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Arizona Corporation Commission

DOCKETED

APR 25 2012

GARY PIERCE, Chairman
BOB STUMP
SANDRA KENNEDY
PAUL NEWMAN
BRENDA BURNS

DOCKETED BY *MS*

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

Response of **tw telecom** to
Request to Withdraw of
DoD/FEA

tw telecom of arizona llc opposes the request of the United State Department of Defense and all other Federal Executive Agencies ("DoD/FEA") to withdraw its intervention, discovery requests and responses, and its pre-filed testimony opposing the Application of Qwest Corporation to Classify and Regulate Retail Local Exchange Telecommunications Services as Competitive and to Classify and Deregulate Certain Services as Non-Essential ("Application").
See DoD/FEA Request to Withdrawal, p. 2.

On Wednesday, April 18, 2012, Qwest Corporation d/b/a CenturyLink-QC ("CenturyLink") sent electronic notice to the parties in this docket that CenturyLink and Dod/FEA had entered into a settlement agreement ("DoD/FEA Settlement"). In that electronic notice, Qwest provided to all parties a copy of the DoD/FEA Settlement. The DoD/FEA Settlement appears to require that Qwest: (1) make available to DoD/FEA existing rates, terms

and conditions for services currently provided to DoD/FEA in all contracts entered into in the next five years, and (2) bid whenever DoD/FEA solicits bids for procurement of telecommunications services in Qwest's service territory. Setting aside the merits of this settlement generally, the procedural request by DoD/FEA to withdrawal all prior advocacy in this docket should be denied.

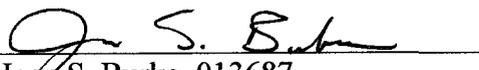
Under Arizona law, and pursuant to Commission policy, the Administrative Law Judge in this proceeding and the Commissioners are required to receive and review evidence upon which the Commission will base its decisions in this docket. *See Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 578 P.2d 612 (App. 1978) (Commission decision overturned where Commission received no evidence supporting its findings). The pre-filed written testimony submitted by DoD/FEA is a necessary component of the record in this case and is already permanently publically available through Docket Control. Without this evidence in the record, the Commission cannot independently consider and evaluate the merits and context of the DoD/FEA Settlement. Additionally, the Commission will have difficulty evaluating the merits of testimony filed in response to the DoD/FEA testimony without the DoD/FEA testimony also in the record.

The Commission's most recent telecommunications settlement in Arizona supports the admission of all filed evidence in a settlement proceeding. In the Qwest/CenturyLink merger case, the settlement agreement signed by the parties expressly provided that all currently filed testimony and exhibits would be stipulated into the Commission's record as evidence. (See excerpted pages from Qwest Merger Settlement Agreement attached as Exhibit A; Docket T-01051B-10-0194). Furthermore, additional testimony in support of the settlement was submitted in the Qwest merger docket providing the evidence that supported the Commission's

ultimate decision that the settlement was in the public interest. If the DoD/FEA testimony is withdrawn, and no testimony in support of the settlement is filed, the record evidence regarding the settlement will be virtually non-existent.

DoD/FEA's request to withdraw its intervention, discovery requests and responses, and its pre-filed testimony is contrary to the law in Arizona and contrary to Commission policy and should be denied.

RESPECTFULLY SUBMITTED this 25th day of April 2012

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ORIGINAL and thirteen (13) copies of the foregoing filed this 25th day of April, 2012 with:

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

COPIES of the foregoing mailed and emailed this 25th day of April 2012, to:

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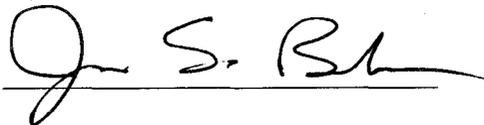
A handwritten signature in black ink, appearing to read "J. S. Blum", is written over a horizontal line.

Exhibit A

7. **Public Interest.**

The Settling Parties agree that, with this Agreement and the agreed upon conditions and commitments contained herein and in Attachment 1 of this Agreement, the Joint Application of Qwest and CenturyLink for approval of the proposed merger is in the public interest and should be approved by the Commission. As part of meeting the public interest standard, the merger will create numerous benefits to consumers in the State of Arizona. Those benefits include:

- (a) creation of a combined company that is stronger financially than either company would be standing alone. This will provide the merged company the ability to make necessary investments to its network in order to provide advanced products and services.
- (b) substantial investment in broadband in the state, as particularly describe in Section 1 above.
- (c) maintenance of existing retail service quality measures for a period of two (2) years;
- (d) implementation of a new local market model where by operation decisions are pushed closer to the customer, increasing responsive to customers' needs, marketing flexibility, and targeted investment.
- (e) neither Qwest Corporation nor any successor entity will recover through wholesale service rates or other fees paid by CLECs or through Arizona end-user retail rates the acquisition costs of the merger.
- (f) extension of interconnection agreements, wholesale agreements, commercial agreements and tariffs for the benefit of CLECs and their respective customers.
- (g) the Joint Applicants will evaluate existing litigation involving the Commission and make a good faith effort to resolve the issues without further litigation.
- (h) the Joint Applicants have agreed to significant reporting to the Commission which will enable the Commission to better evaluate improvements in service quality, customer complaints, infrastructure, broadband coverage, and the financial status of the Joint Applicants.

8. **Resolution of All Issues.**

This Agreement resolves all Settling Parties' issues related to the Commission's approval of the Joint Application.

9. **Commission Evaluation of this Proposed Settlement.**

- (a) The Settling Parties agree that all currently filed testimony and exhibits shall be stipulated into the Commission's record as evidence. Each of the Settling Parties shall file testimony in support of the Agreement.

(b) The Settling Parties recognize that Staff does not have the power to bind the Commission. For purposes of proposing a settlement agreement, Staff acts in the same manner as any party to a Commission proceeding.

(c) This Agreement shall serve as a procedural device by which the Settling Parties will submit their proposed settlement of Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194 to the Commission. Except for Sections 13, 14 and 16, this Agreement will not have any binding force or effect until its provisions are adopted as an order of the Commission.

(d) The Settling Parties further recognize that the Commission will independently consider and evaluate the terms of this Agreement.

10. Approval by the Commission; Approval with Material Conditions.

(a) If the Commission issues an order adopting all material terms of this settlement, such action shall constitute Commission approval of this Agreement. Thereafter, the Settling Parties shall abide by the terms as approved by the Commission.

(b) If the Commission is willing to approve the Joint Application, but such approval is contingent upon conditions or requirements that materially alter the Agreement ("Material Conditions"), the Settling Parties shall meet and confer as soon as reasonably practical to determine in good faith whether each Party would be willing to accept such Material Conditions. If the Material Conditions are not acceptable to one or more of the Settling Parties, then the Settling Parties, prior to the Commission approving the Settlement, shall request that the Commission send the matter back to the Hearing Division for an expedited evidentiary hearing on the Joint Application based upon the pre-filed testimony in the Docket. If the Commission approves the Settlement with terms that materially alter the Agreement and one or more of the Settling Parties are not willing to accept the terms, then the Settling Parties (with the exception of Staff) shall request a rehearing pursuant to ARS § 40-253. For the purposes of this Agreement, whether a condition or requirement constitutes a Material Condition shall be left to the discretion of each Party.

11. Definitive Text.

The "Definitive Text" of this Agreement shall be the text adopted by the Commission in an order that approves all material terms of the Agreement, including all modifications made by the Commission in such an order.

12. Non-Severability Clause.

Each of the terms of the Definitive Text of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable.

13. Privileged and Confidential Communications.

All negotiations relating to this Agreement are privileged and confidential, and no Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement.