

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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IN THE MATTER OF QWEST CORPORATION'S
FILING OF RENEWED PRICE REGULATION
PLAN

Docket No. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS

Docket No. T-00000D-00-0672

**STAFF'S NOTICE OF FILING
REBUTTAL TESTIMONY IN DOCKET
NO. T-01051A-11-0378**

On October 13, 2011, Qwest Corporation dba CenturyLink QC ("CenturyLink") filed an Application with the Commission 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)("Competitive Classification filing"). At the request of Staff, in December , 2011, CenturyLink notified all parties to this Docket that a meeting would be held at the Commission's Offices to discuss CenturyLink's Competitive Classification filing and a schedule for processing that Application. Several parties in this Docket participated in that meeting held on January 5, 2012 and a follow-up meeting.

The Arizona Corporation Commission Staff ("Staff") recently filed Rebuttal Testimony of Elijah O. Abinah and Armando F. Fimbres in CenturyLink's Competitive Classification proceeding (Docket No. T-01051A-11-0378). Staff hereby files a copy of its Rebuttal Testimony in this Docket; since if the Commission were to grant CenturyLink the relief requested in the Competitive Classification Docket, the Renewed Price Cap Plan would be subject to termination.

...

...

1 A hearing on CenturyLink's Competitive Classification Application will commence on April
2 30, 2012 at 10:00 a.m. at the Commission's Offices in Tucson, Arizona.

3 RESPECTFULLY submitted this 24th day of April, 2012.

4
5
6 

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12 Docket Control
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Phoenix, Arizona 85007

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16 24th day of April, 2012 to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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

DOCKET NO. T-01051B-11-0378

REBUTTAL
TESTIMONY
OF
ELIJAH ABINAH
ASSISTANT DIRECTOR
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

APRIL 23, 2012

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

Staff's recommendation would result in a more streamlined form of regulation for CenturyLink similar to that applied to other Competitive Local Exchange Carriers. CenturyLink would be given pricing flexibility for all services and would no longer be subject to R14-2-103 filings when it sought a general rate increase in the future.

Staff's recommendation differs from CenturyLink's in that Staff proposes a classification of Competitive for Enterprise services; but a classification of Emerging Competitive for Residential, Small and Medium Business services. The classification of Emerging Competitive recognizes that there are different degrees of competition in these markets, ranging from no competitive alternatives to few or some competitive alternatives. Emerging Competitive markets would be subject to certain safeguards under Staff's recommendation.

Staff does not agree with several of RUCO witness Quinn's recommendations including, (1) the proposal to geographically deaverage Residential rates, (2) to classify all Residential services as Competitive despite an analysis which expressly finds some markets not to be competitive, and (3) to deregulate residential services without having analyzed the factors set out in A.R.S. 40-281(E).

Staff's proposal best balances the interests of the Company and customers in this case and is in the public interest.

1 **INTRODUCTION**

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

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

5
6 **Q. Where are you employed and in what capacity?**

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

9
10 **Q. How long have you been employed with the Utilities Division?**

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

12
13 **Q. Please describe your educational background and professional experience.**

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

19
20 **Q. What are your current responsibilities?**

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

23
24 **Q. Have you reviewed the testimony filed by other parties in this Docket?**

25 A. Yes.

26

1 **BACKGROUND**

2 **Q. What is the purpose of your Rebuttal Testimony?**

3 A. The purpose of my testimony is to respond to testimony filed on behalf of the Department
4 Of Defense ("DOD")/Federal Executive Agencies ("FEA"), and on behalf of the
5 Residential Utility Consumer Office ("RUCO"). In addition, I will also make some
6 clarification to Staff's recommendations in Direct Testimony relating to pricing flexibility
7 for Qwest Corporation dba CenturyLink-QC's ("Qwest" or "CenturyLink" or "Company")
8 Emerging Competitive services. I will limit my response to the policy issues. Mr.
9 Armando Fimbres will address the technical issues.

10

11 **RESPONSE TO DOD/FEA DIRECT TESTIMONY**

12 **Q. Does Staff agree with the statement on page 7 lines 1 through 1 1/2 of the Direct**
13 **Testimony of Mr. August Ankum, which states that "CenturyLink's Application**
14 **represents a sea change in regulation of telecommunications services in Arizona"?**

15 A. Yes. Staff believes that CenturyLink's requests represent a significant change in the way
16 the Company would be regulated by the Commission in the future. Although the
17 Company was accorded an Alternative Form of Regulation ("AFOR") by this
18 Commission; under the AFOR, there were revenue caps on the Baskets which were set
19 based upon a filing pursuant to Commission Rule R14-2-103. If the Company's request in
20 this case were granted, CenturyLink would be freed of the obligation to have its rates set
21 based upon a Rule R14-2-103 filing.

