

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

2014 JUN -6 P 3:28

Arizona Corporation Commission

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

**IN THE MATTER OF THE AGREEMENT
BETWEEN DISHNET WIRELINE, L.L.C.
(f/k/a LIBERTY-BELL TELECOM, LLC)
AND QWEST CORPORATION dba
CENTURYLINK QC FOR THE PROVISION
OF CENTURYLINK LOCAL SERVICES
PLATFORM**

DOCKET NOS. T-20752A-14-0183
T-01051B-14-0183

**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 Amendment Number Four to CenturyLink Local Services Platform Agreement 2014 (“CLSP-2014”) Service entered into between CenturyLink and dishNET Wireline, L.L.C. (f/k/a Liberty-Bell Telecom, LLC) for approval by the Commission. This Attached Amendment is effective as of May 31, 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 protest is the result of the order entered by the Commission on September 9, 2005 in Docket

1 Nos. T-01051B-04-0540 and T-03574A-04-0540 (the “MCI Filing Order”). In that order, the
2 Commission denied CenturyLink’s Motion to Dismiss the Agreement Filing of MCImetro
3 Access Transmission Services, L.L.C. (“MCI”). In the MCI Filing Order, the Commission
4 concluded that the Commercial QPP Agreement between CenturyLink and MCI is subject to the
5 Commission’s jurisdiction and that the Telecommunications Act of 1996 (“the Act”) required
6 CenturyLink and MCImetro to file the agreement and seek the Commission’s approval of it.

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

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

23
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 network elements and services included in Section 251, it specifically did not grant state
2 authority over the elements and services that the FCC has removed from Section 251.⁵ Thus, the
3 Amendment to CLSP-2014 Agreement, which does not include any services required under
4 Section 251, is not subject to review by this Commission. Further, that decision is consistent
5 with those of multiple other federal courts that have ruled that states do not have authority under
6 the Act to impose requirements on services and elements that the FCC has removed from
7 Section 251.⁶

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

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19 ⁵ *Id.* at 1076-78.

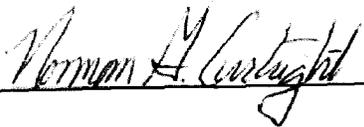
20 ⁶ See e.g. *Verizon New England v. Maine Public Utilities Comm'n, et al.*, Nos. 06-2151, 06-2429, 2007 WL 2509863
21 (1st Cir. Sept. 6, 2007); *DIECA Communications, Inc. v. Florida Public Services Comm'n et al.*, 447 F. Supp. 2d
22 1281 (N.D. Fla. 2006); *Bellsouth Telecommunications, Inc. v. Kentucky 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 6th day of June, 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 6th day of June, 2014 with:

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

COPY of the foregoing mailed
this same day to:

William P. Hunt
Director, Regulatory
dishNET Wireline, L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112-5905

Nigel Alexander
Manager
dishNET Wireline, L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112-5905

By: 
Reed Peterson

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

This amendment ("Amendment"), by and between Qwest Corporation dba CenturyLink QC ("CenturyLink"), a Colorado corporation, and dishNET Wireline, L.L.C. (f/k/a Liberty-Bell Telecom, LLC) ("CLEC"), a Colorado limited liability company, amends the CenturyLink™ Local Services Platform ("CLSP™") Agreement (formerly known as "Qwest Local Services Platform™" ("QLSP™") Agreement) between the Parties.

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") with an Effective Date of October 21, 2010; 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

The Agreement is hereby amended by replacing and adding terms and conditions as set forth in Attachment 1 attached hereto and incorporated herein by this reference. The provisions included in Attachment 1 are intended to supersede and replace provisions in the Agreement.

Effective Date

This Amendment shall be deemed effective on May 31, 2014.

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.

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

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.

Qwest Corporation dba CenturyLink QC: By: _____ Name: <u>L. T. Christensen</u> Title: <u>Director – Wholesale Contracts</u> Date: <u>5/30/2014</u>	dishNET Wireline, L.L.C.: By: <u><i>Robert Olsen</i></u> Name: <u>Robert Olsen</u> Title: <u>Director</u> Date: <u>5/30/14</u>
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dishNET Holding L.L.C.: By: <u><i>Robert Olsen</i></u> Name: <u>Robert Olsen</u> Title: <u>Director</u> Date: <u>5/30/14</u>

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

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.

Qwest Corporation dba CenturyLink QC: 05E9FC68BD57454... <i>L T Christensen</i> DocuSigned By: L T Christensen By: _____ Name: <u>L. T. Christensen</u> Title: <u>Director – Wholesale Contracts</u> Date: <u>5/30/2014</u>	dishNET Wireline, L.L.C.: By: _____ Name: <u>Robert Olsen</u> Title: <u>Director</u> Date: <u>5/30/14</u>
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dishNET Holding L.L.C.: By: _____ Name: <u>Robert Olsen</u> Title: <u>Director</u> Date: <u>5/30/14</u>
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**AMENDMENT NUMBER FOUR TO
CENTURYLINK™ LOCAL SERVICES PLATFORM (“CLSP™”) AGREEMENT**

ATTACHMENT 1

The first sentence of Section 3 Term of the Agreement will be replaced with the following sentence:

The term of this Agreement begins on the Effective Date and continues through December 31, 2015.

The following sentence shall be added to the end of 3.3.1 of Attachment 2:

In service lines mean the number of lines billed to CLEC in that calendar month.

The Cumulative Volume Growth Requirements Table in Section 3.3.1 of Attachment 2 to the Agreement will be removed and replaced with the following Table:

Cumulative Volume Growth Requirements Table

Start Date	End Date	Cumulative Growth Req.
May 2012	May 2013	7,337
May 2012	August 2014	19,537
May 2012	May 2015	30,517
May 2012	December 2015	30,517

The following sentence shall be added to the end of 3.3.2 of Attachment 2:

Should CLEC transfer Customers and services covered by this agreement to another provider operating under a CLSP or Resale agreement with CenturyLink, the Parties must mutually agree upon the number of divested CLSP and/or Resold lines as applicable, and the resulting impact to the volume measurement. In no event shall the transfer of the lines be the cause of any Shortfall payment by dishNET to CenturyLink.

The last sentence of Section 3.3.5.1 of Attachment 2 to the Agreement shall be replaced with the following sentence:

For the purpose of measuring the Conversion Ratio for the remaining Measurement Periods under this amended agreement, only those orders issued January 1, 2014 and later shall be counted.