCC  
13       found that CenturyLink failed to substantiate the fundamental assumption of Mr.  
14       Brigham’s market share analysis for the “voice market.”

15       **Q.    PLEASE ELABORATE.**

16       A.    The FCC stated as follows in its Phoenix Forbearance Order:

17               The fundamental question in a traditional product market definition  
18               exercise is whether mobile wireless access service constrains the price of  
19               wireline access service. These two services should be in the same relevant  
20               market only if the prospect of buyer substitution to mobile wireless access  
21               constrains the price of wireline access.<sup>82</sup>

22       The data relied upon by Mr. Brigham – both in this proceeding and in the FCC Phoenix  
23       forbearance proceeding – to support his assertion that mobile wireless and wireline

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<sup>81</sup> Compare Brigham FCC Declaration, pp. 8-9 to Brigham Direct, p. 15.

<sup>82</sup> FCC Phoenix Forbearance Order, ¶ 56.

1 services should be in the same market is data showing the demand for wirelines  
2 decreasing at the same time demand for wireless service is increasing.<sup>83</sup> The FCC was  
3 not persuaded by this data. The FCC said:

4 neither Qwest nor any other commenter has submitted evidence that would  
5 support a conclusion that mobile wireless service constrains the price of  
6 wireline service. For example, Qwest has produced no econometric  
7 analyses that estimate the cross-elasticity of demand between mobile  
8 wireless and wireline access services. Nor has it produced any evidence  
9 that it has reduced prices for its wireline services or otherwise adjusted its  
10 marketing for wireline service in response to changes in the price of  
11 mobile wireless service. Nor has it produced any marketing studies that  
12 show the extent to which consumers view wireless and wireline access  
13 services as close substitutes.<sup>84</sup>

14 The FCC also concluded that: “Knowing the percentage of households that rely  
15 exclusively upon mobile wireless is insufficient to determine whether mobile wireless  
16 services have a price-constraining effect on wireline access services.”<sup>85</sup> Since Mr.  
17 Brigham has provided nothing more in this proceeding than what he provided to the FCC,  
18 there is no reason to deviate from the FCC’s prior conclusions and its prior rejection.

19 **Q. COULD OTHER FACTORS EXPLAIN THE “CUTTING THE CORD”**  
20 **PHENOMENON BESIDES WIRELESS BEING A PRICE-CONSTRAINING**  
21 **SUBSTITUTE FOR WIRELINE SERVICES?**

22 A. Yes. The FCC discussed some of these other factors in the Phoenix Forbearance Order.  
23 For instance, the FCC said:

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<sup>83</sup> Brigham FCC Declaration, ¶ 12 (showing increase in wireless lines and decrease in CenturyLink access lines); ¶ 13 (showing the presence of multiple wireless providers); ¶¶ 13-17 (presenting data on how many customers have “cut the cord”); ¶ 21 (explaining that mobile wireless services is a viable substitute even though it may not be “identical”). This is the same type of data presented in Mr. Brigham’s testimony in this docket (see, pp. 43-54).

<sup>84</sup> FCC Phoenix Forbearance Order, ¶ 58.

<sup>85</sup> FCC Phoenix Forbearance Order, ¶ 59.

1           Moreover, while we acknowledge that the number of customers that rely  
2           solely on mobile wireless service has been growing steadily, we find that  
3           other reasons may explain the growth in the number of wireless-only  
4           customers, besides an increasing cross-elasticity of demand between  
5           mobile wireless and wireline services. For example, nationwide statistics  
6           published by the CDC suggest that the choice to rely exclusively upon  
7           mobile wireless services could be driven more by differences in  
8           consumers' age, household structure, and underlying preferences than by  
9           relative price differentials.<sup>86</sup>

10           The FCC also acknowledged that there are certain customer classes that are unlikely to  
11           “cut the cord” in response to a significant price increase for wireline services, or which  
12           view wireline and wireless as complements instead of substitutes.<sup>87</sup> For these customer  
13           classes, which would include the DoD/FEA, wireless does not serve as a price-  
14           constraining substitute for CenturyLink's wireline services.

15           **Q. DID THE FCC ALSO REJECT MR. BRIGHAM'S ASSERTION THAT MOBILE**  
16           **WIRELESS SERVICES PROVIDE COMPETITION “AT THE MARGIN”?**

17           A. Yes. In his testimony in this proceeding, Mr. Brigham testifies that: “as long as there are  
18           enough customers willing to ‘cut the cord’ (often called customers ‘at the margin’), this  
19           constrains CenturyLink's prices.”<sup>88</sup> This same exact sentence verbatim appears in Mr.  
20           Brigham's FCC declaration.<sup>89</sup> To that, the FCC said:

21           Although Qwest argues that wireless provides competitive discipline on  
22           wireline prices and that competition at the margin disciplines a firm's  
23           pricing behavior, it has provided no empirical or documentary evidence  
24           that its pricing has been constrained by wireless service  
25           offerings...Qwest's observation that the number of wireless access lines  
26           exceeds the number of wireline access lines is not probative of the issue of

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<sup>86</sup> FCC Phoenix Forbearance Order, ¶ 59.

<sup>87</sup> FCC Phoenix Forbearance Order, ¶ 59.

<sup>88</sup> Brigham Direct, p. 52, lines 13-15.

<sup>89</sup> Brigham FCC Declaration, ¶ 21.

1 the substitutability between wireline and wireless services for residential  
2 households.<sup>90</sup>

3 Like at the FCC, Mr. Brigham provided no empirical or documentary evidence in this  
4 proceeding that CenturyLink's pricing has been constrained by wireless service offerings.

5 **Q. ARE THERE OTHER PROBLEMS WITH CENTURYLINK'S ASSERTION**  
6 **THAT MOBILE WIRELESS SERVICES SERVE AS A PRICE-CONSTRAINING**  
7 **SUBSTITUTE TO CENTURYLINK WIRELINE SERVICES?**

8 A. Yes. CenturyLink does not identify the specific services for which it is seeking  
9 competitive reclassification that would be price-constrained by mobile wireless services.  
10 There can be no question that mobile wireless services is not a substitute for all of the  
11 services for which CenturyLink is seeking a competitive reclassification. For example,  
12 CenturyLink is seeking reclassification for pole attachments, Caller ID blocking, N11  
13 service, toll restriction, emergency transport backup – just to name a few. The  
14 proliferation of mobile wireless services would certainly not constrain the prices for these  
15 services because it is obviously not functionally equivalent to these other services.

16 **Q. IS MOBILE WIRELESS SERVICE A PRICE-CONSTRAINING SUBSTITUTE**  
17 **FOR THE SERVICES PURCHASED BY THE DoD/FEA?**

18 A. No. Mobile wireless is not a price-constraining substitute for services purchased by  
19 DoD/FEA. For example, the seven contracts mentioned above under which the Army  
20 and Air Force are served in Arizona are required to be for wireline services. The military  
21 installations in Arizona do not use wireless services as an alternative to wireline services

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<sup>90</sup> FCC Phoenix Forbearance Order, footnote 173. See also, footnote 206 ("Nor is there information in the record that would enable us to evaluate other factors, such as elasticity of demand...").

1 provided under those contracts. The same is true for most if not all of the local services  
2 obtained under GSA contracts.

3 **4. VoIP Providers Do Not Provide Reasonably Available Alternatives for**  
4 **DoD/GSA**

5 **Q. MR. BRIGHAM STATES THAT “OVER THE TOP” VoIP SERVICES “LIMITS**  
6 **CENTURYLINK’S MARKET POWER[.]”<sup>91</sup> HAS CENTURYLINK**  
7 **SUBSTANTIATED THIS CLAIM?**

8 A. No. Mr. Brigham has not shown that VoIP services are a price-constraining alternative to  
9 CenturyLink’s wireline services. For example, Mr. Brigham identifies a VoIP product  
10 “Vonage World” service that is priced at \$14.99 per month, which includes “domestic  
11 usage and unlimited calls to 60 countries, Voicemail, Caller ID, Call Waiting,  
12 Anonymous Call Block, 3-Way Calling and many other standard features, online account  
13 access and portability[.]”<sup>92</sup> Yet, Mr. Brigham has provided no data to show that  
14 CenturyLink has responded to the availability of VoIP products by lowering prices or  
15 introducing new services.

16 **Q. ARE THERE OTHER FACTORS RELEVANT TO OVER-THE-TOP VOIP**  
17 **SERVICES THAT IMPACT THEIR ABILITY TO SERVE AS A PRICE-**  
18 **CONSTRAINING SUBSTITUTE FOR CENTURYLINK’S RETAIL SERVICES?**

19 A. Yes. Unlike CenturyLink’s retail services, a consumer must have a broadband  
20 connection in order to receive over-the-top VoIP service. As a result, consumers wanting

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<sup>91</sup> Brigham Direct, p. 59.

<sup>92</sup> Brigham Direct, p. 58, lines 21-24.

1 to take service from an over-the-top VoIP provider must first obtain access facilities from  
2 CenturyLink or one of CenturyLink's competitors providing broadband connections.