22

23 **Q. Has Staff advocated that the Commission require CenturyLink to continue to comply**
24 **with Commission Rule R14-2-103?**

25 A. No, Staff's recommendation would also represent a significant change in the way
26 CenturyLink is regulated in the future. Under Staff's recommendation, CenturyLink

1 would also no longer have its rates set based upon a R14-2-103 filing. Staff's
2 recommendation in this regard recognizes that while there are different degrees of
3 competition in the various markets, there is some competition in most markets. Under
4 Staff's recommendation, a more stream-lined procedure would apply to CenturyLink,
5 similar to what applies to other competitive local exchange carriers. Staff's
6 recommendation differs from CenturyLink's position in that Residential, Small and
7 Medium Business services would be classified as Emerging Competitive in recognition
8 that portions of these markets are without competitive alternatives at this time or have
9 very few competitive alternatives available.

10

11 **Q. Does Staff disagree with the overall recommendations put forth by DOD/FEA?**

12 A. Yes. Staff disagrees with the overall recommendation set forth on page 9, lines 3 through
13 8.

14

15 **Q. Can you please briefly explain why Staff disagrees with DOD/FEA's overall
16 recommendation?**

17 A. Yes. Staff agrees with DOD/FEA that since the passage of the Telecom Act of 1996, the
18 telecommunications market has evolved. That is one of the rationales behind Staff's
19 recommendation. However, based on Staff's analysis, which was discussed in Mr.
20 Fimbres' testimony, Staff came to a conclusion different from that of the DOD. Based on
21 those analyses, Staff believes that sufficient competition exists as it relates to Enterprise
22 and Large Business services to classify them as competitive pursuant to Rule 1108, while
23 sufficient competition does not exist for Small and Medium Business services and, to
24 some extent, based on the geographical location, sufficient competition does not exist in
25 the Residential service market.

26

1 **Q. What was Staff's rationale for its recommendation?**

2 A. Staff believes that the Company is entitled to a more streamlined form regulation in
3 markets where the requirements of R14-2-1108 are met. In other markets, where the
4 requirements of R14-2-1108 are not entirely met at this time, Staff has recommended that
5 the Company still receive pricing flexibility and a more streamlined form of regulation,
6 but subject to certain safeguards. Staff believes the Commission should proceed
7 cautiously when transitioning from the current regulatory regime where CenturyLink is
8 regulated under a Price Cap Plan to the regulatory regime proposed by the Company
9 which would result in termination of the Price Cap Plan and the Company instead having
10 the ability to price services within a range of rates established by the Commission,
11 especially in less competitive markets.

12
13 **Q. Did Staff consider different factors in arriving at Staff's recommendation**
14 **recommendation on page 9, lines 3 through 4, wherein Staff stated that it cannot**
15 **support statewide Competitive classification for services provided to Residential or**
16 **Small and Medium business?**

17 A. Yes, based on the analysis performed and provided in Mr. Fimbres' testimony, and policy
18 reasons, Staff could not support/recommend fully Competitive classification for
19 Residential or Small and Medium Business services.

20
21 **Q. What is Staff's role when making recommendations to the Commission?**

22 A. Staff's role is to balance the interests of the Company, ratepayers and the stakeholders. In
23 doing so, Staff takes into consideration many factors. One of those factors is the public
24 interest in addition to various regulatory analyses.

25

1 **Q. Based on the analyses described in Mr. Fimbres' testimony, could Staff have made a**
2 **different recommendation as it relates to Residential, Small and Medium Business?**

3 A. Yes. Staff could have recommended that the Commission deny CenturyLink's request as
4 it relates to Residential, Small and Medium Business services based solely upon the
5 factors considered by Mr. Fimbres.

6
7 **Q. Based on that analysis, why did Staff recommend that the Commission grant the**
8 **Company pricing flexibility?**

9 A. Staff took into consideration other factors, such as the public interest, in making its
10 recommendation.

11
12 **Q. Does Staff believe that it is in the public interest to grant CenturyLink's request?**

13 A. No. Staff believes instead that it is in the public interest to grant CenturyLink the
14 Emerging Competitive and Competitive Classifications recommended by Staff. Staff
15 believes that its recommendation is just, fair and reasonable and better balances the
16 interests of ratepayers, the Company and the stakeholders.

17
18 **Q. Are Staff's recommendations consistent with a continuation of the Renewed Price**
19 **Cap Plan as previously established?**

20 A. No. In fact, Staff viewed CenturyLink's Application as a specific request to terminate the
21 Price-Cap Plan. For example, on page 12 of the Company's Application, it states that it is
22 asking the Commission to "vacate the order establishing the Revised Price Cap Plan in
23 favor of the precompetitive actions" described in the Company's Application. Staff's
24 recommendations to classify services as "Emerging Competitive" or "Competitive" are
25 intended to supersede the Price Cap Plan. RUCO apparently is recommending a

1 continuation of the Renewed Price Cap Plan, with services shifting form one basket to
2 another.

