

**ORIGINAL**

**NEW APPLICATION**



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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**BOB STUMP**  
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AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**  
JUN 28 2013

DOCKETED BY *nr*

**VERIFIED APPLICATION OF QWEST CORPORATION D/B/A CENTURYLINK QC, QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC, QWEST LD CORP. D/B/A CENTURYLINK LD, EMBARQ COMMUNICATIONS, INC. D/B/A CENTURYLINK COMMUNICATIONS, AND EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK FOR WAIVER OF COMPLIANCE WITH THE PROVISIONS OF ARIZONA CORPORATION COMMISSION RULES RELATING TO PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS ARIZONA ADMINISTRATIVE CODE, TITLE 14, ARTICLE 8**

I T-01051B-13-0218  
I T-02811B-13-0218  
I T-04190A-13-0218  
I T-20443A-13-0218  
I T-03555A-13-0218

**VERIFIED JOINT APPLICATION**

1. The Arizona telephone operating companies Qwest Corporation d/b/a CenturyLink QC, Qwest Communications Company, LLC d/b/a CenturyLink QCC, Qwest LD Corp. d/b/a CenturyLink LD, Embarq Communications, Inc. d/b/a CenturyLink Communications, and Embarq Payphone Services, Inc. d/b/a CenturyLink, on behalf of themselves and their parent corporation, CenturyLink, Inc. (collectively, "CenturyLink," or the "CenturyLink Companies," or the "Joint Petitioners"),<sup>1</sup> submit this Joint Application for Waiver Of Compliance With the Provisions Of Arizona Corporation Commission (the "Commission") Rules Relating To Public Utility Holding Companies And Affiliated Interests, Arizona Administrative Code, Title 14, Article 8, Sections R14-2-801 through R14-2-806 (the

<sup>1</sup> Each of the Joint Petitioners is a subsidiary corporation wholly-owned, directly or indirectly, by CenturyLink, Inc.

1 “Affiliated Interests Rules” or the “Rules”), CenturyLink requests a waiver from the applicability of all  
2 of the Affiliated Interests Rules for the reason that the public interest does not require compliance, due  
3 to the competitive nature of telecommunications services provided by CenturyLink in the State of  
4 Arizona.

5 2. CenturyLink requests relief from the Commission’s Affiliated Interests Rules much like  
6 the relief which the Arizona Legislature has recently provided to telecom companies by the passage of  
7 House Bill 2482.<sup>2</sup> A copy of HR 2482 is attached to this Petition, marked as Exhibit A. HR 2482  
8 amends the Arizona statute (A.R.S. 40-285) which requires Commission approval of the disposition of  
9 assets by public service corporations and the acquisition of the stock of public service corporations. The  
10 amendment exempts competitive telecom companies from those requirements:

11 This section does not apply to a telecommunications corporation whose retail  
12 telecommunications services are all classified as competitive by the Commission, except  
13 as may otherwise be determined by a Commission order after the effective date of this  
14 amendment to this section.

15 By this Application, CenturyLink asks for relief from the Commission’s Rules, which overlap the  
16 transactions addressed by *A.R.S. 40-285* yet are more extensive in their scope. The logic of exempting  
17 competitive telecom providers from the statute, however, applies equally to the Commission’s Rules.

18 3. CenturyLink makes this request pursuant to A.A.C. R14-2-806, which provides that the  
19 Commission may waive compliance with any of the provisions of the Affiliated Interests Rules upon a  
20 finding that such waiver is in the public interest. *A.A.C. R14-806.A*. Any affected entity may petition  
21 the Commission for a waiver by filing a verified application for waiver setting forth the circumstances  
22 whereby the public interest justifies noncompliance. *A.A.C. R14-806.B*.

23 4. Each Joint Applicant is a public service corporation subject to the jurisdiction of the  
24 Commission, and is either a Class A utility or under common ownership and control with a Class A

25 <sup>2</sup> House Bill 2482, Amending Section 40-285, Arizona Revised Statutes, Relating to Public Service  
Corporations, Fifty-first Legislature First Regular Session, 2013. (“HR 2482”). HR 2482 has been  
signed by Governor Brewer, and will become effective September 13, 2013.

1 utility, as those terms are defined under Arizona law. Each Joint Applicant is a “telecommunications  
2 corporation” as defined in *A.R.S. 40-201(20)*. Accordingly, the Joint Applicants are subject to the  
3 Affiliated Interests Rules.

