ORIGINAL

OPEN MEETING ITEM

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COMMISSIONERS
GARY PIERCE - Chairman
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PAUL NEWMAN
BRENDA BURNS

ARIZONA CORPORATION COMMISSION

ERNEST G. JOHNSON
Executive Director

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Arizona Corporation Commission
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AZ CORP COMMISSION
DOCKET CONTROL

DATE: JULY 3, 2012

DOCKET NO.: T-01051B-11-0378

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

QWEST CORPORATION DBA CENTURYLINK-QC
(CLASSIFY AND REGULATE RETAIL LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AS COMPETITIVE AND TO CLASSIFY AND DEREGULATE CERTAIN SERVICES AS NON-ESSENTIAL)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 12, 2012

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 18, 2012 AND JULY 19, 2012

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

BEFORE THE ARIZONA CORPORATION COMMISSION

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 DECISION NO. _____ **OPINION AND ORDER**

DATES OF HEARING:	April 30, 2012, May 1, 2012, and June 5, 2012
PLACE OF HEARING:	Tucson, Arizona
ADMINISTRATIVE LAW JUDGE:	Jane L. Rodda
APPEARANCES:	Norman G. Curtright, QWEST CORPORATION D/B/A CENTURYLINK-QC; Stephen S. Melnikoff, OFFICE OF THE JUDGE ADVOCATE GENERAL, for Department of Defense and all other Federal Executive Agencies; Daniel W. Pozefsky, RESIDENTIAL UTILITY CONSUMER OFFICE; Joan S. Burke, LAW OFFICES OF JOAN S. BURKE, for tw telecom of arizona, llc; Michael M. Grant, GALLAGHER & KENNEDY, PA, for Arizona Investment Council; and Janet Wagner, Assistant Chief Counsel, and Maureen A. Scott, Sr. Staff Attorney, LEGAL DIVISION, for the Arizona Corporation Commission Utilities Division.

BY THE COMMISSION:

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On October 13, 2011, Qwest Corporation d/b/a CenturyLink-QC ("CenturyLink") filed with the 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.

2. On November 11, 2011, the Residential Utility Consumer Office ("RUCO") filed a Motion to Intervene, which was granted on December 2, 2011.

3. On December 22, 2011, CenturyLink filed a Notice of Filing, in which it notified interested parties of an informal meeting for CenturyLink to explain its Application, and to give parties the opportunity to ask questions and express concerns, as well as to discuss the process for the Commission's consideration of the Application.

4. On January 11, 2012, CenturyLink, the Commission's Utility Division ("Staff") and RUCO filed a Joint Motion for Expedited Hearing and for Protective Order.

5. By Procedural Order dated January 17, 2012, the matter was set for hearing to commence on April 30, 2012, and other procedural deadlines and directives were established.

6. On January 25, 2012, CenturyLink filed the Direct Testimony of Robert Brigham.

7. On February 13, 2012, CenturyLink filed an Affidavit of Publication indicating that notice of the hearing in this matter was published in *The Arizona Republic*, a newspaper of general circulation in the state, on January 26, 2012.

8. On February 8, 2012, February 15, 2012, and February 15, 2012, respectively, tw telecom of arizona llc ("tw telecom"), the Arizona Investment Council ("AIC"), and the Department of Defense and all other Federal Executive Agencies ("DOD/FEA") filed requests to intervene. Intervention to the foregoing parties was granted on March 1, 2012.

9. On February 22, 2012, CenturyLink filed notice that it would mail notice of the proceeding to its retail customers in their March 2012 bill.

10. On February 24, 2012, CenturyLink filed notice that it provided notice of the proceeding to all Competitive Local Exchange Carriers ("CLECs"), Resellers, and ISP provider

representatives that subscribed to receive Arizona specific notices.

11. On March 1, 2012, CenturyLink filed an unopposed Joint Motion with Staff to extend testimony filing dates by one week. The requested extension was granted by Procedural Order dated March 12, 2012.

12. On March 16, 2012, Staff filed the direct testimony of Elijah Abinah and Armando Fimbres; tw telecom filed the direct testimony of Lyndall Nipps; AIC filed the direct testimony of Gary Yaquinto; RUCO filed the direct testimony of Patrick Quinn; and on March 20, 2012, DOD/FEA filed the direct testimony of August Ankum.[1]

13. On March 29, 2012, Staff filed a Notice that the parties would engage in settlement discussions.

14. On March 30, 2012, CenturyLink filed a Notice of Settlement discussions and directions for participating therein.

15. On April 9, 2012, Staff filed an Unopposed Motion to Modify Testimony Filing Date, requesting an extension of one week to file testimony to give the parties time to consider matters addressed in settlement discussion. The request was granted by Procedural Order dated April 12, 2012.

16. On April 19, 2012, CenturyLink filed a Notice of a settlement agreement between CenturyLink and the DOD/FEA. The DOD/FEA settlement agreement provided that DOD/FEA would seek to withdraw from the proceeding, including withdrawal of Dr. Ankum's the pre-filed testimony.

17. On April 23, 2012, CenturyLink filed the rebuttal testimony of Mr. Fenn and Mr. Brigham; Staff filed the rebuttal testimony of Mr. Abinah and Mr. Fimbres; AIC filed the rebuttal testimony of Mr. Yaquinto; and RUCO filed the rebuttal testimony of Mr. Quinn.

18. On April 23, 2012, a pre-hearing conference convened to discuss scheduling witnesses, as well as the ramifications of the portion of the DOD/FEA settlement agreement that called for the withdrawal of the DOD/FEA from the proceeding.

19. On April 24, 2012, pursuant to the terms of the settlement agreement, the DOD/FEA

[1] On March 26, 2012, DOD/FEA filed the confidential portions of Dr. Ankum's testimony.

filed a Request to Withdraw from the proceeding because, according to the DOD/FEA, the settlement agreement addressed its concerns about the Application.

20. On April 24, 2012, AIC filed a Response to the DOD/FEA Motion indicating no objection to the withdrawal. On April 25, 2012, tw telecom and Staff filed responses opposing the DOD/FEA Motion.

21. By Procedural Order dated April 25, 2012, DOD/FEA's request to withdraw its pre-filed testimony and its status as intervenor was denied, and DEA/FEA and CenturyLink were ordered to have a witness available at the hearing to address the terms of their settlement.

22. On April 26, 2012, CenturyLink filed a Response to the DOD/FEA Motion, supporting DOD/FEA's request to withdraw. CenturyLink requested reconsideration of the April 25, 2012 Procedural Order.

23. On April 27, 2012, the parties participated in a telephonic Procedural Conference to discuss the DOD/FEA Motion. The decision to make the DOD/FEA pre-filed testimony part of the record of this proceeding, and to have DOD/FEA and CenturyLink provide testimony in support of their agreement, was reaffirmed.

