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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCKET CONTROL

COMMISSIONERS

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

2012 MAY 25 PM 3 03

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

DOCKET NO. T-01051B-11-0378

STAFF'S NOTICE OF FILING TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), hereby files the testimony of Staff witness Elijah O. Abinah in support of the Settlement Agreement in the above-referenced matter.

RESPECTFULLY SUBMITTED this 25th day of May, 2012.

Maureen A. Scott, Senior Staff Counsel
Janet F. Wagner, Assistant Chief Counsel
Scott Hesla, Staff Counsel
Arizona Corporation Commission – Legal Division
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Phoenix, Arizona 85007

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

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Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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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

IN SUPPORT OF THE SETTLEMENT AGREEMENT

TESTIMONY

OF

ELIJAH O. ABINAH

ASSISTANT DIRECTOR

UTILITES DIVISION

ARIZONA CORPORATION COMMISSION

MAY 25, 2012

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

Since the passage of the Telecom Act of 1996, the telecommunication market has evolved. Staff recognizes that while there are varying degrees of competition in the various markets, there is some competition in most. To that effect, Staff believes the Settlement Agreement is in the public interest for the following reasons:

- This Settlement Agreement would allow the Commission to proceed cautiously when transitioning from the current regulatory regime to a full competitive market.
- By placing a limit on the amount of rate request, Staff believes that during the transition period rates for Residential service and Small and Medium business services will be established over a three year period.
- The Settlement Agreement will keep the Company's cost down, since the Company will no longer be obligated to file a rate case under Rule 103.
- The Settlement Agreement accorded the Company a streamlined procedure, similar to what applies to other competitive local exchange carriers.

1 **INTRODUCTION**

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

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

23
24 **Q. Are you the same Elijah O. Abinah who provided earlier testimony in this matter?**

25 A. Yes.

1 **Q Did you participate in the discussion which gave rise to the Settlement Agreement**
2 **between Staff, Qwest Corporation dba CenturyLink-QC (“Qwest” “CenturyLink” or**
3 **“Company”), the Arizona Investment Council (“AIC”) and Residential Utility**
4 **Consumer Office (“RUCO”)?**

5 A Yes, I did. I was part of the Staff negotiating team.

6
7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to describe the Settlement process and to explain Staff’s
9 view regarding the Settlement Agreement between Staff of the Arizona Corporation
10 Commission (“Staff”) and other parties.

11
12 **Q. How is your testimony being presented?**

13 A. My testimony is organized into sections. Section I is the introduction, Section II provides
14 discussion of the settlement process, Section III discusses the various parts of the
15 Settlement Agreement, Section IV discusses the rationale why the Agreement is in the
16 public interest and Section V discusses other general policy considerations.

17
18 **SETTLEMENT PROCESS**

19 **Q. Please discuss the Settlement process.**

20 A. Staff believes that the Settlement process was open, transparent and inclusive. All parties
21 received notice of the Settlement meetings and were accorded an opportunity to raise,
22 discuss and propose resolution to any issue that they desired. Parties either participated in
23 person or via telephone.

24

1 **Q. Who participated in those meetings?**

2 A. The following parties were participants in some or all of the meetings: CenturyLink;
3 RUCO; AIC; the United States Department of Defense and all other Federal Executive
4 Agencies (“DoD/FEA”); tw telecom arizona llc (“tw telecom”); and Staff.

5
6 **Q. Could you identify some of the diverse interests that were involved in this process?**

7 A. Yes. The diverse interests included Staff, RUCO (representing residential ratepayers),
8 CenturyLink, AIC (a shareholders association), DoD/FEA (representing federal
9 government agencies), and tw telecom (a telecommunications company).

10

11 **Q. Were there parties who chose not to execute the Agreement?**

12 A. Yes, DoD/FEA and tw telecom did not sign the Agreement. However, it is my
13 understanding that these parties do not oppose the Agreement.