3

4 **Q. Does Staff have a recommendation about the services in Basket 4 of the Price-Cap**
5 **Plan?**

6 A. Yes. Staff recommends that those services retain the treatment that they are currently
7 accorded because they are wholesale services subject to sections 251 and 252 of the
8 Telecommunications Act of 1996; switched access services now subject to Federal
9 Communication Commission ("FCC") mandates under the FCC's recent intercarrier
10 compensation/universal service reform order; or are other services used by other carriers.
11 In other words, although Basket 4 would be eliminated, the services contained in that
12 Basket would be subject to the same terms and conditions to which they are now subject
13 until further order of the Commission.

14

15 **RESPONSE TO RUCO'S DIRECT TESTIMONY**

16 **Q. Does Staff agree with RUCO's recommendation on page 18, lines 8 through 10?**

17 A. No.

18

19 **Q. Can you please explain why Staff disagrees with RUCO's recommendation?**

20 A. As stated by RUCO's witness Mr. Patrick J. Quinn ("Mr. Quinn" or "witness"),
21 CenturyLink has not shown competitive alternatives in all areas of its service territory.
22 Despite the fact that RUCO believes the Company has yet to demonstrate competitive
23 alternatives, Mr. Quinn is still recommending reclassification of all those services as
24 "Competitive".

25

1 Staff believes the right way to proceed is to be cautious by providing the Company pricing
2 flexibility and by reclassifying the Residential, Small and Medium Business services as
3 Emerging Competitive.

4

5 **Q. Do you agree with RUCO witness Quinn's recommendation which would allow**
6 **CenturyLink to geographically deaverage rates for residential customers?**

7

8 A. No, I do not agree with Mr. Quinn's testimony which would allow CenturyLink to
9 geographically deaverage rates for residential customers. Mr. Quinn states that this would
10 act as a safeguard for customers. I do not agree. The likely result of geographical
11 deaveraging is significantly higher rates in rural areas than in urban areas. This would be
12 a very poor result from a policy perspective, since it is in the rural areas of the state where
13 competition is lacking and customers have few (if any) competitive alternatives.

14

15 **Q. Does Staff agree with RUCO's recommendation on page 20, lines 1 through 2?**

16 A. No.

17

18 **Q. Can you please explain why Staff disagrees with RUCO's recommendation regarding**
19 **deregulation of certain services?**

20 A. Yes. On page 19, lines 8 through 10, RUCO's witness admits that he did not analyze the
21 factors set forth in A.R.S. 40-281(E) in reaching his conclusions. However, the witness is
22 recommending that at least 17 services be deregulated despite the fact that required
23 statutory analysis was not performed.

24

1 **Q. What is Staff's recommendation on the Company's proposal to deregulate the**
2 **services appearing on Attachment B of its Application?**

3 A. Based on the analysis performed by Mr. Fimbres, Staff recommends that the Commission
4 adopt the recommendations set forth in the Direct Testimony of Mr. Fimbres.
5

6 **CLARIFICATION TO STAFF RECOMMENDATION**

7 **Q. Is Staff clarifying its recommendation as it relates to pricing flexibility?**

8 A. Yes. Page 11, lines 12 through 19 of Staff's testimony states, "To affect a gradual
9 transition to a fully competitive environment, Staff recommends that the maximum tariff
10 rates for the services provided to Residential or Consumer customers included in this
11 category be no higher than 125 percent of the current actual rates over a 36 month period
12 from the date the Commission approves maximum rates for these services. Staff further
13 recommends that the current maximum rates for the services included in this category
14 provided to Small and Medium Business customers be no higher than 130 percent of the
15 current actual rates over a 36 month period from the date the Commission approves
16 maximum rates for these services."
17

18 **Q. Is Staff recommending a change in the percentage increases?**

19 A. No.
20

21 **Q. What clarification would you like to make to Staff's original recommendation?**

22 A. Staff recommends that CenturyLink be authorized to establish maximum rates for services
23 provided to Residential or Consumer customers that are 125 percent of the current actual
24 rates for services subject to the following conditions:

- 25
- 26 ▪ If the current rate is equal to the maximum tariff rate authorized by the
27 Commission, the new maximum rate would equal no more than 125
28 percent of the current rate.

- 1 ▪ If 125 percent of the current rate is greater than the Commission authorized
- 2 maximum rate, the new maximum rate would equal no more than 125
- 3 percent of the current rate.
- 4 ▪ If the current maximum rate for a service is greater than the 125 percent of
- 5 the current rate, there is no change to the maximum rate.
- 6 ▪ The rates that are actually charged to Residential or Consumer customers
- 7 would increase by no more than 10 percent annually, up to the maximum
- 8 rate.

9

10 In addition, CenturyLink would be authorized to establish maximum rates for services

11 provided to Small and Medium Business customers that are 130 percent of the current

12 actual rates for services subject to the following conditions:

- 13
- 14 ▪ If the current rate is equal to the maximum rate authorized by the
- 15 Commission, new maximum rate would equal no more than 130 percent of
- 16 the current rate.
- 17 ▪ If the 130 percent of the actual rate is greater than the Commission
- 18 authorized maximum rate, the new maximum rate would equal no more
- 19 than 130 percent of the current rate.
- 20 ▪ If the current maximum rate for a service is greater than the 130 percent of
- 21 the current rate, there would be no change to the maximum rate.
- 22 ▪ That the rates that are actually charged to Small and Medium business
- 23 customers would increase by no more than 15 percent annually, up to the
- 24 maximum rate.

25

26 **Q. Please elaborate further on Staff's clarification?**

27 **A.** Staff continues to recommend maximum rates that are no higher than 125 percent of the

28 current actual rates over a 36 month period for Residential or Consumer customers and no

29 higher than 130 percent of the current actual rates over a 36 month period for Small and

30 Medium Business customers. Staff views these percentage caps as features of the

31 "Emerging Competitive" classification. However, to actually establish or change

32 CentryLink's maximum rates, the Company should file an application seeking that

33 specific relief pursuant to A.A.C. R14-2-1110. Although the Company's current

34 Application seeks to reclassify services, it does not ask for authorization to change its

35 maximum rates. Staff would like to clarify that any change in maximum rates should be

1 accomplished through a subsequent filing with appropriate notice to the public that a
2 change in maximum rates is being requested.

3

4 **Q. When can CenturyLink file to change its maximum rates once they are established in**
5 **this case?**

6 A. I want to clarify that Staff's recommendation is that CenturyLink can file in 30 months
7 after the Commission's Order approving Qwest's R14-2-1110 filing stemming from the
8 Commission's Order in this Docket to change the maximum rates ultimately approved by
9 the Commission.

10

11 **Q. If the Commission adopts Staff's recommendations, what rates will be in place for**
12 **CenturyLink?**

13 A. Until CenturyLink is granted a change to its maximum rates or its actual rates, its existing
14 maximum rates or actual rates would remain in effect. The Company could continue to
15 make changes to its actual rates with an R14-2-1109 filing. This would maintain the
16 status quo until CenturyLink files and the Commission acts upon a subsequent filing to
17 change maximum rates.

18

19 **Q. Does this conclude your Rebuttal Testimony?**

20 A. Yes.

BEFORE THE ARIZONA CORPORATION COMMISSION

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

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

DOCKET NO. T-01051B-11-0378

REBUTTAL
TESTIMONY
OF
ARMANDO FIMBRES
PUBLIC UTILITIES ANALYST V
ON BEHALF OF
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

APRIL 23, 2012

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

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

Staff continues to support the testimony and recommendations filed on March 16, 2012.

For Competitive Classification pursuant to Rule 1108

Staff believes the information filed by CenturyLink supports an "Emerging Competitive" classification for the Residence, Small Business and Medium Business Segments.

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

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

Staff supports deregulation for 40 tariff sections listed in Revised Attachment B of CenturyLink Witness Brigham's Direct Testimony.

1 **INTRODUCTION**

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

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

6
7 **Q. Have you previously filed testimony in this proceeding?**

8 A. Yes. I filed Direct Testimony on behalf of Staff on March 16, 2012.

9
10 **BACKGROUND**

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

12 A. My testimony responds to the Direct Testimony of two intervenors - the U.S. Department
13 of Defense and all other Federal Executive Agencies and the Residential Utility Consumer
14 Office - filed on March 16, 2012.

15
16 **Q. Will any other Staff witness file Rebuttal Testimony?**

17 A. Yes. Mr. Elijah Abinah will also file Rebuttal Testimony.

18
19 **STAFF'S RESPONSE TO THE DIRECT TESTIMONY OF THE U.S. DEPARTMENT OF**
20 **DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES ("DOD/FEA")¹**

21 **Q. Have you read the Direct Testimony of August H. Ankum, Ph.D. on Behalf of the**
22 **U.S. Department Of Defense and all other Federal Executive Agencies filed on**
23 **March 16, 2012?**

24 A. Yes.

25

¹ 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

1 **Q. Please summarize your understanding of the DoD/FEA Direct Testimony.**

2 A. The DoD/FEA Direct Testimony puts forth several basic positions. CenturyLink's
3 showing is flawed and incomplete, failing to demonstrate that it lacks market power;
4 therefore, its competitive reclassification request should be denied. Also, CenturyLink's
5 request for deregulation is vague and unsupported and should be denied.

6
7 **Q. Does Staff disagree with the DoD/FEA analysis?**

8 A. No. Staff agrees with the analysis presented in the DoD/FEA Direct Testimony,
9

10 **Q. Does Staff disagree with the DoD/FEA conclusions and recommendations?**

11 A. Yes. The reasons for Staff reaching conclusions and recommendations different from
12 those of DoD/FEA will be explained in the Rebuttal Testimony of Staff Witness Elijah
13 Abinah.

