

ORIGINAL



0000136137

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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

2012 APR 26 A 10: 05

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 26 2012

DOCKETED BY

DOCKET NO. T-01051B-11-0378

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.

PROCEDURAL ORDER

BY THE COMMISSION:

On October 13, 2011, Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") filed with the Arizona Corporation Commission ("Commission") an Application to classify and regulate certain retail local exchange telecommunications services as competitive, and to classify and deregulate certain services as non-essential.

By Procedural Orders dated January 17, 2012, March 9, 2012, and April 9, 2012, dates for filing testimony in the above-captioned matter were set. The hearing in this matter was set to commence on April 30, 2012. A Pre-hearing conference was scheduled for April 23, 2012.

On March 16, 2012, intervenors and the Commission's Utilities Division ("Staff") filed their testimony. Among the parties filing testimony was the intervenor, the Department of Defense and All Other Federal Executive Agencies (Collectively "DOD/FEA"). The pre-filed testimony of the DOD/FEA raised several issues with CenturyLink's Application, and opposed granting the Application.

On April 19, 2012, CenturyLink filed a Notice of Settlement Agreement Between CenturyLink and the DOD/FEA. A copy of the Settlement between these two parties was attached to the Notice. The Settlement provides that the DOD/FEA acknowledges that the approval of CenturyLink's Application in this matter would be in the public interest as it pertains to the

1 DOD/FEA and that the DOD/FEA does not oppose the grant of the CenturyLink's Application under
2 the terms of the Settlement. The Settlement also provides that DOD/FEA will move to dismiss its
3 opposition by filing a request to withdraw as an intervenor, and to withdraw its discovery requests
4 and responses and its pre-filed written testimony.

5 Although the DOD/FEA had not filed its Motion to Withdraw as of the time of the Pre-
6 hearing Conference on April 23, 2012, the parties discussed the DOD/FEA's and CenturyLink's
7 positions on DOD/FEA's continued participation in this matter. Staff and tw telecom of arizona llc
8 ("tw telecom") (a Competitive Local Exchange Carrier that has intervened in this matter) expressed
9 opposition to allowing DOD/FEA to withdraw, and argued that the pre-filed testimony should be
10 admitted. CenturyLink and DOD/FEA expressed surprise at the opposition. DOD/FEA filed its
11 Request to Withdraw from this proceeding later in the day on April 23, 2012.

12 The DOD/FEA's Request states that after it filed its testimony in this matter opposing
13 CenturyLink's Application, CenturyLink and DOD/FEA entered into settlement discussions that
14 resulted in a voluntary agreement that resolved all of the issues DOD/FEA had with the Application.
15 DOD/FEA states that because no further matters remain between DOD/FEA and CenturyLink
16 regarding the Application, it requests withdrawal of its intervention, discovery requests and responses
17 and withdrawal of all of its pre-filed written testimony opposing the Application.

18 On April 24, 2012, intervenor the Arizona Investment Council ("AIC") filed a Response to
19 the DOD/FEA Request, stating that it did not oppose the request to withdraw.

20 On April 25, 2012, Staff filed its Opposition to DOD/FEA's Request to Withdraw and tw
21 telecom filed its Response.

22 Staff states that it would like the opportunity to question both CenturyLink and DOD/FEA on
23 the provisions of the Settlement Agreement. Staff states that typically when settlement agreements
24 are filed with the Commission, the underlying testimony is still admitted in order to provide a context
25 to evaluate the settlement agreement. In addition, Staff asserts that it referred to DOD/FEA's
26 testimony when it filed its rebuttal testimony. Thus, Staff believes that DOD/FEA's underlying
27 testimony should be admitted into the record. Staff also believes that consistent with typical
28 Commission procedures, CenturyLink and DOD/FEA should offer testimony in support of the

1 Settlement. Finally, because the Settlement appears to cap rates charged to DOD/FEA for a period of
2 five years, Staff believes that the Commission should make a determination as to whether the
3 Settlement Agreement is in the public interest.

