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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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ARIZONA CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

OCT 10 2014

DOCKETED BY

ORIGINAL

PAC-WEST TELECOMM, INC.

Complainant,

DOCKET NOS. T-01051B-05-0495
T-03693A-05-0495

v.

QWEST CORPORATION,

Respondent.

QWEST CORPORATION d/b/a
CENTURYLINK QC RESPONSE TO STAFF'S
STATUS REPORT AND PROCEDURAL
RECOMMENDATIONS

Qwest Corporation d/b/a CenturyLink QC ("Qwest") files this response to the Staff's status report and procedural recommendations filed on September 30, 2014.

Qwest and Staff both recommend that the Commission dismiss the claims and counterclaims and close this Docket. The Staff went on to recommend, however, that the claims be dismissed with prejudice. Because of the "with prejudice" recommendation, the Staff noted in footnote 45 on page 3 of its filing that "Out of an abundance of caution, since TNCI was not a party to the Docket, the Commission could give TNCI notice of Staff's and Qwest's recommended disposition of this Docket and a period of 20 days to confirm that there are no outstanding issues or claims and that the complaint should be dismissed with prejudice." Qwest's position is that the Staff's suggested action in that regard is improper and unnecessary.

1 The Staff may have overlooked that Qwest has not recommended that the claims and
2 counterclaims be dismissed with prejudice. Qwest recognizes that it might better have indicated that its
3 recommendation for dismissal was that it be ordered “without prejudice”; regardless, the omission of the
4 words “with prejudice” was purposeful.

5 The Commission is aware that the claims brought in this matter involved complex legal issues
6 arising under the Telecommunications Act of 1996, the implementing orders and regulations of the FCC,
7 federal court decisions, and the interconnection agreement between the litigants. Certain of these
8 questions of law have not been decided, but could conceivably be the subject of future litigation. A
9 dismissal with prejudice in this matter could potentially impact future litigation involving the same legal
10 issues—an unintended consequence, however remote—that should not be risked.

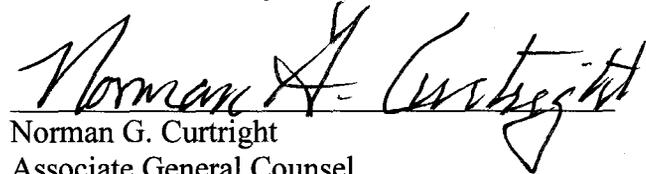
11 In addition, dismissal without prejudice is important to avoid any impact of the settlement on
12 third parties. A third party should not be prejudiced by, or benefit from, the dismissal of Pac-West’s or
13 Qwest’s claims.

14 Regarding TNCI, Qwest objects to Staff’s suggestion. TNCI is not a party to the docket, and is
15 not a successor or assign of Pac-West’s claims in the docket. Regardless, should the Commission wish
16 to act “out of an abundance of caution,” Qwest submits that a dismissal without prejudice best serves the
17 situation. Although present parties to the litigation are foreclosed from future litigation against one
18 another by the settlement, the claims and defenses of the parties vis-à-vis third parties, and any claims of
19 those third parties, are unaffected by the settlement. Because the issues were not litigated to final
20 conclusion before the Commission, the parties’ respective claims should be dismissed “without
21 prejudice.”

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2 Based on these circumstances, and the fact that the issues raised by the parties in Docket 05-0495
3 have been settled pursuant to the Agreed Order, the claims and counterclaims in Docket 05-0495 should
4 be dismissed without prejudice and the docket closed.

5
6 RESPECTFULLY SUBMITTED, this 10th day of October, 2014.

7 QWEST CORPORATION d/b/a
8 CENTURYLINK-QC

9 

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15 **ORIGINAL** and thirteen (13) copies filed
16 this 10th day of October, 2014, with:

17 Docket Control
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21 **COPIES** of the foregoing hand-delivered
22 this same day to:

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