14
15 **STAFF'S RESPONSE TO THE DIRECT TESTIMONY OF THE RESIDENTIAL**
16 **UTILITY CONSUMER OFFICE ("RUCO")²**

17 **Q. Have you read the Direct Testimony of Patrick J. Quinn on Behalf of RUCO filed on**
18 **March 16, 2012?**

19 A. Yes.
20

21 **Q. Please summarize your understanding of the RUCO Direct Testimony.**

22 A. RUCO represents the residential consumers in Arizona. With that focus, the RUCO
23 Direct Testimony is limited to the effects of CenturyLink's application on Residential
24 customers. The five RUCO recommendations are on page 20 of its Direct Testimony.
25

² Direct Testimony of Patrick J. Quinn on Behalf of RUCO, March 16, 2012

1 **Q. Will your Rebuttal Testimony respond to the entirety of the RUCO Direct**
2 **Testimony?**

3 A. No. Staff Witness Abinah will respond to policy matters. My Rebuttal Testimony will
4 focus on key details of the RUCO Direct Testimony that correspond to Staff's analysis.
5

6 **Q. What are the key details you reference?**

7 A. The analysis approach taken by RUCO Witness Quinn focuses on the existing Price Cap
8 Plan³ rather than the specifics of the CenturyLink Application in this matter.
9

10 **Q. Why does a discussion and analysis of the existing Price Cap Plan fail to address the**
11 **issues raised by the Company's application?**

12 A. CenturyLink's Application asks for certain specific determinations: "(1) for a
13 determination pursuant to A.C.C. R14-2-1108 that all Commission-regulated retail local
14 exchange services CenturyLink provides are competitive telecommunications services,"
15 and (2) for a determination pursuant to A.R.S. §40-281(E) that certain of the retail services
16 CenturyLink provides are not essential or integral to the public service and shall not be
17 regulated by the Commission." The CenturyLink Application ends by acknowledging that
18 its Application will have consequences for the Price Cap Plan and, therefore asks that the
19 Commission vacate the order establishing the Revised Price Cap Plan in favor of the
20 precompetitive actions described above. CenturyLink further acknowledges that, while
21 this proceeding is underway, CenturyLink will continue to operate under the Revised Price
22 Cap Plan."⁴
23

³ In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan; T-01051B-03-0454, Decision 68604.

⁴ Page 12

1 Witness Quinn states at page 4 of his testimony, "I will include RUCO's recommendation
2 of whether CenturyLink used the proper methods in determining whether certain
3 residential services should be reclassified to competitive Basket 3 ...". This statement
4 reflects a fundamental disagreement with CenturyLink's application. CenturyLink's
5 Application contemplates that, if the Commission approves its request, the Price Cap Plan
6 would be terminated.

7
8 To further elaborate, the CenturyLink Application requests competitive classification
9 pursuant to R14-2-1108 of services in Attachment A and deregulation of services in
10 Attachment B, later revised in CenturyLink Witness Brigham's Direct Testimony.
11 CenturyLink did not request reclassification of services and associated movement of those
12 services to different Baskets of the Price Cap Plan.

13
14 **Q. How does RUCO's discussion of Price Cap Plan baskets overlook an important**
15 **aspect of this Application?**

16 A. As already stated, at page 5, line 12, RUCO Witness Quinn describes CenturyLink's
17 Application as a request to move Basket 1 and 2 residential services into Basket 3.
18 CenturyLink's Application asks the Commission to vacate the Price Cap Plan at the end of
19 this proceeding, not revise the Price Cap Plan.

20
21 **Q. Are there others areas of RUCO's testimony that address this point?**

22 A. Yes, at page 20 of Mr. Quinn's testimony, he recommends that the Commission require
23 CenturyLink to make a filing in a year to "wrap up the Price Cap Plan". He does not
24 provide further elaboration on this recommendation. In addition, Mr. Quinn recommends
25 that the Commission require CenturyLink to make a filing under R14-2-1110 within one
26 year. Mr. Quinn appears to be recommending competitive classification of residential

1 services with safeguards, but then suggests that any rate flexibility associated with this
2 classification would not be implemented for a year. In Staff's opinion, it is a better option
3 to simply replace the Price Cap Plan at this time if significant reclassifications of services
4 are implemented.

5
6 **Q. Are there other key details in the RUCO Direct Testimony that you would like to**
7 **discuss?**

8 A. Yes. RUCO's Direct Testimony does not utilize the standard for deregulating services
9 contained in A.R.S. § 40-281(E) which states as follows:

10
11 When the commission determines after notice and hearing that any
12 product or service of a telecommunications corporation is neither essential
13 nor integral to the public service rendered by such corporation, it shall
14 declare that such product or service is not subject to regulation by the
15 commission.

16
17 Mr. Quinn, in his Direct Testimony does not address this standard.