24. The hearing convened as scheduled before a duly authorized Administrative Law Judge on April 30, 2012, at the Commission's Tucson offices. Mr. Fenn testified for CenturyLink, Mr. Yaquinto testified for AIC, and Mr. Nipps testified for tw telecom. On May 1, 2012, Mr. Brigham began to testify for CenturyLink. The hearing was suspended for reasons unrelated to the proceeding, prior to Mr. Brigham completing his testimony or any of the remaining witnesses for RUCO and Staff taking the stand. The parties agreed to resume the hearing on May 9, 2012.

25. On May 3, 2012, Staff filed a Request for Procedural Order to reschedule the hearing for June 4, 2012, to accommodate scheduling conflicts. No party objected, and by Procedural Order dated May 4, 2012, the matter was set to re-commence on June 4, 2012.

26. On May 17, 2012, Staff filed a Notice of Settlement Agreement and Request for Procedural Order. A settlement of all of the issues raised in this matter was reached among CenturyLink, AIC, RUCO and Staff. A copy of the Settlement Agreement is attached hereto as Exhibit A, and incorporated herein by reference.

27. By Procedural Order dated May 18, 2012, a schedule for filing testimony in support of, or opposition to, the Settlement Agreement was set, and the hearing date set for June 5, 2012.

28. On May 22, 2012, CenturyLink filed an Unopposed Motion to Withdraw the Settlement Agreement Between CenturyLink and the DOD/FEA.

29. On May 25, 2012, CenturyLink filed the testimony of Mr. Fenn, Staff filed the testimony of Mr. Abinah, RUCO filed the testimony of Ms. Jodi Jerich, and AIC filed the testimony of Mr. Yaquinto, all in support of the Settlement Agreement. No party opposed the Settlement Agreement.

30. On May 30, 2012, tw telecom filed a Notice stating that it intervened in this docket in order to monitor and review the possible impact on wholesale services. tw telecom stated that it supports Section 2.8 of the Settlement (confirming no impact on wholesale services) and that it takes no position on the remaining issues.

31. The DOD/FEA did not sign the Settlement Agreement but does not oppose it. DOD/FEA states that its interests are, and will be, protected by contractual arrangements with CenturyLink.[2]

32. The hearing re-convened as scheduled on June 5, 2012, in order to address the Settlement Agreement. CenturyLink, AIC, tw telecom, DOD/FEA, RUCO and Staff were represented by counsel. Mr. Fenn testified for CenturyLink, Ms. Jerich testified for RUCO, Mr. Yaquinto testified for AIC, and Mr. Abinah testified for Staff. CenturyLink's unopposed Motion to withdraw the settlement agreement with the DOD/FEA was granted.

33. The Commission received four written comments from consumers, three opposed to CenturyLink's request, and one concerning the wording of the notice mailed to consumers. In addition, two CenturyLink customers appeared at the commencement of the hearing to provide comments, each expressing concerns that there is not always an alternative provider to CenturyLink at a comparable price.

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. . .

[2] Hearing Transcript ("Tr.") at 265.

Background and Pre-Settlement Issues

34. By its Application in this docket, CenturyLink requested that the Commission find that its telecommunications services are competitive pursuant to A.A.C. R14-2-1108, and that approximately 158 of its services be deregulated pursuant to A.R.S. §40-281(E) as no longer necessary or essential to the provision of a public service.[3]

35. If CenturyLink's request is granted, those services that are classified as competitive pursuant to A.A.C. R14-2-1108 would be subject to the more flexible rate making treatment afforded by A.A.C. R14-2-1110 and A.A.C. R-14-2-1109, instead of pursuant to traditional rate-of-return rate making treatment under A.A.C. R14-2-103.[4]

36. Currently, CenturyLink's rates are set and governed pursuant to a Price Cap Plan.[5] Under the current version of the Price Cap Plan, CenturyLink's services are divided into three retail baskets and one wholesale basket. Basket 1 services are hard-capped retail services, the prices of which may not be increased while the Price Cap Plan is in effect. Basket 2 consists of retail products/services which are given limited pricing flexibility. Prices for Basket 2 services may not increase more than 25 percent in any 12 month period. With each price change, CenturyLink must submit information that demonstrates that overall Basket 2 revenue changes caused by the price change, at then current sales volumes, do not exceed the allowed revenue increase of $13.8 million.[6] Basket 3 consists of flexibly-priced competitive retail services. With each price change to Basket 3 services, CenturyLink must submit information which demonstrates that overall basket revenue changes caused by the price changes do not exceed the allowed revenue increases. The additional revenue level for purposes of limiting price increases in Basket 3 is capped at $30.0 million, plus the remainder of the $13.8 million not used for Basket 2. Basket 4 consists of wholesale services, and the prices of these services are capped at the tariffed or contract price levels.

37. In connection with its original and Renewed Price Cap Plans, Qwest Corporation was

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[3] Ex CTL-1 Brigham Dir at Attachment B. Under CenturyLink's current Price Cap Plan, 15 of the services sought to be deregulated are in Basket 2, and 123 are in Basket 3.

[4] Because approval of the Application would supersede CenturyLink's Price Cap Plan, Staff filed its Rebuttal Testimony and the Settlement Agreement in the Price Cap Plan Dockets (Docket Nos. T-01051B-03-0454 and T-00000D-00-0672).

[5] Decision No. 68604 (March 23, 2006) (Renewed Price Cap Plan). The original Price Cap Plan was approved in Decision No. 63487 (March 30, 2001).

[6] *See* Ex. S-3 Abinah Dir at 5.

required to file information required by A.C.C. R14-2-103.[7]

38. CenturyLink asserts that the Price Cap Plan under which it currently operates, and which contains hard caps on certain services, does not allow it to compete with carriers who are afforded streamlined and greater pricing flexibility.[8] CenturyLink has reached the revenue limits allowed under the Renewed Price Cap Plan.[9]

39. A.A.C. R14-2-1108 sets out the process for a telecommunications company to follow in order to have a service or group of services classified as competitive. Under the Rule, the petition for competitive classification should set forth the conditions within the relevant market that demonstrate that the telecommunications service is competitive and shall provide, at a minimum the following information: 1) a description of the general economic conditions that exist which make the relevant market for the service one that is competitive; 2) the number of alternative providers of the service; 3) the estimated market share held by each alternative provider of the service; 4) the names and addresses of any alternative providers of the service that are also affiliates of the petitioner; 5) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and 6) other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service.[10]

40. If the Commission finds that a telecommunications company's service is competitive, the company may obtain a rate change for the competitive service by applying for streamlined rate treatment pursuant to A.A.C. R14-2-1110.[11]

41. A.A.C. R14-2-1110 provides that in order to increase the rate for a competitive telecommunications service, the applicant must submit: 1) a statement setting forth the reasons for which a rate increase is required; 2) a schedule of current rates and proposed rates and the additional revenues to be derived from the proposed rates; and 3) an affidavit verifying notice of the rate increase has been provided to customers of the service.