4 5. The certificate of convenience and necessity (“CC&N”) held by each Joint Applicant other  
5 than CenturyLink QC was requested and expressly granted on the understanding that the  
6 telecommunications services authorized are competitive.

7 6. The CC&N for Qwest Communications Company, LLC d/b/a CenturyLink QCC  
8 authorizes it to provide facilities based competitive long distance services (*Commission Decision No.*  
9 *66612*), and facilities based and resold competitive local and long distance services. *Commission*  
10 *Decision No. 68447*.

11 7. The CC&N for Qwest LD Corp. d/b/a CenturyLink LD authorizes it to provide facilities  
12 based resold competitive long distance services. *Commission Decision No. 66613*.

13 8. The CC&N for Embarq Communications, Inc. d/b/a CenturyLink Communications  
14 authorizes it to provide resold competitive interexchange services. *Commission Decision No. 68828*.

15 9. The CC&N for Embarq Payphone Services, Inc. d/b/a CenturyLink authorizes it to  
16 provide payphone services. *Commission Decision No. 61049*.

17 10. Qwest Corporation d/b/a CenturyLink QC (“QC”) is an incumbent local exchange carrier  
18 (“ILEC”) as that term is used in the Communications Act of 1934 as amended, and also as that term is  
19 defined in *A.A.C. 14-2-1302(10)*. In Docket No. T-01051B-11-0378, QC filed with the Commission an  
20 Application to classify and regulate certain retail local exchange telecommunications services as  
21 competitive, under *A.A.C. R14-2-1108*. By its Opinion and Order entered August 21, 2012, in *Decision*  
22 *No. 73354*, the Commission concluded that QC’s intrastate retail telecommunications services (that are  
23 not deregulated) are considered competitive.

24 11. The Affiliated Interests Rules were promulgated by the Commission in its *Decision*  
25 *No. 56844* (March 14, 1990). The Rules require notice from any utility or affiliate intending to organize

1 or reorganize a public utility holding company, with disclosure of specific financial and organizational  
2 information, diversification plans, and anticipated changes in the utility's costs and services. *R14-2-803*.  
3 The Rules permit the Commission to gain access to an affiliate's books and records regarding its  
4 transactions with a public utility. *R14-2-804.A*. The Rules require annual reports from utilities and their  
5 holding companies regarding diversification plans and business activities between affiliates and the  
6 utility. *R14-2-805.A*. In adopting the Affiliated Interests Rules, the Commission stated that the  
7 "singular purpose is to ensure that the ratepayers do not pay rates for utility service that include costs  
8 associated with the holding company structure, financially beleaguered affiliates, or sweetheart deals  
9 with affiliates intended to extract capital from the utility to subsidize non-utility operations." *Decision*  
10 *No. 56844*, Concise Explanatory Statement at 2.

11       12.     The Affiliated Interests Rules are within the Commission's constitutional ratemaking  
12 power, according to the Arizona Supreme Court. *Ariz. Corp. Comm'n v. Ariz. Ex rel. Woods*, 171 Ariz.  
13 286, 830 P.2d 807 (1992) ("*Woods*"). In *Woods*, the Court explained that the Commission enacted the  
14 Rules primarily in response to the creation by the Arizona Public Service Company ("APS") of a utility  
15 holding company, and business diversification by the holding company. *Woods* at 810. The Court took  
16 note that APS was the largest public utility in the state, and that the holding company formed after the  
17 APS reorganization allegedly was facing serious financial difficulties including problems of various  
18 affiliates and a threat by the holding company to seek protection under the Bankruptcy Code. *Id.* The  
19 Court also cited the diversification efforts at that time by Tucson Electric Power Company and its  
20 affiliates. The Court took notice that the Tucson Electric reorganization, along with subsequent  
21 transactions with its affiliates, spinoffs, and similar dealings, allegedly led to involuntary bankruptcy  
22 proceedings for the firm. *Id.*

23       13.     The Arizona Supreme Court explained why it found the Rules were reasonably related to  
24 the Commission's rate making discretionary authority, as follows:  
25

1 The Proposed Rules arguably prevent utilities from endangering their assets through  
2 transactions with their affiliates. If such transactions damage a utility company's assets  
3 or net worth, the company will have to seek higher rates for survival. Thus transactions  
4 with affiliated corporations could have a direct and devastating impact on rates. . . . We  
5 believe the Commission's regulatory power permits it to require information regarding,  
6 *and* approval of, all transactions between a public service corporation and its affiliates  
7 that may significantly affect economic stability and thus impact the rates charged by a  
8 public service corporation. . . . In our view, the regulatory aspects of the Proposed Rules  
9 are reasonably necessary for ratemaking and are within the Commission's discretionary  
10 authority. . . .