18
19 **Q. Why is this subject a key detail?**

20 A. RUCO Witness Quinn states that he "only analyzed" the effects of deregulation on two
21 residential services⁵ identified in Attachment B of CenturyLink's Application and Direct
22 Testimony. He states at page 18 of his testimony that CenturyLink has requested
23 deregulation of many business services but only 19 residential services. Of the 19
24 residential services, only two services are of concern to him because of the number of
25 residential customers involved. The two services that he has concerns with are packages
26 that deal with residential customers and that are currently in Basket 3. I believe that his
27 analysis should have also addressed the standard contained in A.R.S. § 40-281(E).

⁵ Home Phone Package, C5.9.1; Obsolete Basic Exchange Package, C105.9.1.

1 Furthermore, RUCO's Direct Testimony contains no analysis on the other 17 residential
2 services, yet recommends deregulation approval of the "residential services as shown in
3 Revised Attachment B". In my opinion, any analysis of deregulation of services should
4 address the standard set forth in A.R.S. § 340-218(E).

5

6 **Q. Are there other key details in the RUCO Direct Testimony that you would like to**
7 **discuss?**

8 A. Yes. The concept of rate deaveraging is fundamental to the RUCO Direct Testimony.
9 The subject is an important policy matter that will be addressed in the Rebuttal Testimony
10 of Staff Witness Abinah.

11

12 **Q. Are there other key details in the RUCO Direct Testimony that you would like to**
13 **discuss?**

14 A. Yes. The RUCO Direct Testimony, while suggesting that CenturyLink obtain
15 Competitive Classification for residential access line services with safeguards, also
16 suggests some problems or shortcomings with the supporting analysis performed by
17 CenturyLink. Mr. Quinn notes that CenturyLink admits that not all customers have
18 competitive options. He also notes at page 10 of his testimony that "CenturyLink has
19 utilized the high degree of competition statewide to reach a broad and sweeping
20 conclusion that competition must exist in every wire center even in the lower density
21 areas." Finally, he finds fault with CenturyLink's failure to analyze the degree of
22 competitiveness on a service by service and wire center by wire center basis. He
23 concluded by saying that CenturyLink has performed a very limited service by service
24 analysis.

25

1 **Q. What is your response to Mr. Quinn's comments?**

2 A. Staff generally agrees with the statement, "CenturyLink has utilized the high degree of
3 competition statewide to reach a broad and sweeping conclusion that competition must
4 exist in every wire center even in the lower density areas." Staff also agrees that, in order
5 to address the potential effects of CenturyLink's Application on residential ratepayers in
6 lower density areas, the analysis needs to be broken down on a service by service, wire
7 center by wire center basis. Mr. Quinn's statement that CenturyLink has performed a very
8 limited service by service or wire center by wire center analysis is correct as is his
9 observation that CenturyLink's analysis is limited even for the large services like basic
10 residential voice service.⁶

11
12 All of this discussion by Mr. Quinn supports Staff Witness Abinah's Direct Testimony for
13 a transitional approach to competitive classification with safeguards for a three year
14 period.

15
16 **Q. Are there specific details in the RUCO Direct Testimony pertaining to the
17 Competitive classification analysis to which Staff responds?**

18 A. Yes. The subject of geographic power was raised by DoD/FEA. The subject is also
19 indirectly addressed by RUCO Witness Quinn when he states "cable companies overlap
20 the majority of CenturyLink's service territory covering 88% of their wire centers
21 according to Mr. Brigham's testimony."⁷ The statement, taken literally, suggests that
22 cable companies compete everywhere in the 88% area referenced by RUCO Witness
23 Quinn. In fact, not even CenturyLink serves 100% of the areas within its wire centers.

24

⁶ Direct Testimony of Patrick J. Quinn on Behalf of RUCO, March 16, 2012, page 11.

⁷ Direct Testimony of Patrick J. Quinn on Behalf of RUCO, March 16, 2012, page 8.

1 Neither CenturyLink nor Cox Arizona Telecom, LLC ("Cox") serves 100% of the areas
2 within wire centers. Cox is known, for example, to serve Master Planned Communities
3 not served by CenturyLink. The opposite may also be true. It is therefore unclear how
4 much the '88%' area referenced by the RUCO and CenturyLink witnesses is actually
5 served by cable companies and how much of the wire center areas actually served by cable
6 companies are actually served by CenturyLink itself. Nor can ubiquitous coverage be
7 assumed for Wireless providers since signal strengths vary for a multitude of
8 technological and environmental reasons. Mr. Quinn acknowledges that, while
9 CenturyLink relies in part on the number and presence of competitive service providers by
10 wire centers, this is not actual competition or market share. He also states at page 10 of
11 his testimony that it "is unclear whether the competition claimed by CenturyLink in some
12 areas outside of the major metro areas is for business customers, residential customers or
13 both."

14
15 Again, all of these shortcomings discussed in Mr. Quinn's testimony, are reasons for the
16 cautious approach taken by Staff in the recommendations stated in Staff Witness Abinah's
17 Direct Testimony.