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[7] *See* Decision No. 68604 at 9.
[8] Ex CTL-1 at 10.
[9] Tr. at 87-88, 126.
[10] R14-2-1108.B.
[11] R14-2-1108.F.

42. While A.A.C. R14-2-1110 provides for setting maximum rates, A.A.C. R14-2-1109 governs setting actual rates. Pursuant to Subsection A of A.A.C. R14-2-1109, competitive services may be priced at any level at or below the maximum rates as set in the company's tariff, and not less than the company's total service long-run incremental cost of providing the service. A company can effect a price change by providing the Commission with concurrent written notice of the price change as long as the changed price comports with the limitations in A.A.C. R14-2-1109.A. A.A.C. R14-2-1109 prohibits noncompetitive services subsidizing competitive services, and requires that each competitive telecommunications service provide revenues that equal or exceed the company's total service long-run incremental cost of providing the service.

43. A.A.C. R14-2-1108.H provides that after notice and hearing, any telecommunications service classified as competitive may subsequently be reclassified as non-competitive if the Commission determines that reclassification would protect the public interest.

44. In support of its Application, CenturyLink asserts that the telecommunications market in Arizona is "exceptionally competitive" with the Company facing competition from traditional competitors which as Cox Communications, a number of Competitive Local Exchange Carriers ("CLECs") such as Integra, tw telecom, PAETEC and Level 3, and intermodal voice services from wireless companies such as AT&T, Verizon, Sprint and T-Mobile, and Voice over Internet Protocol ("VoIP") services from companies such as Vonage and Google.[12] CenturyLink offered evidence that its retail access lines in Arizona declined 54 percent, from 2.832 million in December 2001, to 1.295 million in 2010, at the same time that the number of households in Arizona increased 24.3 percent.[13] CenturyLink provided FCC data that in the western United States, household expenditures for telephone service increased steadily since 2001, but that CenturyLink's (i.e. Qwest) revenues declined. While CenturyLink does not have access to the confidential access line and other data of its competitors, the Company's market research indicates that the ILEC market share in Arizona in 2010 was 18.4 percent, as compared to 15.6 percent for non-ILECs (including reporting VoIP providers) and 65.9 percent for wireless providers.[14] CenturyLink asserts that it provides service to only one-

[12] *Id.* at 11.
[13] *Id.* at 12-13
[14] *Id.* at 15.

third of the households in its Arizona service area.[15]

45. CenturyLink offered evidence that cable telephony service is available to consumers in at least 116 of CenturyLink's 132 wire centers, and these wire centers comprised 98.4 percent of CenturyLink's access lines in Arizona as of December 31, 2010.[16] CenturyLink asserted that Cox Communications, alone, has almost as many consumer voice lines as CenturyLink in Arizona, which CenturyLink argues clearly demonstrates that CenturyLink is no longer the dominant voice provider in the state, and that there is no basis to regulate CenturyLink more heavily than Cox.

46. CenturyLink presented evidence that there are approximately 40 unaffiliated CLECs competing with CenturyLink in Arizona, including AT&T, Verizon, Integra, PAETEC, XO Communications, Level 3, tw telecom, Granite, and 360 Networks, etc.[17] Most of these CLECs focus on serving business customers. The data shows that CLECs compete in each of the 132 wire centers.[18] CenturyLink asserts that CLECs can easily enter and exit the market and can offer services by purchasing UNEs (unbundled network elements) or resold services from CenturyLink or other CLECs, or by building their own facilities.[19]

47. According to the FCC's Local Competition Report, as of December 2010, there were 5.285 million wireless subscribers in Arizona, while there were 2.730 million wirelines (both ILEC and non-ILEC).[20] While wireless access lines increased 143 percent from 2001 to 2010, CenturyLink's access lines for residential and business customers in Arizona dropped 52 percent over the same period.[21] CenturyLink identified only a few wire centers that did not have wireless coverage: e.g. the Grand Canyon exchange did not have coverage, nor did the Gila Bend, Kearny, Hayden or Dudleyville exchanges. In addition, small portions of the Winslow, Tubac, Willcox, Maricopa, Benson, Wickenberg and Superior wire centers also had no wireless coverage.[22]

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[15] *Id.* at 20. CenturyLink also provided market share estimates for the Small and Medium Business market and the Large Business market. *See* Ex CTL-1 at 20-24. Market share information was considered confidential. The data indicates that the Large Business or Enterprise market is a national market dominated by Verizon and AT&T, and that CenturyLink does not possess market power in this segment.
[16] *Id.* at 24-25.
[17] *Id.* at 35-36.
[18] *Id.* at 36.
[19] *Id.* at 42.
[20] *Id.* at 43.
[21] *Id.* at 43.
[22] *Id.* at 44-45.

CenturyLink argued that each of the areas without wireless coverage were sparsely populated, typically with less than one household per square mile and that in fact, very few Arizonans actually live in areas without wireless service.[23] CenturyLink provided data that for the July 2009-June 2010 time period, 29.4 percent of adult Arizona wireless households were "wireless only."[24] CenturyLink argues that wireless is an effective price-constraining substitute for wireline service.[25]

48. CenturyLink presented evidence that consumers are increasingly viewing VoIP service as a substitute for traditional voice telephone services.[26] In December 2010, non-ILEC Arizona VoIP subscribers were 484,000.[27] To utilize VoIP, subscribers need access to a high-speed broadband connection. Information from the FCC indicates that as of December 31, 2010, there were 552,000 ADSL connections,[28] 1,161,000 cable modem connections, 4,000 fiber connections, 24,000 fixed wireless broadband connections, 1,487,000 mobile wireless broadband connections and 16,000 other broadband connections, for a total of 3.264 million broadband connections in Arizona.[29] According to the FCC, as of December 2010, high speed internet access was available to 88 percent of ILEC residential end-user premises and 99 percent of cable residential end-user premises in Arizona, and that 67 percent of Arizona residential households had a high speed internet connection from one of the 74 broadband providers in the state.[30]

49. CenturyLink argued that it clearly demonstrated that it faces robust competition and does not have market power in the Residential, Business or Enterprise markets in Arizona, and consequently, that its telecommunication services should be classified as competitive pursuant to A.A.C. R14-2-1108.[31]