11 The Commission must certainly be given the power to prevent a public utility corporation  
12 from engaging in transactions that will so adversely affect its financial position that the  
13 ratepayers will have to make good the losses. *Woods* at 817-818. (Underlining emphasis  
14 added).

15 14. The Affiliated Interests Rules were adopted effective July 30, 1992, four years before  
16 Congress enacted the landmark Telecommunications Act of 1996 (the "1996 Act"). The purpose of the  
17 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to  
18 accelerate rapidly private sector deployment of advanced telecommunications and information  
19 technologies and services to all Americans by opening all telecommunications markets to  
20 competition[.]" *Conference Report* 104-458, CR-1, 104<sup>th</sup> Congress 2d Session, January 31, 1996.

21 15. The 1996 Act has accomplished its goal of opening the telecommunications markets to  
22 competition, including notably the end of the former monopoly for local telecommunications services in  
23 the areas served by CenturyLink in Arizona. In 2011, CenturyLink QC, the incumbent local exchange  
24 carrier providing local telecommunications services in much of Arizona including the Phoenix and  
25 Tucson metropolitan areas, applied to the Commission for classification of its retail local exchange  
services as competitive under Commission rules (R14-2-1108), and for deregulation of certain other of  
its services as non-essential under *A.R.S. §40-281(E)*. Ariz. Corp. Comm'n. Dkt. No. T-01051B-11-  
0378 (the "*CenturyLink Competition Docket*"). The Commission concluded that CenturyLink's retail  
services shall be considered competitive, subject to conditions which were specified in an agreement  
between CenturyLink, the Commission Staff, and the Residential Utilities Consumers Office, that was  
approved by the Commission. *Decision No. 73354*, August 21, 2012.

1           16.     The Commission's ruling in the *CenturyLink Competition Docket* that CenturyLink QC's  
2 retail services are competitive means that "customers of the service have reasonably available  
3 alternatives." *See*, definition of "Competitive Telecommunications Service," *R14-2-1102(4)*. Indeed,  
4 that is the case. CenturyLink QC presented evidence that from 2001 to 2010 its retail access lines in  
5 Arizona declined 54 percent while at the same time the number of households increased 24.3 percent. In  
6 2011, CenturyLink QC presented evidence that its share of voice connections was 18.4 percent, as  
7 compared to 15.6 percent for other LECs and reporting VoIP providers and 65.9 percent for wireless  
8 providers. *Decision No. 73354* at 8. The loss of retail wireline customers to cable, wireless and  
9 providers has continued since the Commission made its competitive classification for CenturyLink QC  
10 in 2012.

11           17.     For the telecommunications market, the situation has changed dramatically since the  
12 Commission entered its Affiliated Transactions Rules in 1992. At that time, without the Rules, captive  
13 ratepayers had to make good for the losses of imprudent holding company actions. Now, when faced  
14 with unsatisfactory service or higher rates, retail telecom customers in Arizona simply move to another  
15 provider, choosing from the many that are available. Competitive telecom companies cannot make up  
16 for their bad business diversification decisions by passing the losses through to utility customers in the  
17 form of rate increases. Companies that cannot pass costs through to customers (as monopolies are able  
18 to do) have no incentive to engage in cross-subsidization or other activities that financially weaken the  
19 utility operation. The Affiliated Interests Rules are not necessary.

20           18.     *Rule 803* requires extremely extensive production of information regarding the proposed  
21 transaction and the affiliates.<sup>3</sup> Although the Rules were entered as a result of diversification transactions  
22 by large energy utilities, the Rules as written applied not only to energy companies, but to every kind of

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23 <sup>3</sup> *Rule 803* requires advance notice (120 days) before organization or reorganization of a public utility or  
24 public utility holding company. "Reorganization" is defined as "the acquisition or divestiture of a  
25 financial interest in an affiliate or a utility or configuration of an existing affiliate or utility's position in  
the corporate structure or the merger or consolidation of an affiliate or a utility." *R14-2-801(5)*. The  
notice must include extensive information regarding the intended transaction and the affiliates.