14

15 **Q. Was there an opportunity for all issues to be discussed and considered?**

16 A. Yes, each party had the opportunity to raise and have its issues considered.

17

18 **Q. Were the Signatories able to resolve all issues?**

19 A. Yes, the Signatories were able to resolve and reach agreement on all issues.

20

21 **Q. How would you describe the negotiations?**

22 A. I believe that all participants zealously advocated and represented their interests. I would
23 characterize the discussions as candid but professional. While acknowledging that not all
24 parties executed the Agreement, I must re-emphasize that all parties had the opportunity to
25 be heard and to have their issues fairly considered.

1 **Q. Would you describe the process as requiring give and take?**

2 A. Yes, I would. As a result of the varied interests represented in the settlement process, a
3 willingness to compromise was necessary. As evidenced in the Agreement, the Signatories
4 compromised on what could be described as vastly different litigation positions.

5
6 **Q. Because of such compromising, do you believe the public interest was compromised?**

7 A. No. As I will discuss later in this testimony, I believe that the compromises made by the
8 various parties further the public interest.

9
10 **Q. What specific areas will your testimony address?**

11 A. Specifically, my testimony will address the following areas:

- 12 • Process
13 • Public Interest

14
15 In addition to the process and the public interest components, my testimony will generally
16 summarize the entire Agreement.

17
18 **SETTLEMENT PROCESS**

19 **Q. Please discuss the settlement process.**

20 A. Staff was contacted by a Qwest representative about the possibility of conducting
21 settlement discussions regarding Docket No. T-01051B-11-0378, Qwest, at Staff request,
22 filed with the Commission's Docket Control a notice informing the Commission and all
23 interested parties that Staff and Qwest intended to engage in a settlement discussion.

24

1 **Q. Were other Staff members participants in this discussion?**

2 A Yes, the Staff negotiating team consisted of Steven Olea, (Director of Utilities Division),
3 Terri Ford (Chief of Telecom and Energy), Del Smith (Chief of Engineering), Will Shand
4 (Telecom Manager), Armando Fimbres (Telecom Analyst), Maureen Scott (Staff Legal
5 Counsel), Janet Wagner (Assistant Chief Counsel) and myself.
6

7 **OVERVIEW OF THE SETTLEMENT AGREEMENT**

8 **Q. Can you please briefly provide an overview of the Settlement Agreement?**

9 A. Yes. Section 2.2 of the Settlement Agreement provides for the following:
10
11 • CenturyLink may file a proceeding under Rule 1110 to increase its maximum rates.
12
13 • For a period of three years from the date an order is entered by the Commission in
14 this docket, CenturyLink shall not be entitled to increase its maximum rates for
15 residential services or for small and medium business services greater than 25
16 percent over present rates.
17
18 • In connection with the filing under Rule 1110, CenturyLink may thereafter file
19 under Rule 1109 to increase its actual rates by no more than 10 percent annually for
20 residential services during the three years following the Order Approving
21 Settlement and no more than 15 percent annually for small and medium business
22 services during the three years following the Order Approving Settlement.
23
24 • For the three year period identified above, Staff agrees not to contest requests by
25 CenturyLink under Rule 1110 or 1109 to increase maximum rates or actual rates as
26 long as the request conform to the provision set forth in the preceding paragraph.
27
28 • Enterprise services are considered fully competitive and may be increased pursuant
29 to a Rule 1110 proceeding. Services already found to be competitive under Rule
30 1108 are not subject to the conditions in paragraphs 2(a) and 2(b) of the Settlement
31 Agreement.
32 • CenturyLink agrees for a period of three years from the date of the Order
33 Approving Settlement to charge statewide uniform rates for services subject to
34 paragraphs 2(a) and 2(b) of the Settlement Agreement. CenturyLink agrees to
35 continue to charge uniform rates after the three year period unless it specifically
36 requests and is granted Commission authorization to deaverage rates in a filing
37 pursuant to Rule 1110.