50. AIC supported CenturyLink's Application. Mr. Yaquinto testified that numerous competitive providers have entered the Arizona market, that the vast majority of residential and business customers can now choose among multiple providers, and that while certain competitive

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[23] *Id.* at 45.
[24] *Id.* at 50.
[25] *Id.* at 51-54.
[26] *Id.* at 54-56.
[27] *Id.* at 56.
[28] Asymmetric Digital Subscriber Line, a high-speed transmission technology.
[29] *Id.* at 57.
[30] *Id.*
[31] Tr. at 56-60.

providers serve only select areas of certain customer grounds, providers like Cox Communications and other cable companies provide local exchange service to residential and business customers in virtually all areas served by CenturyLink.[32] Mr. Yaquinto believes that ILEC loss of market share, from close to 100 percent in the early 1990's to only 18.4 percent currently, is most telling of the flourishing state of competition for telecommunication services.[33] Mr. Yaquinto highlighted the statistics that CenturyLink's access lines dropped 54 percent between 2001 and 2010 and the percentage of households that have "cut the cord" and moved to wireless was over 29 percent.[34] AIC believes that the notion of fairness warrants allowing CenturyLink to utilize the same streamlined pricing practices enjoyed by its competitors.[35]

51. tw telecomm did not take a position on whether CenturyLink's services should be classified as competitive, but intervened in this matter to monitor the effect of the proceeding on CenturyLink's provision of wholesale services. Mr. Nipps' testimony was offered to clarify certain statements in CenturyLink's testimony about its role as the wholesale supplier for competitive providers.[36] Mr. Nipps recommended that the Commission not approve any rate deregulation, or classify any services as competitive, without ensuring that protections are in place that allow: 1) reviewing data relating to the true availability of retail competition for specific geographic areas; 2) quickly addressing and resolving any complaints or anti-competitive behavior relating to wholesale sales and services; 3) investigating all reports of possible cross-subsidization between CenturyLink affiliates; and 4) continued transparency and vigilance in the reporting and tariffing processes.[37] Mr. Nipps agreed that the hearing process in this docket addressed his first point, and that the Commission had processes in place to address his other concerns.[38]

52. RUCO supported CenturyLink's Application, and Mr. Quinn testified that CenturyLink met the six conditions set forth in A.A.C. R14-2-1108.B to allow competitive classification of telecommunications services.[39] RUCO believed that Staff's use of the Herfindahl-

[32] Ex AIC-1 Yaquinto Dir at 8-9.
[33] *Id.* at 9.
[34] *Id.* at 10.
[35] *Id.* at 13.
[36] Ex twta-1 Nipps Dir at 1.
[37] Id. at 6.
[38] Tr. at 174-179.
[39] Ex RUCO - 3 Quinn Reb at 3-4.

Hirschman Index ("HHI") to measure market concentration is misleading in the analysis to determine if the market is competitive in this case.[40] RUCO took no position with respect to the Business or Enterprise markets, but found that in the Residential market there were reasonable alternatives to Qwest's wireline service, and that only thirteen wire centers were not serviced by both a cable provider and wireless provider. RUCO recommended that safeguards that would effectively confer the benefits of competition could, and should, be implemented for the protection of consumers in these few wire centers.[41]

53. DOD/FEA originally filed direct testimony that criticized CenturyLink's Application and recommended against granting CenturyLink the competitive classification it sought. The DOD/FEA asserted that CenturyLink's analysis of the market was not sufficiently rigorous to allow the Commission to approve the request.[42] Dr. Ankum's pre-filed testimony asserted that CenturyLink did not properly define the geographic and product dimensions of the market which resulted in overstating the degree of competitive alternatives.[43] The DOD/FEA was particularly concerned that often CenturyLink has been the only bidder on its contracts.[44] After CenturyLink and DOD/FEA reached a settlement agreement, under which CenturyLink agreed to protect DOD/FEA from future tariff price increases for five years, DOD/FEA sought to have its pre-filed testimony withdrawn.[45]

54. In its March 2012 pre-filed testimony, Staff did not believe that all of CenturyLink's services should be classified as competitive as requested.[46] Staff's analysis of the alternatives available to CenturyLink customers led it to conclude that although customers had available alternatives, the market was highly concentrated and there was not sufficiently robust competition in the Residential and Small and Medium Business markets to allow Staff to support unrestricted statewide competitive classification for services provided to Residential or Small and Medium Business customers. Staff recommended that CenturyLink's services provided to Residential and Small and Medium Business customers be classified as "Emerging Competitive," and that

[40] Id. at 6-7.
[41] Ex RUCO - 1, Quinn Dir at 19.
[42] Ex DOD/FEA-1 at 7.
[43] *Id.*
[44] *Id.* at 18.
[45] As previously stated, the withdrawal of the pre-filed testimony was denied and the terms of the DOD/FEA/CenturyLink settlement agreement were to be examined in the course of the hearing.
[46] Ex S-3 Abinah Dir at 8.

CenturyLink be authorized to establish maximum rates that are 125 percent of the current actual rates for these classes of customers, and further that the rates actually charged to Residential or consumer customers increase by no more than 10 percent annually.[47] For the Small and Medium Business customers, Staff recommended that CenturyLink be authorized to establish maximum rates that are 130 percent of the current rates, and that the rates that are actually charged to the Small and Medium Business customers not increase by more than 15 percent annually.[48] Staff also recommended that CenturyLink not be permitted to file a request to increase maximum rates for 30 months after Commission approval of the new maximum rates. Staff recommended that services provided to Large Business or Enterprise customers be classified as competitive, and that CenturyLink should be authorized to file for maximum rates for services provided to these customers under A.A.C. R14-2-1110 without condition. Staff recommended deregulation for 40 of the services that CenturyLink had requested to be deregulated.[49]

55. CenturyLink objected to Staff's "Emerging Competitive" classification on the grounds that "Emerging Competitive" is not a classification recognized under the Rules, and vigorously argued that all of its services met the criteria in the Rules to be considered competitive and subject to flexible pricing. Mr. Fenn was adamant that the data relating to the competitiveness of the market for voice services supports regulating CenturyLink on par with its competitors.[50]

The Settlement Agreement

56. The Settlement Agreement provides that CenturyLink's services shall be considered competitive and in compliance with A.A.C. R14-2-1108, and that CenturyLink may file for increased rates pursuant to A.A.C. R14-2-1110 subject to the following conditions:

(a) For a period of three years from the effective date of the approval of the Settlement, CenturyLink shall not be entitled to increase its maximum rates greater than 25 percent over present rates.