3 **Q. DOES THE MARKET SHARE DATA PRESENTED BY MR. BRIGHAM**  
4 **SUBSTANTIATE HIS CLAIM THAT OVER-THE-TOP VOIP PROVIDERS**  
5 **LIMITS CENTURYLINK'S MARKET POWER?**

6 A. No. **\*\*\*BEGIN CONFIDENTIAL** [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] **END**

11 **CONFIDENTIAL\*\*\*** Though CenturyLink did not provide Arizona-specific market  
12 share data for the large business/enterprise segment, it is logical to conclude that the  
13 market share of over-the-top VoIP providers in the enterprise market is zero. Over-the-  
14 top VoIP services are not typically suitable for the complex telecommunications services  
15 typically purchased by enterprise customers. This conclusion is further supported by the  
16 Arizona Commission's statement in March 2010 that "there is no evidence that the ACC  
17 is aware of that fixed VoIP is used to any great extent in the business market."<sup>93</sup>

18 **Q. ARE OVER-THE-TOP VOIP SERVICES A PRICE-CONSTRAINING**  
19 **SUBSTITUTE FOR THE SERVICES PURCHASED BY THE DoD/FEA?**

20 A. No. Over-the-top VoIP services are not a price-constraining substitute for services  
21 purchased by DoD/FEA. The seven contracts for local services mentioned above under

<sup>93</sup> Arizona Corporation Commission Reply Comments, WC Docket No. 09-135, March 2, 2010, p. 9.

1 which the Army and Air Force are served in Arizona are required to be provided via  
2 Time Division Multiplexing technology. The military installations in Arizona do not use  
3 over-the-top VoIP as an alternative to traditional wireline services provided under those  
4 contracts. The same is true for the services provided under GSA contracts.

5 **Q. PLEASE SUMMARIZE YOUR POSITION REGARDING CENTURYLINK'S**  
6 **REQUEST TO RECLASSIFY SERVICES AS COMPETITIVE.**

7 A. Arizona regulations define a "Competitive Telecommunications Service" as "[a]ny  
8 telecommunications service where customers of the service within the relevant market  
9 have or are likely to have reasonably available alternatives."<sup>94</sup> CenturyLink has not met  
10 its burden to prove that any of the services it seeks to reclassify are competitive – or that  
11 the customers of those services have or are likely to have reasonably available  
12 alternatives in the relevant market. CenturyLink's filing is flawed and incomplete.  
13 Indeed, CenturyLink does not address any particular service it seeks to reclassify as  
14 competitive on an individual basis, but instead lumps them all into a "voice  
15 communications service" catch-all and reclassify them in a single broad stroke – all the  
16 while ignoring the important differences between the services and the geographic regions  
17 in which they are provided. CenturyLink fails to properly define the "relevant market"  
18 and also fails to demonstrate that any of the alternative providers and services it identifies  
19 provides the type of effective, price-constraints that is the hallmark of a competitive  
20 service. This is particularly so for the services purchased by the DoD/GSA. Unless and  
21 until CenturyLink can meet its burden, the Commission should deny CenturyLink's  
22 request to reclassify services as competitive.

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<sup>94</sup> A.A.C. R14-2-1102(4).

1 **VI. CENTURYLINK'S REQUEST FOR DEREGULATION IS FATALLY VAGUE**  
2 **AND UNSUPPORTED AND SHOULD BE DENIED**

3 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT CENTURYLINK'S**  
4 **REQUEST FOR DEREGULATION?**

5 A. Yes. What strikes me is the sheer lack of support for the request. In simple terms,  
6 CenturyLink is requesting deregulation for 158 services and to withdraw three out of the  
7 four retail tariffs it has on file with the Commission, yet it has dedicated a mere eleven  
8 pages of testimony to this request and only five pages which actually apply to the  
9 services themselves. This raises serious questions about the thoroughness of  
10 CenturyLink's analysis and the extent to which it can be relied upon for making such a  
11 dramatic change to the regulatory landscape in Arizona.

12 **Q. MR. BRIGHAM PROPOSES "FOUR DEREGULATION CRITERIA" FOR**  
13 **EVALUATING CENTURYLINK'S REQUEST FOR DEREGULATION. WHAT**  
14 **ARE THOSE CRITERIA AND HOW DID HE AND CENTURYLINK COME UP**  
15 **WITH THESE CRITERIA?**

16 A. As explained above in Section III, CenturyLink and Mr. Brigham combine A.R.S. § 40-  
17 281(E), Article 15, § 2 of the Arizona Constitution, and unidentified court decisions to  
18 come up with the "four deregulation criteria." Mr. Brigham lists the criteria as follows:

19 The Application identifies the following criteria that should be applied to a  
20 request for deregulation of services, based on A.R.S. § 40-281(E) and  
21 Article 15, § 2 of the Arizona Constitution:

- 22 1. Whether the service constitutes "transmitting messages or  
23 furnishing public telegraph or telephone service" under Article  
24 15, § 2 of the Arizona Constitution;
- 25 2. Whether the service is presently an essential and integral part  
26 of "transmitting public telegraph or telephone service;"

- 1                   3. Whether the service is clothed with a public interest, such as to  
2                   make the rates, charges, and methods of provision a matter of  
3                   public concern; and  
4                   4. Whether the service is a common carriage operation.

5                   Mr. Brigham calls these the “four deregulation criteria.”

6                   **Q.   HOW DOES CENTURYLINK PROPOSE APPLYING THE FOUR**  
7                   **DEREGULATION CRITERIA?**

8                   A.   According to CenturyLink, the answer to all four of the criteria must<sup>95</sup> be answered in the  
9                   affirmative in order for the Commission to continue to regulate the services. In other  
10                  words, if the answer to any of the four questions is “no,” then the service should be  
11                  deregulated under CenturyLink’s proposed criteria.

12                  **Q.   DO YOU AGREE THAT CENTURYLINK’S FOUR DEREGULATION**  
13                  **CRITERIA SHOULD BE USED FOR EVALUATING CENTURYLINK’S**  
14                  **DEREGULATION REQUEST?**

15                  A.   No. As I first mentioned in Section III above, the problem with CenturyLink’s criteria is  
16                  that they are based on the erroneous assumption that the definition of “Public Service  
17                  Corporations” under Article 15, §2 of the Arizona Constitution defines the services  
18                  subject to the Commission’s jurisdiction, when in reality it defines the *companies* subject  
19                  to the Commission’s jurisdiction. This definition identifies the companies  
20                  (telecommunications companies, energy companies, water companies, sewer companies)  
21                  that qualify as “public service corporations” and those which do not (*i.e.*, municipals).

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<sup>95</sup> In its Application, CenturyLink states: “[a]ll four questions **must** be answered in the affirmative for the Commission to have the authority to regulate a service.” Application, p. 9, ¶ 16. (emphasis added) In contrast, Mr. Brigham, without any foundation, states: “I agree with the statement in the Application that all of the criteria **should** be answered in the affirmative before rate regulation *should* apply.” Brigham Direct, p. 63, lines 9-10. (bold/underlined added, italics in original)

1 This definition addresses the *companies* – not the services – which are subject to the  
2 Commission’s jurisdiction.<sup>96</sup> The definition of “public service corporations” refers to  
3 companies that are engaged in “transmitting messages or furnishing public telegraph or  
4 telephone service” and “operating as common carriers.” Therefore, if a company engages  
5 in these activities, then the company is a public service corporation subject to the  
6 Commission’s jurisdiction. And if the company does not engage in these activities, then  
7 the company is not a public service corporation and is not subject to the Commission’s  
8 jurisdiction. However, CenturyLink and Mr. Brigham (with an unexplained modification  
9 to CenturyLink’s mandatory language) erroneously use the definition of Public Service  
10 Corporations throughout the four deregulation criteria and apply it to “*services*” to define  
11 the Commission’s authority over CenturyLink’s retail services. This would have the  
12 impact of significantly reducing the number of retail services over which the Commission  
13 has authority.

14 **Q. WHAT STANDARD SHOULD BE USED TO EVALUATE CENTURYLINK’S**  
15 **DEREGULATION REQUEST?**

16 A. It is undisputed that CenturyLink is a “Public Service Corporation” under Article 15, §2  
17 of the Arizona Constitution, and therefore, subject to the Commission’s jurisdiction. The  
18 Commission has already established the CenturyLink services over which it has  
19 jurisdiction, as evidenced by the numerous CenturyLink tariffs currently on file with the  
20 Commission. This was also clearly stated in Conclusions of Law #1 and #2 of Decision

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<sup>96</sup> For example, A.A.C. R14-2-501(4) and R14-2-1102 define “Arizona Corporation Commission” as “[t]he regulatory authority of the state of Arizona having jurisdiction over public service corporations operating in Arizona.” A.A.C. § R14-2-1102(15) defines a “Telecommunications Company” as “[a] public service corporation, as defined in the Arizona Constitution, Article 15, § 2, that provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.”

1 No. 68604, which adopted CenturyLink's revised Price Cap plan: "(1) Qwest is a public  
2 service corporation within the meaning of the Arizona Constitution Article XV, and  
3 under Arizona Revised Statutes, Title 40, generally. (2) The Commission has jurisdiction  
4 over Qwest and the subject matter of this proceeding."<sup>97</sup> The "subject matter" referred to  
5 in Conclusion of Law #2 includes the very services CenturyLink seeks to deregulate in  
6 this case. This has effectively maintained a baseline for the Commission's jurisdiction  
7 over CenturyLink and its services. There is no reasonable rationale to utilize the  
8 definition of "Public Service Corporations" any further to determine whether that  
9 baseline should be changed, and CenturyLink's four deregulation criteria framework  
10 should not be used. Instead, the Commission should use A.R.S. § 40-281(E) to evaluate  
11 CenturyLink's deregulation request. In other words, if the Commission determines that a  
12 service is "neither essential nor integral" to the public service rendered by CenturyLink,  
13 then the service should be deregulated. CenturyLink has not shown that the services for  
14 which it seeks deregulation are neither essential nor integral.