18
19 **Q. Are wire center boundaries always clearly understood?**

20 **A.** No. A wire center is defined by geographic coordinate boundaries to be mapped and
21 facilities to be accurately placed. However, such definitions are not physical barriers and
22 have become blurred by the introduction of new services over time. Services provided by
23 central offices in wire centers can extend beyond geographic wire center boundaries,
24 adding confusion when correlating customer and service information with wire centers.
25 For example, Foreign Exchange⁸ ("FX") Service (Q6.2.6) and Market Expansion Line⁹

⁸ Q6.2.6 - Foreign Exchange (FX) Service provides dial tone from a wire center in an exchange from which the customer is not normally served.

1 (“MEL”) Service (Q5.4.4) extend outside wire center boundaries. Someone in Flagstaff,
2 for example, could have FX service from a wire center in metro Phoenix. MEL service
3 provides the end-user a local telephone number without having a physical location within
4 the wire center providing the MEL service. It is possible for someone in Prescott to use
5 MEL service provided in a metro Phoenix wire center and have calls forwarded to
6 Prescott.

7
8 Both services illustrate how the product power of services can modify geographic power
9 by extending beyond commonly understood wire center boundaries.

10
11 **Q. Given all of the concerns Mr. Quinn identified with CenturyLink’s analysis, were**
12 **you surprised that he recommended full Competitive classification at this time for**
13 **residential services?**

14 **A.** Yes. While he appears to be recommending competitive classification with safeguards
15 (since he acknowledges that not all areas are competitive) he also suggests at page 17 of
16 his testimony that a way should be found to remove the “non-competitive” classification
17 from areas that become Competitive. Here, he appears to be saying that a portion of
18 CenturyLink’s service territory would still be classified as “non-competitive”. This
19 appears inconsistent with his recommendation to classify services as fully competitive.
20 This inconsistency is magnified by his recommendation on page 17 of his testimony that
21 “[a] method also needs to be developed to allow CentryLink [sp.] to demonstrate that
22 competitive alternatives exist in an area and the safeguards can be removed.”

23

⁹ Q5.4.4 - Market Expansion Line is a service that routes all incoming calls to another customer- selected telephone number in the local calling area or a distant exchange.

1 **Q. If CenturyLink receives Competitive classification of its services, should this affect**
2 **its quality of services or responsibilities?**

3 A. No. A determination in this proceeding should not change CenturyLink's Incumbent
4 Local Exchange Carrier ("ILEC") quality of service responsibilities or requirements.
5

6 **SUMMARY AND CONCLUSIONS**

7 **Q. Does Staff have revisions to its Direct Testimony?**

8 A. Yes. Staff is revising the Herfindahl-Hirschman Index ("HHI") ranges referenced on
9 page 12, footnote 13 and used in my Direct Testimony. The most recent HHI ranges are 0
10 - 1500 (Unconcentrated Markets), 1500 - 2500 (Moderately Concentrated Markets), and
11 2500 - 10000 (Highly Concentrated Markets).¹⁰
12

13 **Q. Do the revised HHI ranges change Staff's analysis or recommendations?**

14 A. No.
15

16 **Q. Are the revised HHI ranges of any relevance?**

17 A. Yes. The ranges add support for the policy recommendations in Staff Witness Abinah's
18 Direct Testimony. Despite market share and HHI analysis that Residential, Small
19 Business and Medium Business markets are not sufficiently competitive for
20 reclassification pursuant to Rule 1108, policy recommendations in Staff Witness Abinah's
21 Direct Testimony are intended to provide increased tariff flexibility for CenturyLink while
22 providing safeguards for Arizona end-users. The revised HHI ranges support Staff's
23 position that strict, rigid application of either market share or HHI analysis is not
24 warranted. While these factors were considered in Staff's analysis, they alone do not
25 provide the basis for Staff's recommendations.

¹⁰ Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, Issued August 19, 2010, page 19.

1 **Q. Does Staff's use of the HHI require additional clarification?**

2 A. Yes. CenturyLink's Second Set of Data Requests to Staff, dated April 10, 2012, suggests
3 disagreement with Staff's use of the HHI that warrants additional discussion.
4

5 **Q. Is the HHI controversial?**

6 A. No. The HHI has been in use since at least 1982 by the Department of Justice to measure
7 market concentration for purposes of antitrust enforcement.¹¹
8

9 **Q. Is it inappropriate to use the HHI in matters that do not pertain to antitrust
10 enforcement?**

11 A. No. What is relevant and appropriate is that HHI is a "measure of market concentration".
12

13 **Q. Has Staff used the HHI in other proceedings?**

14 A. Yes. The HHI was used by Staff in Qwest's application for approval of its Renewed Price
15 Regulation Plan. (See the Direct Testimony filed on November 18, 2004, by Staff
16 Witnesses Matthew Rowell and Armando Fimbres, in the matter of Qwest Corporation's
17 filing of Renewed Price Regulation Plan ("AFOR" or "Price Cap Plan"), T-01051B-03-
18 0454.)
19