(b) After making its Rule 1110 filing pursuant to Section 2.2.a of the Settlement, for three years following the Order approving the Settlement, CenturyLink may increase its actual rates pursuant to Rule 1109, by no more than 10 percent annually for Residential services, and by no more than 15 percent annually for Small and Medium Business services.

[47] Ex S-3 at Executive Summary.
[48] *Id.*
[49] Ex S-1 Fimbres Dir at 37.
[50] Tr. at 56, 67, 124.

(c) Staff will not contest a Rule 1110 request made by CenturyLink that complies with Section 2.2.a, or a Rule 1109 filing to increase rates that comports with Section 2.2.b, but no other party is constrained from opposing the Rule 1110 increase.

(d) Enterprise (or Large Business) services, are considered to be fully competitive and may be increased without restrictions, except those provided by the Rules; and services that are already classified competitive under Rule 1108[51] are also not subject to the conditions of Sections 2.2.a or 2.2.b.

(e) For three years after the effective date of the Order approving the Settlement Agreement, CenturyLink will charge statewide uniform rates for the services subject to the limitations of Sections 2.2.a and 2.2.b. Thereafter, CenturyLink will charge uniform statewide rates until it receives authorization from the Commission to de-average rates.

57. Under Section 2.3 of the Settlement Agreement, CenturyLink will file semi-annual reports with the Commission and RUCO for three years, setting forth data that shows the status of telecommunications competition in Arizona.

58. Section 2.4 of the Settlement Agreement provides that thirty months after the date of the Order approving the Settlement Agreement, CenturyLink can submit information in this docket that demonstrates that competition for voice services in Arizona is the same or greater than the levels claimed in CenturyLink's testimony and exhibits at the time it filed its Application. To demonstrate that the state of competition is equivalent to or greater than its current level, that information should show: a) that the percentage of consumers who have no landline voice connection is at least 30 percent; b) wireless connections represent 65 percent or more of total voice connections in Arizona; and c) access to VoIP providers as measured by xDSL broadband availability in Arizona shall be 88 percent or greater of Arizona households. Upon such filing by CenturyLink, and verification by Staff, the Settlement Agreement provides that the conditions set forth in Sections 2.2, 2.3 and 2.4 will terminate six months after CenturyLink makes the filing, and CenturyLink is permitted to make filings for pricing flexibility pursuant to the streamlined provisions of A.A.C. R14-2-1110. Neither Staff nor any other party is prevented from objecting to the subsequent A.A.C. R14-2-1110 filing.

59. The Settlement Agreement provides that after three years, if CenturyLink does not

[51] The services that have previously been classified as competitive under Rule 1108 are listed in Attachment A to the Settlement Agreement.

make the filing contemplated in Section 2.4, CenturyLink may continue to seek rate changes pursuant to A.A.C. R14-2-1110, unless the Commission makes a finding that the services are not competitive, and the Commission may consider that the conditions set forth in Section 2.4 were not demonstrated when it evaluates such A.A.C. R14-2-1110 filing.

60. Under Section 2.6 of the Settlement Agreement, the parties agree that Staff's recommendations on the deregulation of services should be adopted. The services to be deregulated are listed in Attachment B of the Settlement Agreement.

61. Under Section 2.7 of the Settlement Agreement, CenturyLink will no longer make rate case filings under A.A.C. R14-2-103, unless the Commission makes a finding that its services are not competitive. The Settlement Agreement provides that upon the effective date of the Order approving the Settlement Agreement, the procedures for setting rates pursuant to A.A.C. R14-2-1110 and -1109 will supersede the procedures established in the Price Cap Plan.[52] However, CenturyLink may continue to operate under the terms and conditions of the Price Cap Plan until new rates are filed under either A.A.C. R14-2-1110 or -1109 for each service.

62. Section 2.8 of the Settlement Agreement states that all rates, terms and requirements currently applicable to wholesale services in Arizona are not changed by the Settlement Agreement, including those services treated under Basket 4 of the Price Cap Plan.

63. Until further order of the Commission, CenturyLink agrees to be bound by existing statutes and rules in effect, including, but not limited to A.A.C. R14-2-503.C and rules regarding the provision of services to low income customers.[53] CenturyLink also agrees to comply with the Service Quality Plan developed for Qwest Corporation.[54]

64. The Settlement Agreement states that CenturyLink and the DOD/FEA[55] agree to request withdrawal of their agreement filed on April 19, 2012, from Commission consideration in this docket.

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[52] Section 2.9 of the Settlement Agreement.
[53] Section 2.10 of the Settlement Agreement.
[54] Section 2.12 of the Settlement Agreement.
[55] DOD/FEA is not a signatory to the Settlement Agreement, but stated at the hearing on June 5, 2012, that it agreed with the provision to withdraw the earlier agreement with CenturyLink. Tr. at 264-65.

Position of the Parties on the Settlement Agreement

65. Regarding the Settlement Agreement, Mr. Fenn testified for CenturyLink that although the Company believes it is entitled to competitive classification for its services without the limitations of the Settlement Agreement, he also believes that the terms of the Settlement Agreement address concerns that there should be a transition to full competitive flexibility, and that the terms are fair and reasonable and in the public interest.[56] Mr. Fenn testified that the Settlement Agreement enhances the benefits of competition to Arizona consumers and meets CenturyLink's objective of securing regulatory parity with its primary wireline competitors.[57] Mr. Fenn asserted that CenturyLink will be better able to compete because it will no longer be regulated differently from how its competitors are regulated, and that the certainty of knowing how the Company will be treated will give CenturyLink more confidence as it continues to make investments in Arizona.[58] He testified that by reducing unneeded regulatory burdens, CenturyLink will be able to be more responsive to consumer demand and competitive market conditions; the Company will be better positioned to bring products, services and targeted offers and promotions to the market with greater speed; prices for all services will reflect market conditions; and there will be parity in how competitors are regulated.[59]

66. Mr. Yaquinto testified for AIC in favor of the Settlement Agreement stating that it clears a path to certainty for CenturyLink to achieve pricing flexibility and parity in a competitive market and reduces unnecessary regulatory overhead.[60] Mr. Yaquinto believes that Arizona will benefit from CenturyLink being put on even footing with its competitors and the resultant investment.[61]

67. Ms. Jerich testified for RUCO that the negotiations that led to the Settlement Agreement were conducted in a fair and reasonable manner that allowed each party the opportunity to participate.[62] Ms. Jerich testified that the Settlement Agreement is fair to both the consumer and the

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[56] Ex CTL-7 Fenn Settlement testimony at 2. Tr. at 275-79.
[57] Ex CTL-7 at 4.
[58] *Id.* at 5.
[59] *Id.* at 8.
[60] Ex AIC-3 Yaquinto Settlement testimony at 2.
[61] Tr. at 311-12.
[62] Ex RUCO - 5 Jerich Settlement Testimony at 2.

