

ORIGINAL

OPEN MEETING

Arizona Corporation Commission

~~MEMORANDUM~~



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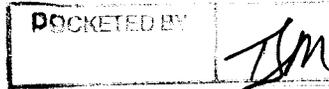
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JAN 14 2013

TO: THE COMMISSION

FROM: Utilities Division

DATE: January 14, 2013



2013 JAN 14 P 4 56

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

RE: IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION DBA CENTURYLINK QC, QWEST COMMUNICATIONS COMPANY, LLC DBA CENTURYLINK QCC, QWEST LD CORP. DBA CENTURYLINK LD AND EMBARQ COMMUNICATIONS, INC. DBA CENTURYLINK COMMUNICATIONS FOR APPROVAL OF A WAIVER FROM COMMISSION RULE A.A.C. R14-2-1115.C.3. (DOCKET NOS. T-01051B-12-0481, T-02811B-12-0481, T-04190A-12-0481 AND T-20443A-12-0481)

Introduction

On November 30, 2012, pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1115.I, Qwest Corporation d/b/a CenturyLink QC, Qwest Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink LD, and Embarq Communications, Inc. d/b/a CenturyLink Communications (collectively the "Joint Applicants" or the "CenturyLink Companies") filed a Joint Application with the Arizona Corporation Commission ("Commission" or "ACC") seeking an exemption from A.A.C. R14-2-1115.C.3, subject to the condition that each of the CenturyLink Companies will be required to provide Individual Case Basis ("ICB") contracts to the Commission Staff at any time upon request.

Background

A.A.C. R14-2-1101 states "These rules shall govern the provision of competitive, intrastate telecommunications services to the public by telecommunications companies subject to the jurisdiction of the Arizona Corporation Commission. Unless otherwise ordered by the Commission, these rules shall not govern the provision of service by independently or local exchange carrier-owned pay telephones (COPTs) and alternative operator service (AOS) providers, which shall instead be governed by Articles 9 and Article 10 of this Chapter, respectively. The provision of local exchange service also shall be governed by Article 5 of this Chapter, to the extent that Article is not inconsistent with these rules."

A.A.C. R14-2-1115.C states "Each telecommunications company governed by this Article shall file with the Commission current tariffs, price levels, and contracts that comply with the provisions of this Article and with all Commission rules, orders, and all other requirements imposed by the laws of the state of Arizona."

A.A.C. R14-2-1115.C.3 states "Contracts of telecommunications companies governed by this Article shall be filed with the Commission not later than five business days after execution. If the contract includes both competitive and noncompetitive services, it must be filed at least

five business days prior to the effective date of the contract and must separately state the tariffed rate for the noncompetitive services and the price for the competitive services.”

A.A.C. R14-2-1115.I states “The Commission may consider variations or exemptions from the terms or requirements of any of the rules included herein (14 A.A.C. 2, Article 11) upon the verified Application of an affected party. The Application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.”

### Staff’s Analysis

The Joint Applicants state that they adopt and incorporate the same reasons given by Cox in its Application for Exemption from the Contract Filing Rule<sup>1</sup> in support of their request for a waiver from A.A.C. R14-2-1115.C.3:

- (i) Confusion exists regarding the requirement to file ICBs,
- (ii) Numerous Basic Services Arrangements, Commercial Service Agreements, ICBs and other contracts may have to be filed pursuant to A.A.C. R14-2-1115.C.3, depending on the Commission’s interpretation of “contract”,
- (iii) The administrative time and cost of filing and securing confidential contracts by Staff and the CenturyLink Companies are burdensome,
- (iv) To date, no carrier has raised a dispute regarding ICBs,
- (v) A.A.C. R14-2-1115.C.3 has created little direct public benefit in regards to ICBs, and
- (vi) The Commission has the authority to ask for any contract if issues are brought to the Commission’s attention regardless of whether any contracts have been filed pursuant to A.A.C. R14-2-1115.C.3.

The Application of the CenturyLink Companies’ for a waiver request asks only for relief from Subsection C.3 relative to the filing of contracts. The Joint Applicants indicate that they do not seek relief from the duty to file tariffs for competitive services.