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- CenturyLink will file semi-annual reports with the Commission, Staff, and RUCO for a period of three years, commencing six months after the date of the Order Approving Settlement, setting forth data to be agreed with Staff and RUCO showing the state of competition in the State.

- After the expiration of at least 30 months from the date of the Order Approving Settlement, CenturyLink may make an additional submission in this docket, demonstrating that competition for voice services in Arizona is the same or greater than the levels CenturyLink’s testimony and evidence claim exist at the time of the filing of the Application in this docket. CenturyLink’s additional submission shall be based on competitive reports, data and statistics, including but not limited to the National Center for Health Statistics Wireless Substitution Report, the Federal Communications Commission (“FCC”) Local Competition Report, and the FCC Internet Access Services Report. CenturyLink in such filing shall demonstrate that:
 - a. The percentage of consumers who have no landline voice connection, as specified in the National Center for Health Statistics Report, shall be 30 percent or greater;¹

 - b. Wireless connections, as set forth in the FCC’s Local Competition Report, shall represent 65 percent or greater of total voice connections in Arizona;² and

 - c. Access to VoIP providers shall be measured by xDSL broadband availability in Arizona, as set forth in the FCC Internet Access Services Report, and shall be 88 percent of households or greater.³

- Upon such a filing by CenturyLink and verification by Staff, the Signatories stipulate that the conditions set forth in paragraphs 2.2, 2.3, and 2.4 shall terminate six months after such filing. CenturyLink may thereafter file, in its discretion, requests for additional pricing flexibility pursuant to the streamlined ratemaking procedures of Rule 1110, and the other parties hereto reserve their rights to object to any filings under Rule 1110.

- After the expiration of three years from the date of the Order Approving Settlement, if CenturyLink does not make the showing described in Paragraph 2.4, CenturyLink

¹ Based on “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey,” which is released by the National Center for Health Statistics every six months. The metric is the percent of American households that are wireless-only, as delineated in Table 1 of the report released 12-21-11.

² Based on “Local Telephone Competition: Status as of XXX” released by the FCC’s Industry and Analysis and Technology Division twice a year. The percentage Metric is based on the quantity of Arizona wireless connections as shown in Table 17, and the ILEC and non-ILEC lines shown in Tables 12 and 13 (in report dated October 2011).

³ Based on “Internet Access Services: Status as of XXX” released by the FCC’s Industry and Analysis and Technology Division twice a year. The Metric for Arizona is provided in table 24, column 1, of the report dated October 2011.

1 may continue to seek rate changes pursuant to Rule 1110 (unless the Commission
2 makes a finding that its services are not competitive). However, the Commission
3 may consider that the conditions in Paragraph 2.4 have not been demonstrated in its
4 evaluation of the Rule 1110 filing.

- 5
- 6 • The Signatories stipulate to the Staff's recommendations on the deregulation of
7 services requested by CenturyLink in its application to be de-regulated. These
8 services to be deregulated are listed in Attachment B to the Agreement.
- 9
- 10 • The Signatories stipulate that CenturyLink shall not hereafter be required to make a
11 rate case filing under Rule 103, unless the Commission makes a finding that
12 CenturyLink's services are not competitive.
- 13
- 14 • All rates, terms, conditions and requirements now applicable to wholesale services
15 in Arizona are unchanged by this Agreement, including those treated under Basket
16 4 in the Price Cap Plan.
- 17
- 18 • The Signatories agree that, upon issuance of the Order Approving Settlement, the
19 procedures for setting rates established in the current Price Cap Plan approved by
20 the Commission in Decision No. 68604 (Docket No. T-01051B-03-0454) will be
21 superseded by implementation of the foregoing provisions. CenturyLink may
22 continue to operate under the terms and conditions of service and the rates
23 contained in Decision No. 68604 until new rates are filed under either Rule 1110 or
24 Rule 1109 for each service, as described above.
- 25
- 26 • Until further order by the Commission, CenturyLink agrees to be bound by existing
27 statutes and rules in effect, including but not limited to R14-2-503(C) and rules
28 regarding the provision of services to qualifying low income customers.
- 29
- 30 • CenturyLink and DoD/FEA agree to request withdrawal of their agreement filed on
31 April 19, 2012, from Commission consideration in this docket, and the remaining
32 Signatories agree not to oppose the withdrawal of that agreement from Commission
33 consideration in this docket.
- 34
- 35 • CenturyLink agrees to continue to comply with the Service Quality Plan developed
36 for Qwest Corporation.