Company, and that RUCO supports the Settlement Agreement because its terms are largely consistent with the position RUCO took in litigation, and because it provides for conditions that favor the consumer and further strengthen the public interest requirement.[63] Ms. Jerich testified that the conditions that limit price increases provide customers with rate level reliability.[64] RUCO believes that CenturyLink's agreement to continue its low income programs, to comply with A.A.C. R14-2-503.C (addressing the conditions necessary to refuse service to a customer) and to continue to comply with its Service Quality Plan offer additional benefits to consumers.[65]

68. Mr. Abinah testified that Staff recognizes that the telecommunications market has evolved since the passage of the Telecom Act of 1996, and that while there are varying degrees of competition in various markets, there is some competition in most. Staff believes that the Settlement is in the public interest because: 1) it would allow the Commission to proceed cautiously when transitioning from the current regulatory regime to a fully competitive market; 2) by placing a limit on the amount of a future rate request during the transition period, Residential and Business rates will be established over a three year period; 3) CenturyLink will be relieved of the expense of filing a rate case under A.A.C. R14-2-103; and 4) CenturyLink will be governed by a streamlined rate setting procedure similar to that which applies to its competitors.[66] Staff believes the Settlement Agreement balances the interests of the Company and ratepayers and that it is in the public interest.[67]

69. DOD/FEA did not sign the Settlement Agreement, but supports its approval. DOD/FEA's counsel states that DOD/FEA's interests have, and will continue to be protected by entering into commercial agreements with CenturyLink or other carriers.[68]

70. tw telecom did not sign the Settlement Agreement, but does not oppose its adoption.[69]

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[63] *Id.* at 7.
[64] *Id.* at 8.
[65] *Id.* at 10-11. RUCO notes that it believes that the obligation of Section 2.12 to comply with the Service Quality Plan is in addition to its obligation to comply with A.A.C. R14-2-1114, which addresses service quality for the provision of competitive services.
[66] Ex S - 5 Abinah Settlement Testimony at 12. *See also* Tr. at 331-32.
[67] *Id.* at 13.
[68] Tr. at 265.
[69] See tw telecom notice filed May 30, 2012.

Analysis and Conclusion

71. CenturyLink (or its predecessor, Qwest) has experienced pricing flexibility for some services for several years. Prior to this proceeding, the Commission has found a number of the Company's services to be competitive under A.A.C. R14-2-1108, specifically: MTS, Private Line, WATS, 800 Service, and Optimal Calling Plans (Decision No. 59637 (April 24, 1996)); Directory Assistance (Decision No. 62129 (December 14, 1996)); Centrix Prime (Decision No. 61089 (August 26, 1998)); ATM Cell Relay Service (Decision No. 61328 (January 7, 1999)); and National Directory Assistance (Decision No. 60545 (December 18, 1997)). In addition, since 2001, the Company has been operating under a Price Cap Plan that provided some pricing flexibility to some services similar to the flexibility provided under A.A.C. R-14-2-1108.

72. Even though in its pre-Settlement position, Staff had some concerns about the vigor of competition in all areas and in all markets in the state, Staff did not refute the market statistics that CenturyLink provided in support of its Application and which indicate the existence of wide-ranging alternatives to CenturyLink's services in the vast majority of its service area. Staff's pre-Settlement position took a step toward flexible pricing under A.A.C. R14-2-1110, and if adopted by the Commission would have resulted in approximately the same pricing flexibility as would be afforded under the Settlement Agreement. The Settlement Agreement achieves the same gradual transitional approach towards competitive pricing as Staff had originally advocated, but does so with greater clarity about what happens at the end of the three year transition period.

73. Prior to entering into the Settlement Agreement, Mr. Fenn testified that market forces and common business sense would prevent CenturyLink from precipitously increasing retail rates.[70] Consequently, the Settlement Agreement does not unreasonably burden or hamper CenturyLink's ability to operate in the marketplace. The Settlement Agreement provides CenturyLink with a clear path towards flexible pricing under A.A.C. R14-2-1110. CenturyLink believes the Settlement Agreement is fair and in the public interest, and advocates for its adoption.

74. CenturyLink has met its burden under A.A.C. R14-2-1108 to show the state of

[70] Tr. at 61-62.

competition in the Arizona markets. Because some markets, or segments of markets, which serve a small percentage of the population in Arizona, are not as robustly competitive as other market segments, a gradual approach to phasing in the pricing flexibility provided by A.A.C. R14-2-1110 and -1109, is reasonable. By requiring statewide pricing, consumers with fewer competitive choices are protected from price gouging. In addition, all Arizona consumers are protected by the Commission's ability to regulate CenturyLink if market forces change such that the public interest would warrant a different regulatory scheme. Even when CenturyLink is given the ability to make A.A.C. R14-2-1110 filings without conditions, it will not be able to set prices at whatever level it wants. Under A.A.C. R14-2-1110, the Commission retains authority to set the maximum price. This power is not insignificant, as asking for increased rates is not tantamount to receiving authority to increase rates. Furthermore, CenturyLink remains subject to the Service Quality Plan developed for Qwest, and to all existing rules and statues, including, but not limited to, A.R.S. §40-321 and §40-322 (which give the Commission authority to determine and regulate the adequacy of service) and A.A.C, R14-2-503 (relating to establishment of service) and A.A.C. R14-2-1114 (service quality for competitive services), and rules regarding the provision of service to qualifying low income customers. At this juncture, and with all of the protections afforded by the Settlement Agreement and other applicable rules, it is in the public interest to allow CenturyLink to begin to compete on equal footing with other entities providing the same or functionally equivalent telecommunication services in the state.

75. The Settlement Agreement is not completely clear about what happens in three years if CenturyLink provides data that shows the Arizona market is at least as competitive as it is currently. Paragraph 2.4 provides in relevant part:

> Upon such 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.

The Agreement is clear that if CenturyLink meets its burden to demonstrate that competition, as measured by the criteria set forth in Section 2.4, is comparable to its current state, and Staff verifies

the filing, the limits on CenturyLink's ability to affect rate increases terminate. The Settlement Agreement is silent on whether additional action by Staff or the Commission is required at that time. It is reasonable to clarify that upon receipt of the filing by CenturyLink contemplated under Section 2.4, that Staff should file in this docket, either its verification that CenturyLink has met the criteria for the termination of the Settlement's conditions, or a statement why in Staff's opinion the filing does not comply with the Settlement's criteria and Staff's recommendation for further action. In addition, any interested party should be able to file comments on CenturyLink's Section 2.4 filing. Any such filings should be made within 30 days of CenturyLink's filing in order to provide reasonable time to resolve any disputes.