As stated in the Application, the CenturyLink Companies provide or hold Certificates of Convenience and Necessity (“CC&Ns”) to provide facilities-based and resold local exchange and interexchange telecommunications services in Arizona. All of the services provided by the CenturyLink Companies are classified as competitive or competitive subject to conditions under A.A.C. R14-2-1108.<sup>2</sup> As a result, the CenturyLink Companies are subject to the administrative

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<sup>1</sup> *In the Matter of the Application of Cox Arizona Telcom, LLC for an Exemption from Commission Rule A.A.C. R14-2-1115.C.3*, ACC Docket No. T-03471A-11-0256.

<sup>2</sup> Opinion and Order, Decision No. 73354, *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*, Arizona Corporation Commission Docket No. T-01051B-11-0378, August 21, 2012.

requirement of A.A.C. R14-2-1115.C.3 to file contracts it enters for providing competitive services.

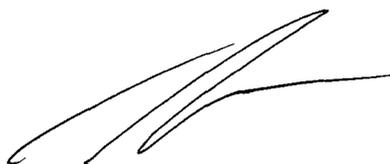
Cox Arizona Telcom, L.L.C. ("Cox") filed a similar Application with the Commission for an exemption from R14-2-1115.C.3 in T-03471A-11-0256 and on November 21, 2012, the Commission granted Cox a waiver regarding the filing of ICBs per R14-2-1115.C.3 in Decision No. 73579.

CenturyLink states that no facts or circumstances distinguish this Application from Cox's Application in a way that should result in a different outcome.

Staff's Recommendations

Staff recognizes that the telecommunications industry has evolved significantly since these Commission rules were adopted. The need no longer exists today, in Staff's opinion, to require carriers to file these contracts within five (5) days of their execution.

Therefore, while Staff does not recommend that the CenturyLink Companies be exempt from the filing requirement of A.A.C. R14-2-1115.C.3 altogether, Staff does believe that a conditional waiver of the ICBs filing requirement is appropriate. The waiver should be subject to the condition that the CenturyLink Companies be required to provide its ICB contracts to Staff, at any time, upon request.



Steven M. Olea  
Director  
Utilities Division

SMO:PJG:sms\MAS

ORIGINATOR: Pamela J. Genung

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

IN THE MATTER OF THE APPLICATION  
OF QWEST CORPORATION DBA  
CENTURYLINK QC, QWEST  
COMMUNICATIONS COMPANY, LLC  
DBA CENTURYLINK QCC, QWEST LD  
CORP. DBA CENTURYLINK LD AND  
EMBARQ COMMUNICATIONS, INC. DBA  
CENTURYLINK COMMUNICATIONS FOR  
APPROVAL OF A WAIVER FROM  
COMMISSION RULE A.A.C. R14-2-  
1115.C.3.

DOCKET NO. T-01051B-12-0481  
DOCKET NO. T-02811B-12-0481  
DOCKET NO. T-04190A-12-0481  
DOCKET NO. T-20443A-12-0481

DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
January 30 and January 31, 2013  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Qwest Corporation d/b/a CenturyLink QC, Qwest Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink LD, and Embarq Communications, Inc. d/b/a CenturyLink Communications (collectively the "Joint Applicants" or the "CenturyLink Companies") are certificated to provide intrastate telecommunications services as public service corporations in the State of Arizona.

Introduction

2. On November 30, 2012, pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1115.I, the CenturyLink Companies filed a Joint Application with the Arizona Corporation Commission ("Commission" or "ACC") seeking an exemption from A.A.C. R14-2-1115.C.3,

1 Commission ("Commission" or "ACC") seeking an exemption from A.A.C. R14-2-1115.C.3,  
2 subject to the condition that each of the CenturyLink Companies will be required to provide  
3 Individual Case Basis ("ICB") contracts to the Commission Staff at any time upon request.

4 Background

5 3. A.A.C. R14-2-1101 states "These rules shall govern the provision of competitive,  
6 intrastate telecommunications services to the public by telecommunications companies subject to  
7 the jurisdiction of the Arizona Corporation Commission. Unless otherwise ordered by the  
8 Commission, these rules shall not govern the provision of service by independently or local  
9 exchange carrier-owned pay telephones (COPTs) and alternative operator service (AOS)  
10 providers, which shall instead be governed by Articles 9 and Article 10 of this Chapter,  
11 respectively. The provision of local exchange service also shall be governed by Article 5 of this  
12 Chapter, to the extent that Article is not inconsistent with these rules."