1 Class A utility under the Commission's jurisdiction, large and small. Almost immediately upon the  
2 effectiveness of the Rules, the Commission began granting waivers. Upon information and belief,  
3 CenturyLink states that the Commission has granted a limited waiver of compliance of *R14-2-803* to  
4 virtually every telecom company subject to the Commission's jurisdiction, including the grant of a  
5 limited waiver to CenturyLink.<sup>4</sup> The history of these waivers shows that the sweep of *Rule 803* as  
6 written was overly broad. The Staff described the waiver as follows:

7 Staff states that the partial waiver of the Rules granted to USWCI and its affiliates in  
8 *Decision No. 58087* has served as a safety net through which transactions inconsequential  
9 to Arizona have passed, while larger transactions with more significant consequences to  
the Arizona jurisdiction have been processed. *Decision No. 64654*, Finding of Fact 18,  
March 25, 2002.

10 19. The limited waiver approach to *Rule 803* is not a satisfactory solution for competitive  
11 telecom providers because *none* of the rate protections the Rule was intended to provide are necessary  
12 today. With the limited waiver, the provider must still report annually all of its transactions, even  
13 though they are inconsequential by definition. The object of *Rule 803* is to permit the Commission to  
14 determine whether an intended transaction will adversely affect rates of the regulated utility, and to give  
15 the Commission the opportunity to reject the transaction before it is consummated,<sup>5</sup> for purposes of  
16 protecting ratepayers' interests in cost-of-service ratemaking. Pursuant to *Decision No. 73354*, however,  
17 CenturyLink QC has been relieved of filing the extensive financial information formerly required by  
18 rate-of-return regulation of rates for monopoly providers, and thus most of the information required by  
19 *Rule 803* is collected for no particular end purpose. More importantly, in a competitive market,  
20 customers who experience bad service or price increases as the result of a corporate reorganization or an  
21 affiliate transaction can simply switch to alternative providers. Therefore, CenturyLink seeks a  
22 complete waiver from *Rule 803*.

23 \_\_\_\_\_  
<sup>4</sup> *Decision No. 72493*, July 25, 2011.

24 <sup>5</sup> [T]he Commission may reject the proposal if it determines that it would impair the financial status of  
25 the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the  
ability of the public utility to provide safe, reasonable and adequate service. *R14-2-803(C)*.

1           20.     The same reasoning supports a complete waiver from *Rule 804*, which requires  
2 Commission approval of a wide range of possible transactions by a utility—including the acquisition of  
3 a “financial interest” in any affiliate not regulated by the Commission, loans to an affiliate not regulated  
4 by the Commission, and the use of utility funds to form a subsidiary or to divest itself of a subsidiary.  
5 Again, the purpose of this provision is to protect captive ratepayers from adverse financial consequences  
6 that might rise out of unregulated businesses. These protections serve no purpose where the regulated  
7 entity is competitive. CenturyLink seeks a complete waiver from *Rule 804*.

8           21.     CenturyLink QC has not previously sought or received a waiver from *Rule 804*.  
9 However, the Commission has already granted numerous limited waivers of *Rule 804* for competitive  
10 telecom companies. *See, Decision No. 73671, In the Matter of the Application of XO Communications,*  
11 *Ariz. Corp. Comm’n Dkt. No. T-04302A-12-0456, February 6, 2013.*

12           22.     CenturyLink seeks a complete wavier of *Rule 805*. Compliance with the Rules, including  
13 *Rule 805’s* annual filing requirements related to diversification activities by competitive telecom  
14 companies is unreasonably costly and burdensome. While CenturyLink QC has not previously received  
15 a waiver from *Rule 805*, the Commission has granted limited or complete waivers of *Rule 805* to at least  
16 ten (10) other telecom companies in the state. *See Decision No. 68299, In the Matter of the Application*  
17 *of Cox Arizona Telecom, LLC for a Waiver of Rule 805, Ariz. Corp. Comm’n Dkt. No. T-03471A-05-*  
18 *0357, November 14, 2005.* Some or all of the *Rule 805* waivers have not been renewed; however, the  
19 rationale upon which a waiver was last granted to Cox Telecom is now more relevant than ever. As the  
20 Commission Staff stated in its analysis 2003: “The application of *Rule 805* is unnecessary where a  
21 public utility . . . operates in a competitive environment, lacks monopoly power, and generates revenue  
22 in Arizona.” *Decision No. 66234, In the Matter of the Applications of Cox Arizona Telecom, LLC for a*  
23 *Waiver of Rule 805, Ariz. Corp. Comm’n. Dkt. No. T-03471A-03-0237, September 16, 2003, at line 17,*  
24 page 4.