76. If Staff verifies that CenturyLink has met the requirements of Section 2.4 and dockets its findings that CenturyLink is in compliance with the terms of the Settlement Agreement, and no other party has docketed an objection, no further action is required by the Commission to allow CenturyLink to make further filings pursuant to A.A.C. R14-2-1110 or -1109 as those Rules provide.

77. We find that based on the evidence in this docket, the services set forth in Attachment B to the Settlement Agreement are neither essential nor integral to the public service and should no longer be subject to regulation by the Commission.

CONCLUSIONS OF LAW

1. CenturyLink is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40, and A.R.S. §40-281.

2. The Commission has jurisdiction over CenturyLink and the subject matter of the Application.

3. Notice of the Application was provided in accordance with the law.

4. The Settlement Agreement, attached hereto as Exhibit A, is fair and reasonable and in the public interest.

5. CenturyLink's services, as set forth in its Application, shall be considered competitive subject to the conditions of the Settlement Agreement.

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. . .

ORDER

IT IS THEREFORE ORDERED the Settlement Agreement by and between Qwest Corporation d/b/a CenturyLink-QC, the Residential Utility Consumer Office, the Arizona Investment Council and Staff, attached hereto as Exhibit A, is approved.

IT IS FURTHER ORDERED that within 30 days of Qwest Corporation d/b/a CenturyLink-QC, making its filing pursuant to Section 2.4 of the Settlement Agreement, Staff or interested parties shall file any objections to Qwest Corporation d/b/a CenturyLink-QC's filing, and if no objection is filed, and Staff files verification that CenturyLink has met the criteria in Paragraph 2.4, Qwest Corporation d/b/a CenturyLink-QC, shall be entitled six months following its filing, to request increased rates under A.A.C. R14-2-1110 without conditions except as provided by the applicable Rules.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2012.

ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: QWEST CORPORATION D/B/A CENTURYLINK-QC

DOCKET NO.: T-01051B-11-0378

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EXHIBIT A

Proposed Settlement Agreement
Docket No.T-01051B-11-0378
In the Matter of the Application of Qwest Corporation dba Century Link-QC to Classify and Regulate Retail Local Exchange Telecommunications Services as Competitive and to Classify and Deregulate Certain Services as Nonessential

The purpose of this Settlement Agreement ("Agreement") is to settle disputed issues related to Docket No. T-01051B-11-0378. This Agreement is entered into by the following entities:

Arizona Corporation Commission Utilities Division ("Staff")

Qwest Corporation dba Century Link-QC ("Century Link")

Residential Utility Consumer Office ("RUCO")

Arizona Investment Council ("AIC")

These entities shall be referred to collectively as "Signatories;" a single entity shall be referred to individually as a "Signatory."

I. RECITALS

1.1 Century Link filed the application underlying Docket No. T-01051B-11-0378 on October 13, 2011.

1.2 Subsequently, the Commission approved applications to intervene filed by RUCO, AIC, the Department of Defense/Federal Executive Agencies ("DoD/FEA"), and tw telecom of Arizona, LLC..

1.3 The Signatories conducted settlement discussions in this matter that were open, transparent, and inclusive of all parties to this docket who desired to participate.

1.4 The terms of this Agreement are just, reasonable, fair, and in the public interest in that they, among other things, establish just and reasonable classifications for ratemaking purposes; resolve issues arising from this docket; and avoid unnecessary litigation expense and delay.

1.5 The Signatories ask the Commission 1) to find that the terms and conditions of this Agreement are just, reasonable, and in the public interest; and 2) to approve the Agreement as written.

EXHIBIT A

TERMS AND CONDITIONS

II. Competitive Classifications Approved Subject to Conditions

In order to settle the principal disputed issues in this matter, the Signatories agree as follows:

2.1 In connection with CenturyLink's Rule 1108 Competitive Classification Application, services shall be considered to be competitive and in compliance with Rule 1108, subject to the conditions set forth in paragraphs 2.2, 2.3 and 2.4 ("Competitive Classification Approved Subject to Conditions").

2.2 CenturyLink may file a proceeding under Rule 1110 to increase its rates.

a. For a period of three years from the date an order is entered by the Commission in this docket approving this agreement or otherwise resolving this petition (the "Order Approving Settlement"), CenturyLink shall not be entitled to increase its maximum rates for residential services or for small and medium business services greater than 25% over present rates.

b. In connection with the filing under Rule 1110 described above, CenturyLink may thereafter file under Rule 1109 to increase its actual rates by no more than 10% annually for residential services during the three years following the Order Approving Settlement and no more than 15% annually for small and medium business services during the three years following the Order Approving Settlement.

c. Staff agrees not to contest a request by CenturyLink under Rule 1110 to increase the maximum rates for services as set forth in paragraph 2(a) above or a request by CenturyLink under Rule 1109 to change the actual rates as set forth in paragraph 2(b) above. No other party shall be constrained from opposing Rule 1110 increases requested by CenturyLink.

d. No other consensual limitations apply to maximum rates for the above three year period. Enterprise services are considered fully competitive and may be increased pursuant to a Rule 1110 proceeding. Services already found to be competitive under Rule 1108 are not subject to the conditions in paragraphs 2(a) and 2(b) above. The services previously classified as competitive under Rule 1108 are listed in Attachment A.

e. CenturyLink agrees for a period of three years from the date of the Order Approving Settlement to charge statewide uniform rates for services subject to paragraphs 2(a) and 2(b) above. Thereafter, CenturyLink agrees to continue to charge uniform rates unless it specifically requests and is granted Commission authorization to deaverage rates in a filing pursuant to Rule 1110.

2.3 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.

2.4 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% or greater;[1]

b. Wireless connections, as set forth in the FCC's Local Competition Report, shall represent 65% 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% 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.

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

2.6 The Signatories stipulate to the Staff's recommendations on the deregulation of services requested by CenturyLink in its application to be de-regulated. These services to be deregulated are listed in Attachment B.

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[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.

2.7 The Signatories stipulate that CenturyLink shall not hereafter be required to make a rate case filing under Rule 103, unless the Commission makes a finding that CenturyLink's services are not competitive.

2.8 All rates, terms, conditions and requirements now applicable to wholesale services in Arizona are unchanged by this Agreement, including those treated under Basket 4 in the Price Cap Plan.

2.9 The Signatories agree that, upon issuance of the Order Approving Settlement, the procedures for setting rates established in the current Price Cap Plan approved by the Commission in Decision No. 68604 (Docket No. T-01051B-03-0454) will be superseded by implementation of the foregoing provisions. CenturyLink may continue to operate under the terms and conditions of service and the rates contained in Decision No. 68604 until new rates are filed under either Rule 1110 or Rule 1109 for each service, as described above.