20 **Q. Has RUCO used the HHI in any proceedings?**

21 A. Yes. RUCO Witness Ben Johnson, Ph.D. used the HHI in the same Price Cap Plan
22 proceeding in Direct Testimony filed on November 18, 2004.
23

¹¹ <http://www.unclaw.com/chin/teaching/antitrust/herfindahl.htm>

1 **Q. What was the reasoning presented by RUCO Witness Johnson for the use of HHI on**
2 **behalf of RUCO?**

3 A. RUCO Witness Johnson stated, "The HHI also provides useful insight into market
4 structure and market power. Economists use this statistic because it reflects the well-
5 established fact that where industry sales are highly concentrated in a small number of
6 firms, the largest firms tend to have market power, and market results tend to deviate
7 greatly from the purely competitive benchmark."¹²

8
9 **Q. Did RUCO Witness Johnson elaborate on the appropriateness of HHI on behalf of**
10 **RUCO?**

11 A. Yes. He stated "The HHI has long been used by the Department of Justice (DOJ), the
12 Federal Trade Commission (FTC), and others involved in analyzing antitrust and other
13 market structure issues from a public policy perspective. For example, the Merger
14 Guidelines adopted by DOJ specify that: 1) HHIs below 1,000 indicate that the market is
15 "unconcentrated"; 2) HHIs between 1,000 and 1,800 indicate that the market is
16 "moderately concentrated"; and 3) HHIs above 1,800 indicate the market is "highly
17 concentrated," as indicated on illustrative Graph 3. [1997 Horizontal Merger Guidelines,
18 §1.51] Where a high HHI is present, or a merger would significantly increase the "HHI,
19 DOJ is less likely to approve a proposed merger or acquisition ... Not only does the HHI
20 provide a sound basis of judging where a market stands on the continuum from pure
21 competition to pure monopoly, it is particularly useful because it captures in a single
22 number the extent to which sales are concentrated in a small number of firms as well as
23 the distribution of market shares across multiple firms."

24

¹² Direct Testimony of Ben Johnson, Ph.D., In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan ("AFOR" or "Price Cap Plan"), T-01051B-03-0454, November 18, 2004, page 154

1 **Q. Are the Horizontal Merger Guidelines referenced by DoD/FEA Witness Ankum the**
2 **same guidelines referenced in DoD/FEA's Direct Testimony in this matter?**

3 A. Yes. DoD/FEA Witness Ankum references the document at eight (8) points in his Direct
4 Testimony beginning at page 21 when he discusses how market power has been analyzed
5 by the Federal Trade Commission ("FTC") and Department of Justice ("DOJ").
6

7 **Q. Are market power and use of the HHI completely separate subjects?**

8 A. No. The discussion on market power is woven into the discussion of HHI in Section 5.3 –
9 Market Concentration – of the Horizontal Merger Guidelines document referenced by
10 DoD/FEA.
11

12 **Q. What was the position of Qwest Corporation, now CenturyLink, regarding the use of**
13 **HHI in the Price Cap Plan?**

14 A. Qwest objected to the use of HHI.
15

16 **Q. How was the Price Cap issue resolved?**

17 A. The issue of HHI pertained to Staff and RUCO's analysis related to a request for
18 Competitive Zones by Qwest and was resolved in Section 26 of the Settlement
19 Agreement: "Qwest shall withdraw its proposal for competitive zones in Arizona. Qwest
20 further agrees that it will not renew its request for competitive zones during the term of the
21 Renewed Price Cap Plan."
22

23 **Q. Does the Federal Communications Commission ("FCC") make use of the HHI?**

24 A. Yes. Numerous FCC documents reference the HHI. A simple search at the FCC home
25 page¹³ revealed 70 documents that discuss use of the HHI. The HHI has, for example

¹³ <http://www.fcc.gov/>

1 been used repeatedly in the FCC's fifteen Wireless Competition Reports. In a November
2 3, 2011 release seeking comments on the state of mobile wireless competition,¹⁴ the FCC
3 states, "In the Fifteenth Report [June 27, 2011], as in previous Competition Reports, the
4 Commission analyzed horizontal concentration in the mobile wireless industry by
5 calculating the Herfindahl-Hirschman Index (HHI) for each Economic Area (EA) in the
6 United States and determining an average HHI, weighted by EA population, for the entire
7 country."

8
9 **Q. Does Staff continue to support use of the HHI?**

10 A. Yes. Staff supports use of the HHI without rigid application of thresholds as a means of
11 adding valuable understanding of the competitive environment in the markets affected by
12 CenturyLink's application.

13
14 **Q. Does this conclude your Rebuttal Testimony?**

15 A. Yes.

¹⁴ WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
THE STATE OF MOBILE WIRELESS COMPETITION, WT Docket No. 11-186, DA 11-1856, November 3, 2011,