13 4. A.A.C. R14-2-1115.C states "Each telecommunications company governed by this  
14 Article shall file with the Commission current tariffs, price levels, and contracts that comply with  
15 the provisions of this Article and with all Commission rules, orders, and all other requirements  
16 imposed by the laws of the state of Arizona."

17 5. A.A.C. R14-2-1115.C.3 states "Contracts of telecommunications companies  
18 governed by this Article shall be filed with the Commission not later than five business days after  
19 execution. If the contract includes both competitive and noncompetitive services, it must be filed  
20 at least five business days prior to the effective date of the contract and must separately state the  
21 tariffed rate for the noncompetitive services and the price for the competitive services."

22 6. A.A.C. R14-2-1115.I states "The Commission may consider variations or  
23 exemptions from the terms or requirements of any of the rules included herein (14 A.A.C. 2,  
24 Article 11) upon the verified Application of an affected party. The Application must set forth the  
25 reasons why the public interest will be served by the variation or exemption from the Commission  
26 rules and regulations. Any variation or exemption granted shall require an order of the  
27 Commission. Where a conflict exists between these rules and an approved tariff or order of the  
28 Commission, the provisions of the approved tariff or order of the Commission shall apply."

1 Staff's Analysis

2 7. The Joint Applicants state that they adopt and incorporate the same reasons given  
3 by Cox in its Application for Exemption from the Contract Filing Rule<sup>1</sup> in support of their request  
4 for a waiver from A.A.C. R14-2-1115.C.3:

- 5 (i) Confusion exists regarding the requirement to file ICBs,  
6 (ii) Numerous Basic Services Arrangements, Commercial Service Agreements, ICBs  
7 and other contracts may have to be filed pursuant to A.A.C. R14-2-1115.C.3,  
8 depending on the Commission's interpretation of "contract",  
9 (iii) The administrative time and cost of filing and securing confidential contracts by  
10 Staff and the CenturyLink Companies are burdensome,  
11 (iv) To date, no carrier has raised a dispute regarding ICBs,  
12 (v) A.A.C. R14-2-1115.C.3 has created little direct public benefit in regards to ICBs,  
13 and  
14 (vi) The Commission has the authority to ask for any contract if issues are brought to  
15 the Commission's attention regardless of whether any contracts have been filed  
16 pursuant to A.A.C. R14-2-1115.C.3.

17 8. The Application of the CenturyLink Companies' for a waiver request asks only for  
18 relief from Subsection C.3 relative to the filing of contracts. The Joint Applicants indicate that they  
19 do not seek relief from the duty to file tariffs for competitive services.

20 9. As stated in the Application, the CenturyLink Companies provide or hold  
21 Certificates of Convenience and Necessity ("CC&Ns") to provide facilities-based and resold local  
22 exchange and interexchange telecommunications services in Arizona. All of the services provided  
23 by the CenturyLink Companies are classified as competitive or competitive subject to conditions  
24 under A.A.C. R14-2-1108.<sup>2</sup> As a result, the CenturyLink Companies are subject to the  
25 administrative requirement of A.A.C. R14-2-1115.C.3 to file contracts it enters for providing  
26 competitive services.

27 10. Cox Arizona Telcom, L.L.C. ("Cox") filed a similar Application with the  
28 Commission for an exemption from R14-2-1115.C.3 in T-03471A-11-0256 and on November 21,

29 \_\_\_\_\_  
30 <sup>1</sup> *In the Matter of the Application of Cox Arizona Telcom, LLC for an Exemption from Commission Rule A.A.C. R14-2-1115.C.3*, ACC Docket No. T-03471A-11-0256.

31 <sup>2</sup> *Opinion and Order, Decision No. 73354, In the Matter 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*, Arizona Corporation Commission Docket No. T-01051B-11-0378, August 21, 2012.

1 2012, the Commission granted Cox a waiver regarding the filing of ICBs per R14-2-1115.C.3 in  
2 Decision No. 73579.

3 11. CenturyLink states that no facts or circumstances distinguish this Application from  
4 Cox's Application in a way that should result in a different outcome.

