

ORIGINAL

NEW APPLICATION



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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

2014 MAR 18 P 4.33

CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAR 18 2014

DOCKETED BY *nr*

**IN THE MATTER OF THE AGREEMENT
BETWEEN IONEX COMMUNICATIONS
NORTH, INC. DBA BIRCH
COMMUNICATIONS AND QWEST
CORPORATION DBA CENTURYLINK QC
FOR THE PROVISION OF CENTURYLINK
LOCAL SERVICES PLATFORM**

DOCKET NOS. T-01051B-14-0094
T-03864A-14-0094

**COMPLIANCE FILING OF
AMENDMENT UNDER PROTEST
AND WITH RESERVATION OF
RIGHTS**

Pursuant to 47 U.S.C. § 252 (e)(1), the Rules of the Arizona Corporation Commission (“Commission”) regarding filing of interconnection agreements and amendments to interconnection agreements, Qwest Corporation dba CenturyLink QC (“CenturyLink”) files the attached Extension Amendment to CenturyLink Local Services Platform Agreement 2014 (“CLSP-2014”) Service entered into between CenturyLink and Ionex Communications North, Inc. for approval by the Commission. This Attached Amendment is effective as of January 1, 2014. The attached Amendment shall be referred to as the “Amendment to Commercial CLSP-2014 Agreement.” As explained below, CenturyLink objects to being required to file the Amendment to Commercial CLSP-2014 Agreement for approval and likewise takes the position that the Commission lacks the authority to review, approve, amend, or reject the Amendment to Commercial CLSP-2014 Agreement, in whole or in part. CenturyLink is therefore filing the attached Amendment to Commercial CLSP-2014 Agreement under protest and with a reservation of rights as explained below.

CenturyLink’s filing of the Amendment to Commercial CLSP-2014 Agreement under

1 protest is the result of the order entered by the Commission on September 9, 2005 in Docket
2 Nos. T-01051B-04-0540 and T-03574A-04-0540 (the "MCI Filing Order"). In that order, the
3 Commission denied CenturyLink's Motion to Dismiss the Agreement Filing of MCImetro
4 Access Transmission Services, L.L.C. ("MCI"). In the MCI Filing Order, the Commission
5 concluded that the Commercial QPP Agreement between CenturyLink and MCI is subject to the
6 Commission's jurisdiction and that the Telecommunications Act of 1996 ("the Act") required
7 CenturyLink and MCImetro to file the agreement and seek the Commission's approval of it.

8 The Amendment to Commercial CLSP-2014 Agreement filed by CenturyLink in this
9 docket, with the exception of the name of the party with whom CenturyLink is contracting to
10 provide CLSP Service, addresses the same services as those in the Commercial QPP™
11 Agreement filed by MCI in Docket Nos. T-01051B-04-0540 and T-03574A-04-0540.

12 Pursuant to the Federal Communications Commission's rulings in the *Triennial Review*
13 *Order*¹ and the *Triennial Review Remand Order*,² incumbent local exchange carriers ("ILECs")
14 like CenturyLink are no longer required to provide mass market switching, shared transport, and
15 certain other services under Section 251 of the Act.³ Notwithstanding these rulings, CenturyLink
16 has voluntarily determined that it will provide mass market switching and shared transport
17 services under the CLSP-2014 Agreement. In *Qwest Corporation v. Arizona Corporation*
18 *Commission* (the "*Covad Arbitration Decision*"), the United States District Court for the District
19 of Arizona recently ruled that the Commission does not have the authority to require
20 CenturyLink to include in its arbitrated interconnection agreements obligations to provide
21 network elements that, per rulings of the Federal Communications Commission, CenturyLink is
22 not required to provide under Section 251.⁴ This ruling recognizes that while Congress gave

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24 ¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report
and Order, 17 FCC Rcd 16978 (2003).

25 ² *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*,
Order on Remand, 20 FCC Rcd 2533 (2005).

26 ³ 47 U.S.C. §251.

⁴ 496 F. Supp.2d 1069, 1077 (D. Ariz. 2007), *affirmed*, *Qwest Corporation v. Arizona Corporation Commission*,
567 F.3d 1109 (9th C.A. 2009).