15 **Q. SHOULD CENTURYLINK BEAR THE BURDEN TO DEMONSTRATE THAT A**  
16 **SERVICE SHOULD BE DEREGULATED?**

17 A. Yes. Again, the baseline of regulated services has already been established and is long-  
18 standing. It should be the responsibility of the proponent of deregulation, CenturyLink,  
19 to demonstrate why a service should no longer be regulated.

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<sup>97</sup> Decision No. 68604, p. 31.

1       **Q.    BESIDES CENTURYLINK’S FOUR DEREGULATION CRITERIA BEING**  
2       **FUNDAMENTALLY FLAWED, ARE THERE PROBLEMS WITH HOW**  
3       **CENTURYLINK APPLIES THOSE CRITERIA?**

4       A.    Yes. Mr. Brigham focuses on whether a service is involved in “transmitting messages for  
5       the public.”<sup>98</sup> He states that if the service is not “transmitting messages” or is not  
6       “offered indiscriminately,” then service should be deregulated. However, he is  
7       inconsistent. There are numerous services that are not involved in transmitting messages  
8       for the public and for which CenturyLink does not seek deregulation. Some of these  
9       services include: Termination of Service (E 2.2.9), Temporary Suspension of Service (E  
10       2.2.10), Returned Check Charge (E 2.3.2), Express Service (E 3.1.8), Telephone  
11       Assistance Programs (E 5.2.6), Listing Services (E 5.7.1), Blocking for  
12       10XXX1+/10XXX011+ (E 10.4.7), Caller ID Blocking (E 10.7.1, E 10.7.2), Disaster  
13       Recovery Services (E 10.10.8), and Pole Attachments (E 11.2). In addition, Mr. Brigham  
14       states that “obsolete” services which are offered only to grandfathered customers are not  
15       offered indiscriminately, and therefore, should be deregulated.<sup>99</sup> However, this does not  
16       explain why there are obsolete services for which CenturyLink is not seeking  
17       deregulation – see, Obsolete Service Stations (E 105.2.5.B) and Obsolete Universal  
18       Emergency Number Service (E109.2.1) which are included in CenturyLink’s competitive  
19       reclassification request. This not only exposes a flaw in CenturyLink’s criteria, but raises  
20       a serious concern about future precedent that would be set if CenturyLink’s erroneous  
21       criteria are adopted.

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<sup>98</sup> Brigham Direct, p. 64.

<sup>99</sup> Brigham Direct, p. 64, lines 12-14.

1       **Q.   MR. BRIGHAM STATES THAT THE ARIZONA COMMISSION HAS**  
2       **PREVIOUSLY DEREGULATED CENTURYLINK SERVICES USING THE**  
3       **PRINCIPLES ADVOCATED BY CENTURYLINK IN THIS PROCEEDING.<sup>100</sup> IS**  
4       **THIS TRUE?**

5       A.   No. Mr. Brigham references Decision No. 68604 (March 23, 2006) which deregulated  
6       Voice Mail Service and Billing and Collection Services, as well as Decision No. 55633  
7       (July 2, 1987) which deregulated radio telephone services. Neither of these cases  
8       deregulated services using the “four deregulation criteria” CenturyLink proposes in this  
9       docket. I have reviewed Decision No. 68604, as well as the testimony in that docket (T-  
10       01051B-03-0454), and the deregulation approved in that docket is based on a settlement  
11       agreement adopted by the Commission. There is no indication in Decision No. 68604 or  
12       the testimony in that docket indicating whether a particular test was used for evaluating  
13       the deregulation of Voice Mail Service and Billing and Collection Services. Nor is there  
14       any support for Mr. Brigham’s claim that those services were deregulated using tests  
15       similar to those advanced by CenturyLink in this docket.

16       **Q.   DOES MR. BRIGHAM’S CLAIM ABOUT DECISION NO. 55633 FARE ANY**  
17       **BETTER?**

18       A.   No. I have reviewed the Commission’s Decision No. 55633 in Docket No. E-1051-86-  
19       016. The Commission did not deregulate radio telephone services in Decision No. 55633  
20       using the same test CenturyLink proposes in this case, nor did Mountain Bell propose a  
21       test similar to what CenturyLink proposes here. The test Mountain Bell proposed in the  
22       prior docket was described in a data request response as follows:

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<sup>100</sup> Brigham Direct, p. 66, lines 16-25.

1 A service is essential to the public service offerings of a public service  
2 corporation if the basic service rendered by the public service corporation  
3 cannot be provided without such a service. A service is integral to the  
4 public service offerings of a public service corporation if such service  
5 cannot reasonably be separated or treated separately from the basic service  
6 rendered by the public service corporation.

7 The Arizona Commission rejected Mountain Bell's proposed test:

8 According to Mountain Bell, the only public service it renders is basic  
9 access service. We can find no support for this limited definition. We can  
10 agree that basic access service is Mountain Bell's primary public service  
11 rendered. However, that is not the only public service it renders. Rather  
12 than focus on Mountain Bell, we can ask what services do the radio  
13 common carriers provide.<sup>101</sup>

14 The Commission instead granted Mountain Bell's application for deregulation based on  
15 "the combination of the factors listed in Findings of Fact Nos. 8 – 12"<sup>102</sup> of Decision No.  
16 55633. Findings of Fact Nos. 8-12 from Decision No. 55633 are shown below:

- 17 8. Less than 7/100 of 1% of Arizona's population subscribe to mobile  
18 radio despite its widespread availability.
- 19 9. Mobile radio is provided through a network that is discrete and  
20 separable from the public telecommunication network.
- 21 10. Mobile radio has been successfully provided as a matter of private  
22 contract for very specialized needs.
- 23 11. Staff has recommended various notice requirements prior to  
24 deregulation and several requirements for providers of both  
25 regulated telecommunication service and deregulated mobile radio  
26 service. (See lines 1-9, page 5 of the discussion.)
- 27 12. Mobile radio common carriers are not providing a public service.

28 While there may be some overlap between Findings of Fact listed above and some of the  
29 principles advocated by CenturyLink in this docket, they are not the same and do not  
30 have the same effects. For example, CenturyLink's proposed "four deregulation criteria"  
31 does not take into account the extent to which Arizona consumers subscribe to the

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<sup>101</sup> Decision No. 55633, p. 6, lines 3-8.

<sup>102</sup> Decision No. 55633, p. 6, lines 26-27.

1 services. In addition, CenturyLink proposes that all four of its criteria must be answered  
2 in the affirmative in order for the Commission to continue to regulate the service in  
3 question – a requirement that was not used in Decision No. 55633. Moreover,  
4 CenturyLink’s four deregulation criteria framework effectively reintroduces the concept  
5 that was rejected by the Commission in Docket No. E-1051-86-016 – *i.e.*, that the only  
6 public service CenturyLink renders is basic access service.

7 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT CENTURYLINK**  
8 **REINTRODUCES THE SAME DEREGULATION TEST THAT WAS**  
9 **REJECTED IN DOCKET NO. E-1051-86-016.**

10 A. It is CenturyLink’s position that all of the 158 services for which it seeks deregulation do  
11 not meet one or more of the four deregulation criteria. Therefore, adopting  
12 CenturyLink’s four deregulation criteria framework would result in deregulation and  
13 detariffing of all of those services. It is also important to note that applying  
14 CenturyLink’s framework would likely result in deregulation of virtually all of the  
15 remaining CenturyLink retail services as well.

16 I have examined the list of services for which CenturyLink seeks competitive  
17 reclassification (services on Exhibit RHB-10), and most if not all of those services would  
18 fail to meet all of CenturyLink’s deregulation criteria as CenturyLink has proposed them  
19 to be applied to the services on services Exhibit RHB-11. This means that applying  
20 CenturyLink’s framework would result in deregulating virtually all of CenturyLink’s  
21 retail services with the possible exception of its most basic access service. For example,  
22 the following services for which CenturyLink seeks competitive reclassification would

1 likely not satisfy CenturyLink's criteria #2 as CenturyLink has proposed it to be applied  
2 (Whether the service is presently an essential and integral part of "transmitting public  
3 telegraph or telephone service"): Termination of Service (E2.2.9), Temporary Suspension  
4 of Service (E2.2.10), Returned Check Charge (E2.3.2), Nonrecurring charges (E3.1.1),  
5 Dual Service (E3.1.7), Express Service (E3.1.8), Local Service Increments (E5.1.6), Low  
6 Use Option Service (E5.2.2), Telephone Assistance Programs (E5.2.6), Listing Services  
7 (E5.7.1), Toll Restriction (E10.4.4), 900 Service Access Restriction (E10.4.6), Blocking  
8 for 10XXX1+/10XXX011+ (E10.4.7), Caller ID Blocking (E10.7.1, E10.7.2), Disaster  
9 Recovery Services (E10.10.8), N11 Service (E10.11.3), Touch Tone Calling Service  
10 (C5.4.2), and Intercept Service (C5.8.4).