37 **Q. Can you please describe Staff's understanding of Section 2.2?**

38 **A. Section 2.2(a), set up a condition by which CenturyLink may, at the Company's discretion**
39 **file a proceeding consistent with Rule 1110 to change its rates.**

1 **Q. Is Staff recommending a rate change in this proceeding?**

2 A. No. Staff is not recommending any changes to the Company's rates and charges in this
3 proceeding.

4
5 **Q. If and when CenturyLink files a proceeding to increase its rates, what is the
6 maximum rate the Company can request?**

7 A. Pursuant to Section 2.2(a) of the Settlement Agreement, for a period of three years from the
8 date of Commission's decision, Residential services, Small and Medium business services
9 maximum rate may be increased by no more than 25 percent over present rates.

10

11 **Q. Is Staff advocating that the 25 percent increase occur in one year?**

12 A. No. Consistent with Section 2.2(b) of the Settlement Agreement, if and when the
13 Company files a request pursuant to Rule 1110 and Rule 1109, for Residential services, the
14 Company cannot increase its actual rate by more than 10 percent in a given year. For
15 Small and Medium business services, CenturyLink cannot increase its actual rate by more
16 than 15 percent in any given year.

17

18 **Q. Can you please explain the provision contained in Section 2.2(c) of the Settlement
19 Agreement?**

20 A. Yes. Consistent with the provision of that section, Staff agreed that if and when
21 CenturyLink files its request consistent with Rule 1110, Staff will not contest such a
22 request as long as the request is less or equal to 10 percent of its actual rates for Residential
23 services and less or equal to 15 percent of its actual rates for Small and Medium business
24 services.

25

1 **Q. Does the provision under Section 2.2(c) preclude other parties from raising objection**
2 **to such a request?**

3 A. No, other parties, that are signatory to the Agreement are not obligated to support such a
4 request. In addition, parties that are non-signatory to the Settlement Agreement can and
5 may object to the request, including members of the public.

6

7 **Q. What is Staff's understanding of Section 2.2(d) of the Settlement Agreement?**

8 A. This section of the Settlement Agreement deals with the Enterprise services provided by
9 CenturyLink. Consistent with the provision of the Settlement Agreement, all Enterprise
10 services provided by CenturyLink are considered to be fully competitive, as such, the
11 Company at its discretion may seek to increase rates for those services pursuant to Rule
12 1110.

13

14 **Q. Is the Company limited in the amount of percentage increase as related to the**
15 **Enterprise services?**

16 A. No.

17

18 **Q. Does the provision of these sections apply to services that were previously deemed to**
19 **be competitive by the Commission?**

20 A. No. As stated in the Settlement Agreement, services that were previously designated to be
21 competitive under Rule 1108 are not subject to the condition in paragraph (2a) and (2b) of
22 the Agreement.

1 **Q. Can you please describe Section 2.2(e)?**

2 A. The provision of this section requires CenturyLink to implement and charge statewide
3 uniform rates for Residential services and Small and Medium business services for a period
4 of at least three years. In addition, CenturyLink agreed to continue to charge statewide
5 uniform rates after the three year period until further ordered by the Commission.
6

7 **REPORTING REQUIREMENT**

8 **Q. Can you please explain the provision of Section 2.3?**

9 A. Yes. For a period of three years, CenturyLink is to provide to the Commission,
10 Commission Staff and RUCO, a report on the state of competition in the State of Arizona.
11 This report will be provided semi-annually from the date of the Commission order.
12