5 Staff's Recommendations

6 12. Staff recognizes that the telecommunications industry has evolved significantly  
7 since these Commission rules were adopted. The need no longer exists today, in Staff's opinion,  
8 to require carriers to file these contracts within five (5) days of their execution.

9 13. Therefore, while Staff does not recommend that the CenturyLink Companies be  
10 exempt from the filing requirement of A.A.C. R14-2-1115.C.3 altogether, Staff does believe that a  
11 conditional waiver of the ICBs filing requirement is appropriate. The waiver should be subject to  
12 the condition that the CenturyLink Companies be required to provide its ICB contracts to Staff, at  
13 any time, upon request.

14 CONCLUSIONS OF LAW

15 1. Qwest Corporation d/b/a CenturyLink QC, Qwest Communications Company, LLC  
16 d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink LD, and Embarq Communications,  
17 Inc. d/b/a CenturyLink Communications are public service corporations within the meaning of  
18 Article XV of the Arizona Constitution.

19 2. The Commission has jurisdiction over Qwest Corporation d/b/a CenturyLink QC,  
20 Qwest Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a  
21 CenturyLink LD, and Embarq Communications, Inc. d/b/a CenturyLink Communications and the  
22 subject matter in this filing.

23 3. The Commission, having reviewed the filing and Staff's Memorandum dated  
24 January 14, 2013, concludes that it is in the public interest to grant approval as proposed and  
25 discussed herein.

26 ORDER

27 IT IS THEREFORE ORDERED that the Joint Application of Qwest Corporation d/b/a  
28 CenturyLink QC, Qwest Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD

1 Corp. d/b/a CenturyLink LD, and Embarq Communications, Inc. d/b/a CenturyLink  
2 Communications seeking an exemption from A.A.C. R14-2-1115.C.3., pursuant to A.A.C. R14-2-  
3 1115.I, as described herein, be and hereby is denied.

4 IT IS FURTHER ORDERED that Qwest Corporation d/b/a CenturyLink QC, Qwest  
5 Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink  
6 LD, and Embarq Communications, Inc. d/b/a CenturyLink Communications shall be granted a  
7 waiver regarding the filing of Individual Case Basis ("ICB") contracts per A.A.C. R14-2-1115.C.3.

8 IT IS FURTHER ORDERED that Qwest Corporation d/b/a CenturyLink QC, Qwest  
9 Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink  
10 LD, and Embarq Communications, Inc. d/b/a CenturyLink Communications are required to  
11 provide their ICB contracts to Staff and/or the Commission, at any time, upon request.

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

13

14 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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16 \_\_\_\_\_  
CHAIRMAN

COMMISSIONER

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18 \_\_\_\_\_  
COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, JODI JERICH, Executive  
Director of the Arizona Corporation Commission, have  
hereunto, set my hand and caused the official seal of this  
Commission to be affixed at the Capitol, in the City of  
Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

25

26 DISSENT: \_\_\_\_\_

27 DISSENT: \_\_\_\_\_

28 SMO:PJG:sms/MAS

1 SERVICE LIST FOR: QWEST CORPORATION DBA CENTURYLINK QC, QWEST  
2 COMMUNICATIONS COMPANY, LLC DBA CENTURYLINK QCC, QWEST LD CORP.  
3 DBA CENTURYLINK LD AND EMBARQ COMMUNICATIONS, INC. DBA  
4 CENTURYLINK COMMUNICATIONS  
5 DOCKET NOS. T-01051B-12-0481, T-02811B-12-0481, T-04190A-12-0481, T-20443A-12-0481

6 Norman G. Curtright  
7 Associate General Counsel  
8 20 E. Thomas Road, 1<sup>st</sup> Floor  
9 Phoenix, Arizona 85012  
10 Attorney for: Qwest Corporation d/b/a CenturyLink QC,  
11 Qwest Communications Company, LLC d/b/a CenturyLink QCC,  
12 Qwest LD Corp. d/b/a CenturyLink LD, and  
13 Embarq Communications, Inc. d/b/a CenturyLink Communications

14 Steven M. Olea  
15 Director, Utilities Division  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Janice M. Alward  
20 Chief Counsel, Legal Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Lyn Farmer  
25 Chief Administrative Law Judge, Hearing Division  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
28 Phoenix, Arizona 85007