11 The following services for which CenturyLink seeks competitive reclassification would  
12 likely not satisfy CenturyLink criteria #1 as CenturyLink has proposed it to be applied  
13 (Whether the service constitutes "transmitting messages or furnishing public telegraph or  
14 telephone service" under Article 15, §2): Assigning and Changing of Telephone Numbers  
15 (E2.2.7) and Pole Attachments (E11.2). Furthermore, the following services for which  
16 CenturyLink seeks competitive reclassification would likely not satisfy CenturyLink's  
17 criteria #3 and/or #4 as CenturyLink has proposed them to be applied: Obsolete Service  
18 Stations (E105.2.5.B), Obsolete Universal Emergency Number Service (E109.2.1), and  
19 Emergency Transport Backup (E9.2.5).

20 In sum, the end result of adopting CenturyLink's deregulation framework is that only the  
21 most basic access service provided by CenturyLink would pass its "four deregulation  
22 criteria" test for continued regulation. This is effectively the same as Mountain Bell's

1 prior defective and rejected claim that the only public service it renders is basic access  
2 service. This raises serious questions about the validity of the framework proposed by  
3 CenturyLink in this docket.

4 **Q. MR. BRIGHAM DIVIDES THE SERVICES FOR WHICH CENTURYLINK**  
5 **SEEKS DEREGULATION INTO SIX CATEGORIES “TO FACILITATE THE**  
6 **ANALYSIS OF A FAIRLY LARGE NUMBER OF SERVICES[.]”<sup>103</sup> WHAT ARE**  
7 **THOSE SIX CATEGORIES?**

8 A. Those six categories are: (1) Supplemental, (2) Value Added, (3) Ancillary, (4) Obsolete,  
9 (5) Pricing, and (6) Toll. My testimony below focuses on the first three categories  
10 because they include services that are particularly important to DoD/FEA, but my silence  
11 on any category of services or individual service is not meant to signal my agreement  
12 with CenturyLink that they should be deregulated.

13 **Q. PLEASE COMMENT ON THE “SUPPLEMENTAL” CATEGORY.**

14 A. Mr. Brigham states that these services are comparable to basic service in some respects,  
15 but differ in terms of either pricing or functionality. This category includes 15 different  
16 services, including ISDN, Primary Rate Service, Flat Rate Service (Additional line),  
17 Digital Switched Service, Integrated T-1 Service, and others. Mr. Brigham discusses the  
18 Flat Rate Service – Additional Line, characterizing it as a difference “simply in  
19 pricing...as a marketing strategy and does not constitute a telecommunications  
20 service.”<sup>104</sup> I disagree. Some small businesses purchase multiples for their business  
21 needs, such as two or three voice lines and a fax line. In these instances, each line is

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<sup>103</sup> Brigham Direct, pp. 67-68.

<sup>104</sup> Brigham Direct, p. 71, lines 10-13.

1 equally important to the business customer, even though some of those lines are  
2 “additional lines.” They are not just a “marketing strategy” to the business customers,  
3 but rather essential or integral to the business’ telecommunications services.

4 Mr. Brigham also discusses ISDN service and likens it to a premium service such as  
5 overnight delivery versus regular delivery. He states that because it goes above and  
6 beyond basic functionality of transmitting messages, it cannot be considered  
7 “essential.”<sup>105</sup> I disagree. ISDN-PRI is the primary service utilized by the U.S. Army  
8 and Air Force to serve the military installations in Arizona for official communications  
9 purposes. These branches of the military could not carry out their missions in Arizona as  
10 they do today without these services. Two things are clear to me: (1) the Army and Air  
11 Force view PRI services as both essential and integral to their telecommunications  
12 services in Arizona, and (2) they are extremely concerned about the prospect of these  
13 services being deregulated and tariffs no longer being available given that there would be  
14 no backstop in the absence of price-constraining competition.

15 **Q. PLEASE COMMENT ON THE “VALUE ADDED” CATEGORY.**

16 A. Mr. Brigham states that these services have been grouped together because they are “add-  
17 ons” that are not related to the transmission of a call. This category includes 51 different  
18 services, including Foreign Exchange Service, Foreign Central Office Service, Digital  
19 Data Service, DS1 Service, DS3 Service, customer calling features, and others.  
20 CenturyLink claims that none of these services are related to the transmission of a call.<sup>106</sup>  
21 This is false. Per CenturyLink’s tariff, DS1 service “provides for the two-way

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<sup>105</sup> Brigham Direct, p. 71, lines 19-24.

<sup>106</sup> Brigham Direct, p. 69, lines 11-12.

1 transmission of 1.544 Mbit/s digital signals” and “may be used for the transmission of  
2 voice, data and video signals, or any combination thereof.”<sup>107</sup> Likewise, DS3 service  
3 “provides a high capacity channel for the transmission of 44.736 Mbit/s isochronous  
4 data...”<sup>108</sup> Digital Data Service – another service Mr. Brigham includes in the “Value  
5 Added” category – is “capable of transmission of synchronous serial data at the rate of  
6 2.4, 4.8, 9.6, 19.2 or 56 kbps.”<sup>109</sup> While Mr. Brigham states that “dedicated private lines  
7 services do not utilize the common public switched network[,]”<sup>110</sup> this has no bearing on  
8 whether the service should continue to be regulated (even under Mr. Brigham’s  
9 misguided four deregulation criteria). The fact that the rates, terms and conditions of  
10 CenturyLink’s interstate private line DS1 and DS3 services are still regulated and tariffed  
11 at the FCC shows that Mr. Brigham and CenturyLink are over-reaching.<sup>111</sup>

12 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SERVICE CENTURYLINK HAS**  
13 **CATEGORIZED AS “VALUE ADDED” THAT IS EITHER ESSENTIAL OR**  
14 **INTEGRAL TO THE PUBLIC SERVICE RENDERED BY CENTURYLINK?**

15 A. Yes. Foreign Exchange (“FX”) Service is one such service. FX “provides dial tone from  
16 a wire center in an exchange from which the customer is not normally served.” The U.S.  
17 Army purchases FX lines in Arizona as part of the overall services it obtains from  
18 CenturyLink. One such FX line is purchased for the Servicemen’s Lounge at the Tucson  
19 International Airport, which allows a soldier to call Fort Huachuca when he/she arrives at  
20 the airport as a local call (even though the airport and the Fort are in different exchanges)

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<sup>107</sup> Competitive Private Line Transport Service Tariff, § 5.2.13.

<sup>108</sup> Competitive Private Line Transport Service Tariff, § 5.2.14.

<sup>109</sup> Competitive Private Line Transport Service Tariff, § 5.2.10.

<sup>110</sup> Brigham Direct, p. 69, line 14.

<sup>111</sup> See, e.g., Tariff F.C.C. Tariff No. 1, §§ 7.11, 7.12.

1 in order to, among other things, ask for a ride from the airport to the military base. This  
2 is just one example of how FX service serves an essential or integral role to the services  
3 rendered by CenturyLink.

4 **Q. PLEASE COMMENT ON THE “ANCILLARY” CATEGORY.**

5 A. Mr. Brigham states that none of the services in this category occur during the course of  
6 the transmission of messages. This category includes 27 different services, including  
7 Listing Services, maintenance plans, special construction, repair of facilities, acceptance  
8 testing, dispatch charge, and others. I disagree with Mr. Brigham that these services  
9 should be deregulated not only because he uses CenturyLink’s misguided four  
10 deregulation criteria, but also because some of these services are essential or integral to  
11 the services CenturyLink provides. For example, the Army and Air Force view directory  
12 listings as essential or integral to the telecommunications services they obtain in Arizona.  
13 Ironically, CenturyLink’s own tariff states that, “Alphabetical listings include  
14 information which is *essential* to the identification of the listed party and facilities [sic]  
15 the use of the directory.”<sup>112</sup>

16 Some other services in the Ancillary category that appear essential or integral to the  
17 services rendered by CenturyLink, include but are not limited to the following:

- 18 • Repair of Facilities: governs the rates, terms and conditions for a repair visit to the  
19 customer premises in response to a trouble report.
- 20 • Maintenance of Service: governs the rates, terms and conditions applicable to  
21 trouble reports to the Company for clearance and no trouble is found in the  
22 Company’s facilities.
- 23 • Telecommunications Service Priority (“TSP”) System: governs the rates, terms  
24 and conditions of the TSP, which is a regulatory, administrative, and operational

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<sup>112</sup> Competitive Exchange and Network Services, § 5.7.1 (emphasis added).

1 system developed by the Federal Government to ensure priority provisioning  
2 and/or restoration of National Security Emergency Preparedness (NSEP)  
3 telecommunications services.

4 The first two services are essential or integral because the telecommunications services  
5 purchased from CenturyLink do not work or are degraded when there is a trouble report  
6 without repair or maintenance. The third service is essential or integral because it is a  
7 matter of national security.

