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MEMORANDUM RECEIVED

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2015 MAY 11 A 8:47

FROM: Steven M. Olea
Director
Utilities Division

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Arizona Corporation Commission
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MAY 11 2015

DATE: May 11, 2015

ORIGINAL

DOCKETED BY

RE: IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION
DBA CENTURYLINK QC TO CLASSIFY AND REGULATE RETAIL LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES AS COMPETITIVE,
AND TO CLASSIFY AND DEREGULATE CERTAIN SERVICES AS NON-
ESSENTIAL (DOCKET NO.T-01051B-11-0378)

I. INTRODUCTION

On February 23, 2015, Qwest Corporation dba CenturyLink QC ("CenturyLink"), filed an Arizona Competitive Report ("Report") pursuant to Section 2.4 of the Settlement Agreement approved by the Arizona Corporation Commission ("Commission") in Decision No. 73354. In Decision No. 73354, the Commission approved CenturyLink's request for competitive classification of its retail services, subject to certain conditions. CenturyLink was also subject to additional restrictions in the residential, small and medium business markets. Section 2.4 of the Settlement Agreement allowed CenturyLink to make a filing demonstrating (through defined indicia) that these markets were as competitive or more competitive than they were at the time CenturyLink filed its original application in this docket. If CenturyLink successfully demonstrates this through the criteria set forth in the Settlement Agreement, and no party objects and Staff verifies CenturyLink's findings, the additional restrictions on price increases in these markets are to be removed in six months from the date of CenturyLink's filing.

II. BACKGROUND

On October 13, 2011, CenturyLink filed an Application with the Commission to classify and regulate certain retail local exchange telecommunications as competitive, and to classify and deregulate certain services as non-essential. CenturyLink, Staff, the Residential Utility Consumer Office ("RUCO"), and the Arizona Investment Council entered into a Settlement Agreement. On August 21, 2012, the Commission entered Decision No. 73354 which adopted the Settlement Agreement between the parties.

CenturyLink was not entitled to increase its maximum rates for residential services or for small and medium business services greater than 25% above the then effective maximum rates for a period of three years from the date of the Order approving the Settlement Agreement. In addition, CenturyLink could not increase its actual rates for these services by more than 10% annually for residential services and no more than 15% annually for small and medium business services for a period of three years from the effective date of the Order approving the Settlement Agreement.

Section 2.4 of the Settlement Agreement provides that thirty months after the date of the Order approving the Settlement Agreement, CenturyLink can submit information in this docket that demonstrates that competition for voice services in Arizona is the same or greater than the levels claimed in CenturyLink's testimony and exhibits at the time it filed its Application. The Settlement Agreement states that upon such filing by CenturyLink and verification by Staff, the Signatories stipulate that the conditions set forth in paragraphs 2.2, 2.3, and 2.4 (See below.) of the Settlement Agreement shall terminate six months after such filing. CenturyLink could thereafter file, at its discretion, requests for additional pricing flexibility pursuant to the streamlined ratemaking procedures of Rule 1110, and the other parties hereto reserve their rights to object to any filings under Rule 1110.¹ The Commission found that the Settlement Agreement is clear that if CenturyLink meets its burden to demonstrate that competition, as measured by the criteria set forth in Section 2.4, is comparable to its current state, and Staff verifies the filing, the limits on CenturyLink's ability to affect maximum rate increases terminate.²

In Decision No. 73354, the Commission clarified that upon receipt of the filing by CenturyLink contemplated under Section 2.4, Staff should file in this docket, either its verification that CenturyLink has met the criteria for the termination of the Settlement's conditions, or a statement why in Staff's opinion the filing does not comply with the Settlement's criteria and Staff's recommendation for further action.³ The Commission ordered that within 30 days of CenturyLink making its filing pursuant to Section 2.4 of the Settlement Agreement, Staff or interested parties shall file any objections to Qwest Corporation dba CenturyLink-QC's filing, and if no objection is filed, and Staff files verification that CenturyLink has met the criteria in Paragraph 2.4, Qwest Corporation dba CenturyLink-QC, shall be entitled, six months following its filing, to request increased maximum rates under A.A.C. R14-2-1110 as provided by the applicable Rules, and without any additional limitations.