4 Tw telecom asserts that setting aside the merits of the Settlement, DOD/FEA's procedural
5 request to withdraw all prior advocacy in this docket should be denied. Tw telecom argues that the
6 pre-filed written testimony that DODO/FEA filed is a necessary component of the record and is
7 already permanently available through Docket Control. Tw Telecom argues that without that
8 evidence in the record, the Commission cannot independently consider and evaluate the merits and
9 context of the DOD/FEA Settlement.

10 The Settlement Agreement raises several issues that merit Commission consideration,
11 including, but not necessarily limited to, how the provisions of the Settlement impact the concerns
12 originally expressed by the DOD/FEA, how the terms of the Settlement impact other rate payers, and
13 whether or not the Settlement requires a determination by the Commission that it is in the public
14 interest. CenturyLink's Application makes significant changes in the Commission's relationship with
15 the largest Incumbent LEC in the state. The Settlement Agreement appears to affect that relationship.
16 In order to have a thorough and complete record in this docket in which to evaluate the implications
17 of the Application, the participation of the DOD/FEA is critical. The DOD/FEA intervened
18 voluntarily. We understand the DOD/FEA's point of view that with the settlement, their concerns
19 with the Application have been addressed, however, given the circumstances of this case, the request
20 to withdraw the pre-filed testimony and to withdraw as a party is not in the public interest.

21 IT IS THEREFORE ORDERED that DOD/FEA's request to withdraw as an Intervenor, and
22 its request to withdraw its pre-filed testimony and discovery requests and responses are denied.

23 IT IS FURTHER ORDERED that the DOD/FEA pre-filed testimony will be made part of the
24 record of this proceeding, and DOD/FEA shall make a witness(es) available to answer questions
25 under oath concerning the pre-filed written testimony as well as on the Settlement Agreement.

26 IT IS FURTHER ORDERED that CenturyLink shall also offer a witness at the hearing who is
27 prepared to testify concerning the terms and impacts of the Settlement Agreement.

28

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 Dated this 26th day of April, 2012.

6
7 
8 JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 26th day of April, 2012, to:

11 Norman G. Curtright
12 QWEST CORPORATION d/b/a
13 CENTURYLINK QC
14 20 E. Thomas Road, 1st Floor
Phoenix, AZ 85012
Norm.curtwright@centurylink.com

August H. Ankum
1520 Spruce Street, Suite 306
Philadelphia, PA 19102
gankum@qsiconsulting.com

15 Daniel Pozefsky
16 RUCO
17 1110 W. Washington St., Suite 220
18 Phoenix, AZ 85007
dpozefsky@azruco.gov

Patrick L. Phipps
3504 Sundance Dr.
Springfield, IL 62711
pphipps@qsiconsulting.com

19 Stephen S. Melnikoff
20 General Attorney
21 Regulatory Law Office (JALS-RL/IP)
22 U.S. Army Legal Services Agency
9275 Gunston Road
For Belvoir, VA 22060-5546
Stephen.s.melnikoff.cov@mail.mil

Gary Yaquinto
Arizona Utility Investors Association
2100 North Central Ave., Suite 210
Phoenix, AZ 85004
gyaquinto@arizonaic.org

23 Daniela D, Haws II
24 OSJA
25 ATTN: ATZS-JAD
26 USA Intelligence Center & Fort Huachuca
27 Fort Huachuca, AZ 85613-6000

Michael Grant
Gallagher & Kennedy, PA
2575 East Camelback Road
Phoenix, AZ 85016-9225
Attorneys for AIC
mmg@gknet.com

Joan Burke
Law Offices of Joan S. Burke
1650 North First Ave.
Phoenix, AZ 85003
Attorney for tw telecom
joah@jsburkelaw.com

1 Janice Alward, Chief Counsel
2 Legal Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSIO
1200 West Washington Street
Phoenix, Arizona 85007

6 By:


7 Debbi Person
8 Assistant to Jane L. Roda
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28