8 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS ON CENTURYLINK'S**  
9 **REQUEST FOR DEREGULATION.**

10 A. CenturyLink has provided a minimal amount of analysis in conjunction with its proposal  
11 to deregulate 158 retail services. What's more, the flawed test proposed by CenturyLink  
12 for evaluating its deregulation proposal is so broad as to be meaningless and would  
13 eviscerate the Commission's jurisdiction over retail telecommunications services.  
14 CenturyLink over-reaches in attempting to deregulate 158 services in one fell swoop, and  
15 includes in that request numerous services that are essential or integral to the public  
16 service rendered by CenturyLink. A more granular approach is needed to carefully  
17 analyze and separate those services which are essential or integral from those that may  
18 now be neither essential nor integral under A.R.S. § 40-281(E). Since the baseline has  
19 been set regarding the Commission's authority over CenturyLink's retail services, the  
20 proponent of change – CenturyLink – needs to demonstrate that change is warranted.  
21 Unless and until CenturyLink comes back to the Commission with a more consistent and  
22 reasoned approach, its deregulation request should be denied. Until such a showing is  
23 made by CenturyLink and accepted by the Commission, the current regulatory regime  
24 applicable to CenturyLink's retail services should remain in place.

1 **VII. CENTURYLINK'S TESTIMONY ABOUT HARMS LACKS CONTEXT**

2 **Q. MR. BRIGHAM CLAIMS THAT REGULATING CENTURYLINK'S RATES**  
3 **DIFFERENTLY THAN ITS COMPETITORS "HARMS CENTURYLINK AND**  
4 **ITS ARIZONA CUSTOMERS."<sup>113</sup> WOULD YOU LIKE TO RESPOND?**

5 A. Yes. Mr. Brigham has failed to identify any such harms. The closest he comes to  
6 describing harms is his assertion that granting the Application will permit CenturyLink to  
7 "be more responsive to customer demand and competitive market conditions[]" and "be  
8 better positioned to bring products, services, and targeted offers and promotions to the  
9 market with greater speed and effectiveness."<sup>114</sup> However, he does not provide any  
10 examples of any products or services that CenturyLink will bring to market if the  
11 Commission grants the application. CenturyLink was specifically asked in data request  
12 DoD/FEA-CTL III.2 to describe any plans for bringing new products, services or targeted  
13 offers and promotions to the Arizona market if the Commission approves CenturyLink's  
14 application. Mr. Brigham replied: "CenturyLink does not have any specific current plans  
15 for the introduction of new products, services or targeted offers and promotions in the  
16 Arizona market, based on the Commission's potential approval of CenturyLink's  
17 application."<sup>115</sup> Mr. Brigham also fails to explain how the current regulatory framework  
18 impedes CenturyLink's introduction of new products, services or promotions. Qwest  
19 made these same claims to the Commission when seeking approval of the

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<sup>113</sup> Brigham Direct, p. 8, lines 18-19.

<sup>114</sup> Brigham Direct, p. 8, lines 19-23.

<sup>115</sup> CenturyLink response to data request DoD/FEA-CTL III.2 (March 7, 2012), Respondent: Robert Brigham.

1 Qwest/CenturyLink merger.<sup>116</sup> Now that the merger has been approved, Qwest should be  
2 better positioned to bring services to the market more rapidly and efficiently absent the  
3 instant Application (assuming Qwest's prior representations to the Commission were true  
4 and accurate).

5 From a customer perspective, DoD/FEA understands the need to modify or eliminate  
6 unnecessary regulatory burdens. DoD/FEA wants CenturyLink to be a vigorous and fair  
7 competitor, but not at the expense of unjustified, unconstrained market power to the  
8 detriment of DoD/FEA's customer interests.

9 **Q. ARE THERE POTENTIAL HARMS ASSOCIATED WITH PREMATURELY**  
10 **APPROVING CENTURYLINK'S APPLICATION?**

11 A. Yes. Not only are there potential harms associated with prematurely approving  
12 CenturyLink's Application, the harms of doing so are greater than the vague and  
13 unsupported harms discussed by Mr. Brigham. The result of granting CenturyLink's  
14 Application prematurely and without ensuring that CenturyLink's faces effective  
15 competition is that CenturyLink has unilateral control over the terms, rates, conditions,  
16 and availability for a majority of its retail services that are deregulated, and the ability to  
17 quickly raise the rates for the remainder of its retail services. From the Arizona  
18 Commission's perspective, it would have limited regulatory oversight over a small  
19 portion of CenturyLink's retail services going forward. Without effective competition or

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<sup>116</sup> See, e.g., Direct Testimony of James Campbell, ACC Docket No. T-01051B-10-0194, *et al.*, May 24, 2010, p. 12, lines 15-18 ("The post-Transaction enterprise will be able to focus more strategically and rapidly respond to customer preferences to provide a full portfolio of quality, advanced communications services that will differentiate the company in the markets it serves.")

1 Commission oversight, the Arizona telecommunications market could transform into an  
2 unregulated monopoly situation to the detriment of consumers.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

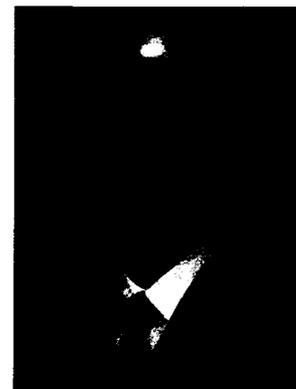
4 A. Yes, it does.

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### **Biography**

Dr. Ankum is a founding partner of QSI, serves as Senior Vice President, and is the firm's Chief Economist. Dr. Ankum is an economist and consultant specializing in both domestic and international telecommunications issues. Before co-founding QSI, Dr. Ankum worked directly with a number of the country's largest communications firms in his own practice. Prior to that, in 1996, he served as Senior Economist for MCI Telecommunications Corporation's Public Policy Division, and before that, in 1995, as a Manager in the Regulatory and External Affairs Division of Teleport Communications Group, Inc. (subsequently purchased by AT&T). While at MCI and TCG, Dr. Ankum provided advice and expert testimony regarding the economics of telecommunications and public policy before the FCC and in contested proceedings before state public utility commissions. Over the course of his career, Dr. Ankum has worked on virtually all issues pertaining to the introduction of competition in telecommunications markets. Dr. Ankum began his career in telecommunications with the Texas Public Utility Commission, where he served as the Commission Staff's Chief Telecommunications Economist before leaving in 1994.

### **Educational Background**

Ph.D., Economics	
<i>University of Texas, Austin, Texas</i>	1992
Master of Arts, Economics	
<i>University of Texas, Austin, Texas</i>	1987
Bachelor of Arts, Economics	
<i>Quincy College, Quincy, Illinois</i>	1982

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## **Professional Experience**

<b>QSI Consulting</b> (1999 to Current)	Founding Partner and Senior Vice President
<b>Ankum &amp; Associates</b> (1996 - 1999)	Founding partner and President
<b>MCI</b> (1995 - 1996)	Senior Economist
<b>TCG</b> (1994 - 1995)	Manager
<b>Texas Office of Public Utility Commission</b> (1987 - 1994)	Chief Economist, and Economist.

## **PROCEEDINGS BEFORE STATE PUBLIC UTILITY COMMISSIONS IN WHICH DR. ANKUM HAS FILED EXPERT WITNESS TESTIMONY**

### **Before the Arizona Corporation Commission**

**Docket Nos. T-01051B-10-0194, et al.**

*Joint Notice and Application of Qwest Corporation, et al. and CenturyLink Communications, et al. for Approval of the Proposed Merger of Their Parent Corporations Qwest Communications International Inc. and CenturyTel, Inc.*

On behalf of Integra Telecom, tw telecom, Level 3 Communications and PAETEC Business Services

### **Before the California Public Utilities Commission**

#### **Consolidated Docket**

*Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050*

On behalf of ATT and MCI

### **Before the Public Utilities Commission of the State of Colorado**

**Docket No. 10A-350T**

*Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, et al.*

On behalf of Integra Telecom, Level 3 Communications, PAETEC Business Services, Cbeyond Communications, and Covad Communications Company

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**Before the Public Utilities Commission of the State of Colorado**

**Docket No. 08F-259T**

*Qwest Communications Company, LLC, (Complainant), v. MCIMetro, XO Communications Services, Time Warner Telecom, Granite Telecommunications, Eschelon Telecom, Arizona DialTone, CAN Communications, Bullseye Telecom, Inc., ComTel Telecom Assets, LP, Earnest Communications, Inc., Level3 Communications, LLC, and Liberty Bell Telecom, LLC. (Respondents)*

On behalf of Eschelon Telecom, XO Communications Services, Granite Telecommunications, and ACN Communication Services

**Before the Public Utilities Commission of the State of Colorado**

**Docket No. 07A-211T**

*In the Matter of Qwest Corporation's Application, Pursuant to Decision Nos. C06-1280 and C07-0423, Requesting that the Commission Consider Testimony and Evidence to Set Costing and Pricing of Certain Network Elements Qwest Is Required to Provide Pursuant to 47 U.S.C. §§ 251(B) and (C)*  
 On Behalf of CBeyond Communications, Comcast Phone of Colorado, Covad Communications Company, Integra Telecom, PAETEC Business Services, XO Communications Services

**Before the Connecticut Department of Public Utility Control**

**Docket No. 02-05-17**

*DPUC Investigation of Intrastate Carrier Access Charges*  
 On behalf of AT&T and MCI

**Before the Connecticut Department of Public Utility Control**

**Docket Nos. 09-04-21, 08-12-04**

*DPUC Investigation into the Southern New England Telephone Company's Cost of Service Re: Reciprocal Compensation and Transit Services*  
 On Behalf of the Connecticut Department of Utility Control