III. THE RELEVANT SETTLEMENT AGREEMENT PROVISIONS

Following are the relevant paragraphs of the Settlement Agreement that set forth the process for termination of the conditions contained in Section 2.2(a) and (b) and 2.3 if no objection to CenturyLink's February 23, 2015 Arizona Competitive Report is filed, and Staff files verification that CenturyLink has met the criteria in Paragraph 2.4 of the Settlement Agreement:

- 2.2** CenturyLink may file a proceeding under Rule 1110 to increase its rates.
- a. For a period of three years from the date an order is entered by the Commission in this docket approving this agreement or otherwise resolving this petition (the "Order Approving Settlement"), CenturyLink shall not be entitled to increase its maximum rates for residential services or for small and medium business services greater than 25% over present rates.

¹ Decision No. 73354, Finding of Fact 58.

² Decision No. 73354, Finding of Fact 75.

³ Decision No. 73354, Finding of Fact 75.

- b. In connection with the filing under Rule 1110 described above, CenturyLink may thereafter file under Rule 1109 to increase its actual rates by no more than 10% annually for residential services during the three years following the Order Approving Settlement and no more than 15% annually for small and medium business services during the three years following the Order Approving Settlement.
 - c. Staff agrees not to contest a request by CenturyLink under Rule 1110 to increase the maximum rates for services as set forth in paragraph 2(a) above or a request by CenturyLink under Rule 1109 to change the actual rates as set forth in paragraph 2(b) above. No other party shall be constrained from opposing Rule 1110 increases requested by CenturyLink.
 - d. No other consensual limitations apply to maximum rates for the above three year period. Enterprise services are considered fully competitive and may be increased pursuant to a Rule 1110 proceeding. Services already found to be competitive under Rule 1108 are not subject to the conditions in paragraphs 2(a) and 2(b) above. The services previously classified as competitive under Rule 1108 are listed in Attachment A.
 - e. CenturyLink agrees for a period of three years from the date of the Order Approving Settlement to charge statewide uniform rates for services subject to paragraphs 2(a) and 2(b) above. Thereafter, CenturyLink agrees to continue to charge uniform rates unless it specifically requests and is granted Commission authorization to deaverage rates in a filing pursuant to Rule 1110.
- 2.3 CenturyLink will file semi-annual reports with the Commission, Staff, and RUCO for a period of three years, commencing six months after the date of the Order Approving Settlement, setting forth data to be agreed with Staff and RUCO showing the state of competition in the State.
- 2.4. After the expiration of at least 30 months from the date of the Order Approving Settlement, CenturyLink may make an additional submission in this docket, demonstrating that competition for voice services in Arizona is the same or greater than the levels CenturyLink's testimony and evidence claim exist at the time of the filing of the Application in this docket. CenturyLink's additional submission shall be based on competitive reports, data and statistics, including but not limited to the National Center for Health Statistics Wireless Substitution Report, the Federal Communications Commission ("FCC") Local Competition Report, and the FCC Internet Access Services Report. CenturyLink in such filing shall demonstrate that:

- a. The percentage of consumers who have no landline voice connection, as specified in the National Center for Health Statistics Report, shall be 30% or greater;⁴
- b. Wireless connections, as set forth in the FCC's Local Competition Report, shall represent 65% or greater of total voice connections in Arizona;⁵ and
- c. Access to VOIP providers shall be measured by xDSL broadband availability in Arizona, as set forth in the FCC Internet Access Services Report, and shall be 88% of households or greater.⁶

Upon such a filing by CenturyLink and verification by Staff, the Signatories stipulate that the conditions set forth in paragraphs 2.2, 2.3, and 2.4 shall terminate six months after such filing. CenturyLink may thereafter file, at its discretion, requests for additional pricing flexibility pursuant to the streamlined ratemaking procedures of Rule 1110, and the other parties hereto reserve their rights to object to any filings under Rule 1110.