1 state commissions authority to impose and enforce requirements involving the unbundled
2 network elements and services included in Section 251, it specifically did not grant state
3 authority over the elements and services that the FCC has removed from Section 251.⁵ Thus, the
4 Amendment to CLSP-2014 Agreement, which does not include any services required under
5 Section 251, is not subject to review by this Commission. Further, that decision is consistent
6 with those of multiple other federal courts that have ruled that states do not have authority under
7 the Act to impose requirements on services and elements that the FCC has removed from
8 Section 251.⁶

9 Therefore, subject to the foregoing, CenturyLink hereby files the attached Amendment to
10 Commercial CLSP-2014 Agreement under protest and, likewise under protest, seeks the
11 Commission's approval of the Amendment under Section 252(e)(1) of the Act.

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19 ⁵ *Id.* at 1076-78.

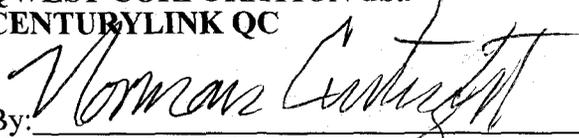
20 ⁶ See e.g. *Verizon New England v. Maine Public Utilities Comm'n, et al.*, Nos. 06-2151, 06-2429, 2007 WL 2509863
21 (1st Cir. Sept. 6, 2007); *DIECA Communications, Inc. v. Florida Public Services Comm'n et al.*, 447 F. Supp. 2d
22 1281 (N.D. Fla. 2006); *Bellsouth Telecommunications, Inc. v. Kentucky Public Service Comm'n, et al.*, No. 06-65-
KKC, 2007 WL 2736544 (E.D. Ky. Sept. 18, 2007); *Michigan Bell Tel. Co. v. Lark, et al.*, No. 06-11982, 2007 WL
2868633 (E.D. Mich. Sept. 26, 2007); *Southwestern Bell Tel., L.P. v. Missouri Public Service Comm'n*, 461 F. Supp.
2d 1055 (E.D. Mo. 2006).

23 In *Qwest Corp. v. Public Utilities Commission of Colorado*, 479 F.3d 1184 (10th Cir. 2007), the 10th Circuit ruled
24 that the Colorado and Utah Commissions had authority to review and approve a Qwest commercial agreement
25 known as "Qwest Platform Plus" under Section 252(e)(1). However, Qwest submits that the decision is incorrect
26 because it concludes erroneously that the commercial agreement at issue in that case related to the duties in
Section 251(b) and (c) involving unbundled network elements and interconnection. The mass market switching and
shared transport that Qwest provides under the agreement at issue here is not provided pursuant to either
Section 251(b) or (c) and therefore does not relate to any of the duties in that section. As such, the agreement is not
an "interconnection agreement" subject to this Commission's review and approval under Section 252(e)(1).

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RESPECTFULLY SUBMITTED this 18th day of March, 2014.

**QWEST CORPORATION dba
CENTURYLINK QC**

By: 

Norman G. Curtright
Associate General Counsel, CenturyLink
20 E. Thomas Rd., 1st Floor
Phoenix, Arizona 85012

Attorney for Qwest Corporation dba
CenturyLink QC

ORIGINAL and 13 copies of the foregoing
filed this 18th day of March, 2014 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPY of the foregoing mailed
this same day to:

Chris Aversano
Executive VP & COO
Birch Communications, Inc.
4885 Riverside Drive
Macon, GA 31210

Chris Bunce
Senior VP & General Counsel
Birch Communications
2300 Main Street, Suite 600
Kansas City, MO 64108

By: 
Reed Peterson

**EXTENSION AMENDMENT TO
CENTURYLINK™ LOCAL SERVICES PLATFORM ("CLSP™") AGREEMENT**

This amendment ("Amendment"), by and between **Qwest Corporation dba CenturyLink QC ("CenturyLink")**, a Colorado corporation, and **Ionex Communications North, Inc. dba Birch Communications ("CLEC")**, amends the CenturyLink™ Local Services Platform ("CLSP™") Agreement (formerly known as "Qwest Local Services Platform™ ("QLSP™") Agreement") between the Parties.