**Before the Delaware Public Service Commission**

**PSC Docket No. 00-025**

*Petition of Focal Communications Corporation of Pennsylvania For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic – Delaware, Inc.*

On behalf of Focal Communications Corporation of Pennsylvania

**Public Service Commission of the District of Columbia**

**Formal Case No. 1040**

*In the Matter of the Investigation into Verizon Washington, D.C. Inc.'s Universal Emergency Number 911 Services Rates in the District of Columbia*

Advisor to the Public Service Commission of the District of Columbia

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**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Inter-carrier Compensation Regime*

On behalf of NuVox Communications

**Before the Florida Public Utilities Commission**

**Docket No. 990649B-TP**

*Investigation into Pricing of Unbundled Network Elements*

On behalf of AT&T Communications of the Southern States, MCImetro Access Transmission Services, MCI WorldCom Communications, and Florida Digital Network

**Before the Florida Public Utilities Commission**

**Docket No. 030829-TP**

*In the Matter of Complaint of FDN Communications for Resolution of Certain Billing Disputes and Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications, Inc.*

On behalf of Florida Digital Network d/b/a FDN Communications

**Before the Georgia Public Service Commission**

**Docket No. 6352-U**

*AT&T Petition for the Commission to Establish Resale Rules, Rates and terms and Conditions and the Initial Unbundling of Services*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 94-0048**

*Adoption of Rules on Line-Side Interconnection and Reciprocal Interconnection*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 94-0096**

*Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 94-0117**

*Addendum to Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois*

On behalf of Teleport Communications Group, Inc.

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**Before the Illinois Commerce Commission**

**Docket No. 94-0146**

*AT&T's Petition for an Investigation and Order Establishing Conditions Necessary to Permit Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell Telephone Company*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 95-0315**

*Proposed Reclassification of Bands B and C Business Usage and Business Operator Assistance/Credit Surcharges to Competitive Status*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket 94-480**

*Investigation Into Amending the Physical Collocation Requirements of 83 Ill. Adm. Code 790*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 95-0458**

*Petition for a Total Local Exchange Wholesale Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13-505.5 of the Illinois Public Utilities Act*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 95-0296**

*Citation to Investigate Illinois Bell Telephone Company's Rates, Rules and regulations For its Unbundled Network Component Elements, Local Transport Facilities, and End office Integration Services*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 96-AB-006**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*

On behalf of MCI Telecommunications Corporation

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**Before the Illinois Commerce Commission**

**Docket No. 96-AB-007**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Central Telephone Company of Illinois*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 96-0486**

*Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 98-0396**

*Phase II of Ameritech Illinois TELRIC proceeding*

On behalf of MCIWorldCom

**Before the Illinois Commerce Commission**

**Docket No. 00-0700**

*Illinois Commerce Commission On its Motion vs Illinois Bell Telephone Company Investigation into Tariff Providing Unbundled Local Switching with Shared Transport*

On behalf of AT&T Communications of Illinois, Inc., and WorldCom, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 02-0864**

*In the Matter of: Illinois Bell Telephone Company, Filing to Increase Unbundled Loop and Nonrecurring Rates (Tariffs Filed December 24, 2002)*

On Behalf of WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., Covad Communications Company, TDS Metrocom, Allegiance Telecom of Illinois, RCN Telecom Services of Illinois, Globalcom, Z-Tel Communications, XO Illinois, Forte Communications, and CIMCO Communications

**Before the Indiana Regulatory Commission**

**Cause No. 39948**

*In the matter of the Petition of MCI Telecommunications Corporation for the Commission to Modify its Existing Certificate of Public Convenience and Necessity and to Authorize the Petitioner to Provide certain Centrex-like Intra-Exchange Services in the Indianapolis LATA Pursuant to I.C. 8-1-2-88, and to Decline the Exercise in Part of its Jurisdiction over Petitioner's Provision of such Service, Pursuant to I.C. 8-1-2.6*

On behalf of MCI Telecommunications Corporation

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**Before the Indiana Regulatory Commission**

**Cause No. 40178**

*In the matter of the Petition of Indiana Bell Telephone company, Inc. For Authorization to Apply a Customer Specific Offering Tariff to Provide the Business Exchange Services Portion of Centrex and PBX Trunking Services and for the Commission to Decline to Exercise in Part Jurisdiction over the Petitioner's Provision of such Services, Pursuant to I.C. 8-1-2.6*

On behalf of MCI Telecommunications Corporation

**Before the Indiana Regulatory Commission**

**Cause No. 40603-INT-01**

*MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Indiana Bell Telephone Company d/b/a Ameritech Indiana*

On behalf of MCI Telecommunications Corporation

**Before the Indiana Regulatory Commission**

**Cause No. 40611**

*In the matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection Service, Unbundled Elements and Transport and Termination under the Telecommunications Act of 1996 and Related Indiana Statutes*

On behalf of MCI Telecommunications Corporation

**Before the Indiana Regulatory Commission**

**Cause No. 40618**

*In the Matter of the Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection, Service, Unbundled Elements, and Transport under the FTA 96 and related Indiana Statutes*

On behalf of MCI Telecommunication Corporation

**Before the Indiana Regulatory Commission**

**Cause No. 40611-S1**

*In the matter of the Commission Investigation and Generic proceeding on the Ameritech Indiana's rates for Interconnection, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes*

On behalf of WorldCom, Inc., AT&T Communications of Indiana

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**Before the Indiana Utility Regulatory Commission**  
**Cause No. 42393**

*In the Matter of the Commission Investigation and Generic Proceeding of Rates and Unbundled Network Elements and Collocation for Indiana Bell d/b/a SBC Indiana Pursuant to the Telecommunications Act of 1996 and Related Indiana Statutes*

On Behalf of WorldCom, McLeodUSA Telecommunications Services, Covad Communications Company, Z-Tel Communications

**Before the Iowa Utilities Board**

**Docket No. SPU-2010-0006**

*In RE: Qwest Communications International, Inc. and CenturyTel, Inc.*

On behalf of PAETEC Business Services

**Before the Iowa Utilities Board**

**Docket No: RPU-00-01**

*IN RE: US West Communications, Inc.*

On behalf of McLeodUSA Telecommunications Services

**Before the State of Maine Public Utilities Commission**

**Dockets Nos. 2007-611, 2008-214 through 2008-218, 2009-41-44.**

*CRC Communications of Maine, Inc., Investigation Pursuant to 47 U.S.C. §251(f)(1) Regarding CRC Communications of Maine's Request of Lincolnville, Telephone Company, UniTel, Inc., Oxford Telephone Company, Oxford West Telephone Company, Tidewater Telecom, Inc.*

On behalf of CRC Communications and Time Warner Cable

**Before the Maryland Public Utilities Commission**

**Case No. 8988**

*In the matter, The Implementation of the Federal Communications Commission's Triennial Review Order*

On behalf of Cavalier Telephone

**Before the Massachusetts Department of Energy and Transportation**

**D.P.U. 96-83**

*NYNEX/MCI Arbitration*

On behalf of MCI Telecommunications Corporation

**Before the Massachusetts Department of Energy and Transportation**

**Docket 01-20**

*Investigation into Pricing based on TELRIC for Unbundled Network Elements and Combinations of Unbundled Networks Elements and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services*

On behalf of Allegiance, Network Plus, El Paso Networks, and Covad Communications Company

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**Before the Massachusetts Department of Energy and Transportation**

**Docket 01-03**

*Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*

On behalf of Network Plus

**Before the Massachusetts Department of Telecommunications and Energy**

**D.T.E. 03-60**

*Proceeding by the Department on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass market Customers*

On behalf of Conversent Communications of Massachusetts

**Before the Massachusetts Department of Telecommunications and Cable**

**D.T.E. 06-61**

*Investigation by the department on its own Motion as to the Propriety of the rates and Charges Set Forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become Effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts*

On behalf of Broadview networks, DSCI Corporation, InfoHighway Communications, Metropolitan Telecommunications of Massachusetts a/k/a MetTel, New Horizon Communications, and One Communications

**Before the Massachusetts Department of Telecommunications and Cable**

**D.T.E. 07-9**

*Department Investigation into the Intrastate Access Rates of Competitive Local Exchange Carriers*

On behalf of One Communications, PAETEC Communications, RNK Communications, and XO Communications Services

**Before the Massachusetts Department of Telecommunications and Cable**

**D.T.E. 10-2**

*Petition of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts Inc., CTC Communications Corp. and Lightship Telecom LLC For Exemption from Price Cap on Intrastate Switched Access Rates as Established in D.T.C. 07-9*

On behalf of One Communications

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**Before the Michigan Public Service Commission**

**Case No. U-10647**

*In the Matter of the Application of City Signal, Inc. for an Order Establishing and Approving Interconnection Arrangements with Michigan Bell Telephone Company*

On behalf of Teleport Communications Group, Inc.