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3 **BEFORE THE ARIZONA CORPORATION COMMISSION**

4 **VERIFIED APPLICATION OF QWEST**  
5 **CORPORATION D/B/A CENTURYLINK QC,**  
6 **QWEST COMMUNICATIONS COMPANY, LLC**  
7 **D/B/A CENTURYLINK QCC, QWEST LD CORP.**  
8 **D/B/A CENTURYLINK LD, EMBARQ**  
9 **COMMUNICATIONS, INC. D/B/A CENTURYLINK**  
10 **COMMUNICATIONS, AND EMBARQ PAYPHONE**  
11 **SERVICES, INC. D/B/A CENTURYLINK FOR**  
12 **WAIVER OF COMPLIANCE WITH THE**  
13 **PROVISIONS OF ARIZONA CORPORATION**  
14 **COMMISSION RULES RELATING TO PUBLIC**  
15 **UTILITY HOLDING COMPANIES AND**  
16 **AFFILIATED INTERESTS ARIZONA**  
17 **ADMINISTRATIVE CODE, TITLE 14, ARTICLE 8**

**VERIFICATION**

11 STATE OF COLORADO )  
12 ) ss.  
13 COUNTY OF DENVER )

14 I, Robert Brigham, being first duly sworn, state that in my capacity as a Director for Qwest  
15 Corporation dba CenturyLink QC, a Delaware corporation ("CenturyLink"), I have read the foregoing  
16 Verified Application for Waiver in the above-entitled action and know the content thereof, and hereby  
17 certify and verify under penalty of perjury and pursuant to A.A.C. R14-2-806.C. that the facts as  
18 explained in the foregoing Verified Application are true and correct to the best of my knowledge, except  
19 where they assert that they are based upon information and belief, in which case I believe them to be  
20 true.

21 Dated this 28<sup>th</sup> day of June, 2013.

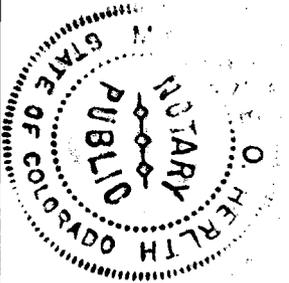
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24 Robert Brigham, Director  
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1 Subscribed and sworn to before me, a licensed notary public, on this 28th day of June 2013.

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*Margie R. Herth*  
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Notary

My Commission expires: 9/25/13



# EXHIBIT A

**House Engrossed**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# **HOUSE BILL 2482**

**AN ACT**

**AMENDING SECTION 40-285, ARIZONA REVISED STATUTES; RELATING TO PUBLIC SERVICE CORPORATIONS.**

**(TEXT OF BILL BEGINS ON NEXT PAGE)**

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 40-285, Arizona Revised Statutes, is amended to read:

40-285. Disposition of plant by public service corporations; acquisition of capital stock of public service corporation by other public service corporations; exemption

A. A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.

B. The approval or permit of the commission under this section shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

C. ~~Nothing in~~ This section shall DOES NOT prevent the sale, lease or other disposition by any such corporation of property which THAT is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation shall be conclusively presumed to have been of property which THAT is not useful or necessary in the performance of its duties to the public as to any purchaser of the property in good faith for value.

D. A public service corporation shall not purchase, acquire, take or hold any part of the capital stock of any other public service corporation organized or existing under the laws of this state without a permit from the commission.

E. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock in violation of the provisions of this section is void, and the transfer shall not be made on the books of any public service corporation.

F. THIS SECTION DOES NOT APPLY TO A TELECOMMUNICATIONS CORPORATION WHOSE RETAIL TELECOMMUNICATIONS SERVICES ARE ALL CLASSIFIED AS COMPETITIVE BY THE COMMISSION, EXCEPT AS MAY OTHERWISE BE DETERMINED BY A COMMISSION ORDER AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.