2.10 Until further order by the Commission, CenturyLink agrees to be bound by existing statutes and rules in effect, including but not limited to R14-2-503(C) and rules regarding the provision of services to qualifying low income customers.

2.11 CenturyLink and DoD/FEA agree to request withdrawal of their agreement filed on April 19, 2012 from Commission consideration in this docket, and the remaining Signatories agree not to oppose the withdrawal of that agreement from Commission consideration in this docket.

2.12 CenturyLink agrees to continue to comply with the Service Quality Plan developed for Qwest Corporation.

III. COMMISSION EVALUATION OF PROPOSED SETTLEMENT

3.1 All currently filed testimony and exhibits shall be offered into the Commission's record as evidence.

3.2 The Signatories 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.

3.3 This Agreement shall serve as a procedural device by which the Signatories will submit their proposed settlement of Century Link's pending application, Docket No. T-01051B-11-0378, to the Commission.

3.4 The Signatories recognize that the Commission will independently consider and evaluate the terms of this Agreement. If the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Signatories shall abide by the terms as approved by the Commission.

3.5 If the Commission fails to issue an order adopting all material terms of this Agreement, any or all of the Signatories may withdraw from this Agreement, and such Signatory or Signatories may pursue without prejudice their respective remedies at law. For purposes of this Agreement, whether a term is material shall be left to the discretion of the Signatory choosing to withdraw from the Agreement. If a Signatory withdraws from the Agreement pursuant to this

paragraph and files an application for rehearing, the other Signatories, except for Staff, shall support the application for rehearing by filing a document with the Commission that supports approval of the Agreement in its entirety. Staff shall not be obligated to file any document or take any position regarding the withdrawing Signatory's application for rehearing.

IV. MISCELLANEOUS PROVISIONS

4.1 To achieve consensus for settlement, the Signatories are accepting positions that, in any other circumstances, they would be unwilling to accept. They are doing so because this Agreement, as a whole, is consistent with their long-term interests and with the broad public interest. The acceptance by any Signatory of a specific element of this Agreement shall not be considered as precedent for acceptance of that element in any other context.

4.2 No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.

4.3 Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except to secure approval of this Agreement and enforce its terms.

4.4 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.

4.5 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable.

4.6 The Signatories shall make reasonable and good faith efforts to obtain a Commission order approving this Agreement. The Signatories shall support and defend this Agreement before the Commission. Subject to paragraph 3.5, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.

4.7 This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.

EXHIBIT A

Docket No. T-01051B-11-0378

QWEST CORPORATION dba CENTURYLINK, INC.

By: _____
Jerry Fenn
Qwest Corporation dba CenturyLink, Inc.

Dated: May 15, 2012

EXHIBIT A

Docket No. T-01051B-11-0378

ARIZONA CORPORATION COMMISSION

By: _____
Steve M. Olea
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Dated: May 16, 2012

EXHIBIT A

Docket No. T-01051B-11-0378

RESIDENTIAL UTILITY CONSUMER OFFICE

By: _____
Jodi Jerich
Residential Utility Consumer Office
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

Dated: 5-17-2012

EXHIBIT A

Docket No. T-01051B-11-0378

ARIZONA INVESTMENT COUNCIL

By: _____
Gary Yaquinto, President
Arizona Investment Council
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

Dated: 5/15/2012

EXHIBIT A

SETTLEMENT AGREEMENT

Docket No. T-01051B-11-0378

Attachment A

Services Previously Found to Be Competitive

Service	Docket No.	Decision No.
MTS, Private Line, WATS, 800 Service, and Optional Calling Plans	T-01051B-96-0160	Decision No. 59637
Directory Assistance	T-01051B-99-0362	Decision No. 62129
Centrex Prime	T-01051B-97-0528	Decision No. 61089
ATM Cell Relay Service	T-01051B-97-0368	Decision No. 61328
National Directory Assistance	T-01051B-97-0369	Decision No. 60545

EXHIBIT A
Docket No. T-01051B-11-0378
Settlement Agreement
EXHIBIT B
Services Recommended for Deregulation

C10.10.4	TRAFFIC DATA REPORTING SERVICE
C13.2	PREMISES WORK CHARGES
C13.2.1	NETWORK PREMISES WORK CHARGES
C13.3	RESIDENCE MAINTENANCE PLANS
C13.4	BUSINESS MAINTENANCE PLANS
C3.1.9	EXPRESS CHANGE CHARGES
Q4.1.1	SERVICE DATE CHANGE
Q4.1.10	MAINTENANCE OF SERVICE
Q4.1.11	ADDITIONAL ENGINNEERING
Q4.1.12	ADDITIONAL LABOR
Q4.1.13	ADDITIONAL ENGINEERING AND LABOR CHARGES
Q4.1.14	ACCEPTANCE TESTING
Q4.1.15	TESTING SERVICES
Q4.1.16	TESTING CHARGES
Q4.1.17	DISPATCH CHARGE
Q4.1.2	DESIGN CHANGE
Q4.1.3	CANCELLATION OF APPLICATION FOR SERVICE
Q4.1.4	EXPEDITE
Q4.1.5	DESIGN LAYOUT REPORT
Q4.1.6	SPECIAL CONSTRUCTION
Q4.1.8	MAINTAINING FACILITIES
Q4.4	PROTECTION SERVICE FOR HIGH VOLTAGE ENVIRONMENTS
Q4.1.9	REPAIR OF FACILITIES
C10.10.1	MESSAGE DELIVERY SERVICE
C10.10.2	MESSAGE WAITING INDICATION
C25.1	CUSTOMIZED SERVICE EQUIPMENT OR SERVICE ARRANGEMENTS
C.10.10.5	CALL EVENT AND MANAGEMENT SIGNALING SERVICE (CEMSS) SUBSCRIBER
C9.4.6	NEXT CONNECTS
C10.5.2	CODE BILLING
C5.4.7	INTRACALL SERVICE
C9.4.4	UNIFORM CALL DISTRIBUTION
C9.4.5	CO-AUTO CALL DISTRIBUTION (CO-ACD)
Q3.2.2	NONRECURRING CHARGES
Q4.3.2	FACILITIES PROTECTION- SPECIAL FACILITIES ROUTING
Q4.5	COMMANDALINK-NETWORK RECONFIGURATION SERVICE
Q5.3	CUSTOM SERVICE ARRANGEMENTS
Q6.2.19	QWAVE SERVICE
Q6.2.5	AUDIO SERVICE
Q6.2.8	EXCHANGE SERVICE EXTENSIONS
Q6.2.9	TELEPHONE ANSWERING SERVICE