**Before the Michigan Public Service Commission**

**Case No. U-10860**

*In the Matter, on the Commission's Own Motion, to Establish Permanent Interconnection Arrangements Between Basic Local Exchange Providers*

On behalf of MCI Telecommunications Corporation

**Before the Michigan Public Service Commission**

**Case No. U-11280**

*In the Matter, on the Commission's Own Motion, to consider the total service long run incremental costs and to determine the prices for unbundled network elements, interconnection services, resold services, and basic local exchange services for Ameritech Michigan*

On behalf of MCI Telecommunications Corporation

**Before the Michigan Public Service Commission**

**Case No. U-11366**

*In the matter of the application under Section 310(2) and 204, and the complaint under Section 205(2) and 203, of MCI Telecommunications Corporation against Ameritech requesting a reduction in intrastate switched access charges*

On behalf of MCI Telecommunications Corporation

**Before the Michigan Public Service Commission**

**Case No. U-13531**

*In the matter, on the Commission's own motion, to review the costs of telecommunications services provided by SBC Michigan*

On behalf of AT&T, Worldcom, McLeodUSA, and TDS Metrocom

**Before the Michigan Public Service Commission**

**Case No. U-11831**

*In the Matter of the Commission's own motion, to consider the total service long run incremental costs for all access, toll, and local exchange services provided by Ameritech Michigan*

On behalf of MCIWorldCom, Inc.

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**Before the Michigan Public Service Commission**

**Case No. U-11830**

*In the matter of Ameritech Michigan's Submission on Performance Measures, Reporting, and Benchmarks, Pursuant to the October 2, 1998 Order in Case No. U-11654*

On behalf of Covad Communications, McLeodUSA Telecommunications Services, LDMI Telecommunications, Talk America, and XO Communications Services

**Before the Michigan Public Service Commission**

**MPSC Case No. U-14952**

*In the matter of the formal complaint of TDS Metrocom, LLC, LDMI, Telecommunications, Inc and XO Communications Services, Inc against Michigan Bell Telephone Company, d/b/a AT&T Michigan, or in the alternative, an application*

On behalf of TDS Metrocom, LDMI Telecommunications, and XO Communications Services

**Before the Minnesota Public Utilities Commission**

**Docket No. P-421, et al./PA-10-456**

*In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*

On behalf of Cbeyond Communications, Charter FiberLink, Integra Telecom, Level 3 Communications, PAETEC Business Services, TDS Metrocom, Orbitcom and POPP.com

**Before the Minnesota Public Utilities Commission**

**PUC Docket No. P-442, 421, 3012 /M-01-1916**

*In Re Commission Investigation Of Qwest's Pricing Of Certain Unbundled Network Elements*

On behalf of Otter Tail Telecom, Val-Ed Joint Venture d/b/a 702 Communications, McLeodUSA Telecommunications, Eschelon Telecom, and USLink

**Before the Minnesota Public Utilities Commission**

**PUC Docket No. P-421/AM-06-713**

**OAH Docket No. 3-2500-17511-2**

*In the Matter of Qwest Corporation's Application for Commission Review of TELRIC rates Pursuant to 47 U.S.C. § 251*

On behalf of Integra Telecom of Minnesota, McLeodUSA Telecommunications Services, POPP.com, Covad Communications Company, TDS Metrocom, and XO Communications

**Before the Minnesota Public Utilities Commission**

**PUC Docket #P-421/CI-05-1996**

**OAH Docket No. 12-2500-17246-2**

*In the Matter of a Potential Proceeding to Investigate the Wholesale Rate Charged by Qwest*

On behalf of Integra Telecom, McLeodUSA Telecommunications Services, POPP.com, Covad Communications Company, TDS Metrocom, and XO Communications

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**Before the Montana Public Service Commission**

Docket No. D2010.5.55

*In the Matter of Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.*

On behalf of Integra Telecom

**Before the New Jersey Board of Public Utilities**

*Petition of Focal Communications Corporation of New Jersey For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic*

On behalf of Focal Communications Corporation of New Jersey

**Before the New Jersey Board of Public Utilities**

Docket No. TO00060356

*I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*

On behalf of WorldCom, Inc.

**Before the New Jersey Board of Public Utilities**

Docket No. TO03090705

*In The Matter, The Implementation Of the Federal Communications Commission's Triennial Review Order*

On behalf of Conversent Communications of New Jersey

**Before the New Jersey Board of Public Utilities**

Docket No. TX08090830

*In the Matter of the Board's Investigation and review of Local Exchange Carrier Intrastate Access Rates*

On behalf of One Communications, PAETEC Communications, US LEC of Pennsylvania, Level3 Communications, and XO Communications Services

**Before The New Mexico Public Regulation Commission**

Docket No. 96-307-TC

*Brooks Fiber Communications of New Mexico, Inc. Petition for Arbitration*

On behalf of Brooks Fiber Communications of New Mexico, Inc.

**Before The New Mexico Public Regulation Commission**

Utility Case No. 3495, Phase B

*In the matter of the consideration of costing and pricing rules for OSS, collocation, shared transport, non-recurring charges, spot frames, combination of network elements and switching.*

On behalf of the Commission Staff

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**Before the New York Public Service Commission**  
**Case Nos. 95-C-0657, 94-C-0095, 91-C-1174**  
*Commission Investigation into Resale, Universal Service and Link and Port Pricing*  
On behalf of MCI Telecommunications Corporation

**Before the New York Public Service Commission**  
**Case 99-C-0529**  
*In the Matter of Proceeding on Motion of the Commission To Reexamine Reciprocal Compensation*  
On behalf Of Cablevision LightPath, Inc.

**Before the New York Public Service Commission**  
**Case 98-C-1357**  
*Proceeding on the Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*  
On behalf of Corecomm New York, Inc.

**Before the New York Public Service Commission**  
**Case 98-C-1357**  
*Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*  
On behalf of MCIWorldCom

**Before the State Of New York Public Service Commission**  
**Case 02-C-1425**  
*In The Matter, Proceeding on Motion of the Commission to Examine the Processes, and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basic*  
On behalf of Conversent Communications of New York, LLC

**Before the Public Utilities Commission of Ohio**  
**Case No. 96-888-TP-ARB**  
*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Ameritech Ohio*  
On behalf of MCI Telecommunications Corporation

**Before the Public Utilities Commission of Ohio**  
**Case No. 96-922-TP-UNC.**  
*In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*  
On behalf of MCI Telecommunications Corporation

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**Before the Public Utilities Commission of Ohio**

**Case No. 00-1368-TP-ATA**

*In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic. Case No. 96-922-TP-UNC and In the Matter of the Application of Ameritech Ohio for Approval of Carrier to Carrier Tariff*

On behalf of MCIWorldCom and AT&T of the Central Region

**Before the Public Utilities Commission of Ohio**

**Case No. 97-152-TP-ARB**

*In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*

On behalf of the MCI Telecommunications Corporation

**Before the Public Utility Commission of Ohio**

**Case No. 02-1280-TP-UNC**

*In the Matter of the Review of SBC Ohio's TELRIC Costs for Unbundled Network Elements*

On Behalf of MCImetro Access Transmission Services, McLeodUSA Telecommunications Services, Covad Communications Company, XO Communications, and NuVox Communications

**Before the Public Utility Commission of Ohio**

**Case No. 08-45-TP-ARB**

*In the Matter of the Petition of Communication Options, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*

On behalf of Communications Options, Inc.

**Before the Oregon Public Utility Commission**

**Docket UM 1484**

*In the Matter of CenturyLink, Inc. Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.*

On behalf of Covad Communications Company, Charter FiberLink, Integra Telecom, Level 3 Communications and tw telecom

**Before the Pennsylvania Public Utility Commission**

**Docket No. I-00940035**

*In Re: Formal Investigation to Examine Updated Universal Service Principles and Policies for telecommunications Services in the Commonwealth Interlocutory order, Initiation of Oral Hearing Phase*

On behalf of MCI Telecommunications Corporation

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**Before the Pennsylvania Public Utility Commission**

**Docket No. M-0001352**

*Structural Separation of Verizon*

On behalf of MCI WorldCom

**Before the Puerto Rico Telecommunications Regulatory Board**

**Docket No. 97-0034-AR**

*Petition for Arbitration Pursuant to 47 U.S.C. & (b) and the Puerto Rico Telecommunications Act of 1996, regarding Interconnection Rates Terms and Conditions with Puerto Rico Telephone Company*

On behalf of Cellular Communications of Puerto Rico, Inc.

**Before the Public Service Commission of South Carolina**

**Dockets Nos. 2008-325-C, 2008-326-C, 2008-327-C, 2008-328-C, and 2008-329-C**

*In Re: Docket No. 2008-325-C - Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*

On behalf of Time Warner Cable

**Before the Public Utility Commission of South Dakota**

**Docket TC07-117**

*In the Matter of the Petition of Midcontinent Communications for the Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company-Specific Cost-Based Switched Access Rates*

On Behalf of Midcontinent Communications, Inc.