WHEREAS, this Agreement will govern those services formerly provided to Lightyear Network Solutions, LLC ("Lightyear") by CenturyLink, to be hereafter purchased by Ionex Communications North, Inc. dba Birch Communications ("Birch") under this Agreement on an interim basis in light of Birch's acquisition of certain assets in the CenturyLink region from Lightyear, and thereafter, upon completion of migrations, under the Birch CLSP Agreements with CenturyLink; and

WHEREAS, the Parties entered into a Qwest Local Services Platform ("QLSP™") Agreement (now referred to as a CenturyLink™ Local Services Platform ("CLSP™") Agreement), (the "Agreement"); and

WHEREAS, the terms "CenturyLink" and "CLSP" in this Amendment shall be used in place of, and interchangeably with, the terms "Qwest" and "QLSP", respectively, in the Agreement; and

WHEREAS, the Parties agree to amend the Agreement under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing and the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

Section 2 of the Agreement will be replaced in its entirety as follows:

2. **Effective Date.** This Amendment shall be deemed effective on January 1, 2014.

Section 3 of the Agreement will be replaced in its entirety as follows:

3. **Term.** The term of this Agreement begins on the Effective Date and continues through December 31, 2016. Upon expiration, this Agreement will continue on a month-to-month basis until it is terminated by either Party, with at least ninety (90) Days prior written notice, pursuant to Section 22 of the Agreement, or replaced by a successor agreement.

Attachment 2 - Service Description - of the Agreement is hereby amended as follows:

1. Section 1 of Attachment 2 will have the following added:
 - 1.6.7 Should CenturyLink cease offering a service to its End User Customers that is also available under this Agreement, upon thirty (30) Days prior written notice to CLEC, CenturyLink will also cease offering the service to CLEC.
2. Section 3.2.4 of Attachment 2 is replaced with the following:

3.2.4 115% YOY Volume Growth Plan: If the number of CLEC's total CLSP lines as of October 31 of each year equals or exceeds 110% of the sum of CLEC's total CLSP lines as of October 31 of the preceding year, and the YOY line increase is equal to or greater than one thousand (1,000) CLSP lines, CLEC will qualify for a 30% discount off the Business Port MRCs and a 6% discount off the Residential Port MRCs applicable during the next calendar year.
3. Section 7 of Attachment 2 will have the following changes:
 - 7.0 **Commercial Performance and Service Credits.**
 - 7.2 Removed in its entirety.
 - 7.3 Removed in its entirety.
4. Section 8 of Attachment 2 will have the following added:
 - 8.1.1 Upon a decision from the Washington Utilities and Transportation Commission that CenturyLink is no longer required to offer the Washington Performance Assurance Plan, CenturyLink will transition to the Commercial Performance and Service Credits Plan of Section 7.0.

**EXTENSION AMENDMENT TO
CENTURYLINK™ LOCAL SERVICES PLATFORM ("CLSP™") AGREEMENT**

The CenturyLink CLSP Rate Sheets are amended per the attached rate sheet(s).

1. Section 109.23.2.1.1 of each CLSP rate Sheet will reflect a rate reduction from \$50.00 to \$25.00.
2. Section 109.11.2 of the CLSP Rate Page will be removed in its entirety – for Minnesota only.

Further Amendments

Except as expressly modified by this Amendment, the provisions of the Agreement shall remain unmodified and shall be in full force and effect. The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both of the Parties hereto. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Entire Agreement

The Agreement as amended (including by the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter of the Agreement, as amended, and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter of the Agreement, as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

<p>Qwest Corporation dba CenturyLink QC:</p> <div style="border: 1px solid black; padding: 2px; width: fit-content; margin: 5px auto;">05E9FC68BD57454...</div> <p style="text-align: center;"><i>L T Christensen</i></p> <p>By: _____ DocuSigned By: L T Christensen</p> <p>Name: <u>L. T. Christensen</u></p> <p>Title: <u>Director – Wholesale Contracts</u></p> <p>Date: <u>2/13/2014</u></p>	<p>Ionex Communications North, Inc. dba Birch Communications:</p> <p>DocuSigned by:</p> <div style="border: 1px solid black; padding: 2px; width: fit-content; margin: 5px auto;"><i>Leia Bates Gatliff</i></div> <p>By: _____ 383EAFB7110E454...</p> <p>Name: <u>Leia Bates Gatliff</u></p> <p>Title: <u>Vice President of Operations</u></p> <p>Date: <u>2/13/2014</u></p>
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**CenturyLink™ Local Services Platform (CLSP™) Rate Page - AZ, CO, IA, ID, MT, ND, NE, NM, OR, SD, UT, WA, WY
January 1, 2014 through Term**

				USOC	Recurring	Non-Recurring	Notes
109.23.2	Installation Nonrecurring Charges						
	109.23.2.1	CLSP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential					
		109.23.2.1.1	First Line (Mechanized)	NHCRA		\$25.00	