13 **Q. Is the Company obligated to provide additional information?**

14 A. No. However, the Company at its discretion may submit additional information to the
15 Commission in order to demonstrate that competition for voice service in Arizona is the
16 same or greater than the levels CenturyLink's testimony and evidence claim exist at the
17 time of the filing of the application in this docket.
18

19 **Q. Can you please explain the provision of Section 2.5?**

20 A. Basically, this section of the Settlement Agreement will maintain the status quo if
21 CenturyLink does not make the showing described in paragraph 2.4 of the Settlement
22 Agreement unless the Commission describes otherwise.
23

1 **Q. Please describe Section 2.6 of the Settlement Agreement.**

2 A. Consistent with this section of the Settlement Agreement, CenturyLink's services listed in
3 Attachment B will be accorded full deregulation.

4

5 **Q. Can you please explain what is meant by full deregulation?**

6 A. By full deregulation, CenturyLink services listed in Attachment B of the Settlement
7 Agreement will no longer be subject to Commission's jurisdiction. CenturyLink will have
8 the ability to change its rate terms and conditions that apply to these services at its
9 discretion.

10

11 **Q. Can you explain Section 2.7 of the Settlement Agreement?**

12 A. This Section of the Settlement Agreement will relieve CenturyLink of its obligation to file
13 a rate case filing under Commission Rule 103.

14

15 **CURRENT PRICE CAP PLAN**

16 **Q. Can you briefly explain section 2.8 of the Settlement Agreement?**

17 A. In Decision No. 68604, the Commission approved the current Price Cap Plan for Qwest.
18 As part of the plan, Qwest services were placed in four different baskets. One of baskets
19 (basket 4) contained Qwest wholesale services. Wholesale services are services that Qwest
20 provides to other telecommunication carriers subject to section 251 and 252 of the Telecom
21 Act of 1996. This section of the provision of the Settlement Agreement will maintain the
22 status quo in Decision No. 68604.

23

1 **Q. Can you please explain what effect this Settlement Agreement will have on the other**
2 **provisions contained in Decision No. 68604?**

3 A. Section 2.9 of this Settlement Agreement addresses other sections of Decision 68604.
4 Pursuant to this section, the procedures for setting rates established in the current price cap
5 plan will be superseded by implementation of the foregoing provisions.
6

7 **PUBLIC INTEREST**

8 **Q. Can you please explain why Staff believes this Settlement Agreement is in the public**
9 **interest?**

10 A. Since the passage of the Telecom Act of 1996, the telecommunication market has evolved.
11 Staff recognizes that while there is degree of competition in the various markets, there is
12 some competition in most. To that effect, Staff believes the Settlement Agreement is in the
13 public interest for the following reasons:

- 14 • This Settlement Agreement would allow the Commission to proceed cautiously
15 when transitioning from the current regulatory regime to a full competitive market.
- 16 • By placing a limit on the amount of rate request, Staff believes that during the
17 transition period rates for Residential service and Small and Medium business
18 services will be established over a three year period.
- 19 • The Settlement Agreement will keep the Company's cost down, since the Company
20 will no longer be obligated to file a rate case under Rule 103.
- 21 • The Settlement Agreement accorded the Company a streamlined procedure, similar
22 to what applies to other competitive local exchange carriers.
23

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

2 A. Staff's role is to balance the interest of the Company, ratepayers and the stakeholders.
3 Staff believes the Settlement Agreement accomplished that.

4

5 **SUMMARY AND CONCLUSIONS**

6 **Q. Describe Staff's understanding of the overall Settlement Agreement?**

7 A. Staff and all parties to this Agreement have devoted considerable time, resources and effort
8 to reach a conclusion that is fair and reasonable. Signatories to the Settlement Agreement
9 have acknowledged their acceptance of this Agreement, reached through open and frank
10 discussions.

11

12 **Q. Do you believe that this Agreement is in the public interest?**

13 A. Yes.

14

15 **Q. Does this conclude your direct testimony?**

16 A. Yes, it does.