**Before the State of Rhode Island and Providence Plantations Public Utilities Commission**

**Docket No. 2252**

*Comprehensive Review of Intrastate Telecommunications Competition*

On behalf of MCI Telecommunications Corporation

**Before the State of Rhode Island and Providence Plantations Public Utilities Commission**

**Docket Nos. 3550 and 2861**

*In The Matter, Implementation of the Requirements of the FCC's Triennial Review Order ("TRO")*

On behalf of Conversent Communications of Rhode Island, LLC

**Before the Tennessee Public Service Commission**

**Docket No. 96-00067**

*Avoidable Costs of Providing Bundled Services for Resale by Local Exchange Telephone Companies*

On behalf of MCI Telecommunications Corporation

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**Before the Public Utility Commission of Texas**

**Docket No. 7790**

*Petition of the General Counsel for an Evidentiary Proceeding to Determine Market Dominance*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 8665**

*Application of Southwestern Bell Telephone Company for Revisions to the Customer Specific Pricing Plan Tariff*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 8478**

*Application of Southwestern Bell Telephone Company to Amend its Existing Customer Specific Pricing Plan Tariff: As it Relates to Local Exchange Access through Integrated Voice/Data Multiplexers*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 8672**

*Application of Southwestern Bell Telephone Company to Provide Custom Service to Specific Customers*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 8585**

*Inquiry of the General Counsel into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 9301**

*Southwestern Bell Telephone Company Application to Declare the Service Market for CO LAN Service to be Subject to Significant Competition*  
On behalf of the Public Utility Commission of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 10382**

*Petition of Southwestern Bell Telephone Company for Authority to Change Rates*  
On behalf of the Public Utility Commission of Texas

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**Before the Public Utility Commission of Texas**

**Docket No. 14658**

*Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. For Approval of Flat-rated Local Exchange Resale Tariffs Pursuant to PURA 1995 Section 3.2532*

On behalf of the Office of Public Utility Counsel of Texas

**Before the Public Utility Commission of Texas**

**Docket No. 14658**

*Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. For Interim Number Portability Pursuant to Section 3.455 of the Public Utility Regulatory Act*

On behalf of the Office of Public Utility Counsel of Texas

**Before the Public Utility Commission of Texas**

**Docket Nos. 16226 and 16285**

*Application of AT&T Communications for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company, and Petition of MCI for Arbitration under the FTA96*

On behalf of AT&T and MCI

**Before the Public Utility Commission of Texas**

**Docket No. 21982**

*Proceeding to examine reciprocal compensation pursuant to section 252 of the Federal Telecommunications of 1996*

On behalf of Taylor Communications

**Before the Public Utility Commission of Texas**

**Docket No. 25834**

*Proceeding on Cost Issues Severed from PUC Docket 24542*

On behalf of AT&T and MCIMetro

**Before the Public Utility Commission of Texas**

**PUC Docket No. 31831**

*Staff's Petition to Determine whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*

On behalf of the Office of Public Utility Counsel of Texas

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**Before the Public Utility Commission of Texas**  
**PUC Docket No. 34723**

*Petition for Review of Monthly Per-Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. Subst. R. 26.403*  
 On behalf of the Office of Public Utility Counsel of Texas

**Before the Public Utility Commission of Texas**  
**Docket No. 33323**

*Petition of UTEX Communications Corporation for Post-Interconnection Dispute resolution with AT&T Texas and petition of AT&T Texas for Post Interconnection Dispute Resolution with UTEX Communications Corporation*  
 On behalf of UTEX Communications Corporation

**Before the Public Utility Commission of Texas**  
**SOAH Docket No. 473-07-1365**

**PUC Docket No. 33545**  
*Application of McLeodUSA Telecommunications Services, Inc. for Approval of Intrastate Switched Access rates Pursuant to PURA Section 52.155 and PUC Subst. R. 26.223*  
 On behalf of McLeodUSA Telecommunications Services

**Before the Utah Public Service Commission**  
**Docket No. 10-049-16**

*Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation*  
 On behalf of Integra Telecom, Level 3 Communications, PAETEC Business Services and tw telecom

**Before the Utah Public Service Commission**  
**Docket No. 01-049-85**

*In the Matter of the Determination of the Costs Investigation of the Unbundled Loop of Qwest Corporation, Inc.*  
 On behalf of AT&T and WorldCom

**Before the Public Service Commission of Utah**  
**Docket No. 09-049-37**

*In the Matter of the Complaint of Qwest Corporation against McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services*  
 On behalf of McLeodUSA Telecommunications Services

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**Before the Vermont Public Service Board**

**Docket No. 5713**

*Investigation into NET's tariff filing re: Open Network Architecture, including the Unbundling of NET's Network, Expanded Interconnection, and Intelligent Networks*

On behalf of MCI Telecommunications Corporation

**Before the Washington Utilities and Transportation Commission**

**Docket No. UT-100820**

*In the matter of Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.*

On behalf of Cbeyond Communications, Covad Communications Company, Integra Telecom, Level 3 Communications, PAETEC Business Services and tw telecom

**Before the Washington Utilities and Transportation Commission**

**Docket No. UT-090892**

*Qwest Corporation (Complainant) v. McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (Respondent)*

On Behalf of McLeodUSA Telecommunications Services

**Before the Public Service Commission of Wisconsin**

**Cause No. 05-TI-138**

*Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin*

On behalf of MCI Telecommunications Corporation

**Before the Public Service Commission of Wisconsin**

**Docket 670-TI-120**

*Matters relating to the satisfaction of conditions for offering interLATA services (Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin)*

On behalf of MCI Telecommunications Corporation

**Before the Public Service Commission of Wisconsin**

**Docket Nos. 6720-MA-104 and 3258-MA-101**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin*

On behalf of MCI Telecommunications Corporation

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**Before the Public Service Commission of Wisconsin**

**Docket No. 05-TI-349**

*Investigation Into The Establishment of Cost-Related Zones For Unbundled Network Elements*

On behalf of AT&T Communications of Wisconsin, McLeodUSA Telecommunications Services, TDS Metrocom, and Time Warner Telecom

**Before the Public Service Commission of Wisconsin**

**Docket No. 6720-TI-161**

*Investigation into Ameritech Wisconsin's Unbundled Network Elements*

On behalf of AT&T Communications of Wisconsin, WorldCom, Rhythms Links, KMC Telecom, and McLeodUSA Telecommunications Services

**AFFIDAVITS AND DECLARATIONS SUBMITTED TO THE FEDERAL COMMUNICATIONS COMMISSION**

**Before the Federal Communications Commission**

**File No. EB-04-MD-006**

*EarthLink, Inc. (Complainant) v. SBC Communications Inc., SBC Advanced Solutions, Inc. (Defendants)*

On behalf of Earthlink, Inc.

**Before the Federal Communications Commission**

**CC Docket No. 04-223**

*In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*

On behalf of McLeodUSA Telecommunications Services

**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Inter-carrier Compensation Regime*

On behalf of NuVox Communications

**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Inter-carrier Compensation Regime*

On Behalf of Cavalier Telephone, Inc.

**Before the Federal Communications Commission**

**WC Docket No. 05-337 CC Docket No. 96-45 WC Docket No. 03-109 WC Docket No. 06-122  
 CC Docket No. 99-200 CC Docket No. 96-98 CC Docket No. 01-92 CC Docket No. 99-68 WC  
 Docket No. 04-36**

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*In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service Lifeline and Link Up Universal Service Contribution Methodology, Numbering Resource Optimization Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic IP-Enabled Services*

On behalf of PAETEC

**Before the Federal Communications Commission**

**WC Docket No. 07-97**

*In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*

On behalf of PAETEC

**Before the Federal Communications Commission**

**WC Docket No. 09-223**

*In the Matter of: Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Network Elements Pursuant to 47 U.S.C. §251(c)(3) of the Act*

On behalf of Covad Communications Company

**Before the Federal Communications Commission**

**GN Docket Nos. 09-47, 09-51, 09-137**

*Comments Sought on Broadband Study Conducted by the Berkman Center for Internet and Society, NBP Public Notice #13*

On behalf of Covad Communications Company

**MISCELLANEOUS**

**U.S. District Court, Northern District of Illinois Eastern Division**

**Case No. 05-C-6250**

*Cingular Wireless, LLC, a Delaware Limited Liability Company V Omar Ahmad*

On behalf of Omar Ahmad

**Ingham County Circuit Court**

**Case No. 04-689-CK**

*T&S Distributors, LLC Custom Software, Inc., Arq, Inc., Absolute Internet, Inc., CAC Medianet, Inc, ACD Telecom, Inc., and Telnet Worldwide, Inc. V. Michigan Bell Telephone Company, d/b/a SBC Michigan*

On behalf of ACD Telecom, and Telnet Worldwide

**August H. Ankum, Ph.D.**  
1520 Spruce Street, Suite 306  
Philadelphia, PA 19102  
618 364 2505



**United States District Court, Northern District of Texas Dallas Division**

**Civil Action No. 09-CV-1268**

*Southwestern Bell Telephone Company, et. al. Plaintiffs, vs. IDT Telecom, Inc., Entrix Telecom, Inc., and John Does 1-10, Defendants.*

On behalf of IDT

**Before the Michigan House Committee on Energy and Technology**

*Presentation on House Bills 4257*

On behalf of Michigan Internet and Telecommunications Alliance

**Before Illinois Commerce Commission**

**Docket 11-0710**

*In re Proposed Contracts between Chicago Clean Energy, Inc. and Ameren Illinois Company and Between Chicago Clean Energy, Inc. and Northern Illinois Gas Company for the Purchase and Sale of Substitute Natural Gas Under the Provisions of Illinois Public Act 97-0096.*

On behalf of Illinois Power Agency

*White Paper: Chicago Clean Energy Coke/Coal Gasification to SNG Project, Analysis of Return on Equity per Section 9-220(h-3)(1)(B) of Public Act 97-96, October 12, 2011*

Submitted to the Illinois Commerce Commission on behalf of Illinois Power Agency