IV. STAFF'S SECTION 2.4 REVIEW

Staff has reviewed the CenturyLink submissions relevant to the criteria set forth in 2.4 above to determine whether the information demonstrates that competition for voice services in Arizona is the same or greater than the levels CenturyLink's testimony and evidence claim exist at the time of the filing of the Application in this docket. Staff's findings are as follows:

- a. **The percentage of consumers who have no landline voice connection, as specified in the National Center for Health Statistics Report, shall be 30% or greater.**

The National Center for Health Statistics Report titled *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014*, the most recent survey published, states that the percentage of consumers who have no landline voice connection is 44%. CenturyLink included this number in its filing and Staff has verified that CenturyLink has met this criteria.

⁴ Based on "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey," which is released by the National Center for Health Statistics every six months. The metric is the percent of American households that are wireless-only, as delineated in Table 1 of the report released 12-21-11.

⁵ Based on "Local Telephone Competition: Status as of XXX" released by the FCC's Industry and Analysis and Technology Division twice a year. The percentage Metric is based on the quantity of Arizona wireless connections as shown in Table 17, and the ILEC and non-KEC lines shown in Tables 12 and 13 (in report dated October 2011)

⁶ Based on "Internet Access Services: Status as of XXX" released by the FCC's Industry and Analysis and Technology Division twice a year. The Metric for Arizona is provided in table 24, column 1, of the report dated October 2011.

- b. **Wireless connections, as set forth in the FCC's Local Competition Report, shall represent 65% or greater of total voice connections in Arizona.**

Staff has verified that the "Local Telephone Competition: Status as of December 31, 2013" released by the FCC's Industry and Analysis and Technology Division in October 2014, provides the percentage wireless connections in Table 17, and the ILEC and non-ILEC lines shown in Tables 12 and 13. Staff has further verified that wireless connections are 70.8% of total voice connections in Arizona.

- c. **Access to VOIP providers shall be measured by xDSL broadband availability in Arizona, as set forth in the FCC Internet Access Services Report, and shall be 88% of households or greater.**

In its February 21, 2012 Competitive Service Report, CenturyLink stated that with the release of its Internet Services Report in December 2013, reflecting data as of December 31, 2012, the FCC no longer provided the percent of xDSL availability for local telephone customers or the percent of cable modem availability for local cable customers in Arizona (formerly in Table 22 of the report) and that it could not update the percentage of xDSL broadband availability for its report.

CenturyLink stated that the FCC's Internet Services Report does include other data, however, that demonstrates the growth of broadband, including the number of ADSL and Cable Modem connections that can be used as a substitute for traditional voice services. CenturyLink provided the following chart to show the increase in ADSL and Cable Modem connections (in thousands) in Arizona from 2010 to 2012.

	DEC	DEC	DEC
	2010	2011	2012
ADSL	552	590	625
Cable Modem	1161	1169	1210
Total*	1713	1759	1835

*Does not include fiber or wireless Connections

On February 23, 2015, filing, Century submitted the following updated information (in thousands) to meet the requirement of Section 2.4 (c):

	DEC	DEC	DEC
	2011	2012	2013
ADSL	589	620	649
Cable Modem	1169	1210	1253
Total*	1713	1759	1902

*Does not include fiber or wireless connections.
As of December 2013, there were 3,954,000 Broadband connections in Arizona.

The Settlement Agreement states that access to VOIP providers is to be measured by xDSL broadband availability in Arizona, as set forth in the FCC Internet Access Services Report, and shall be 88% of households or greater. The footnote to the requirement states that the information is to be, "Based on "Internet Access Services: Status as of XXX" released by the FCC's Industry and Analysis and Technology Division twice a year. The Metric for Arizona is provided in table 24, column 1, of the report dated October 2011." The metric provides information on the relative number of total households that have access to broadband service rather than a number such as those provided by CenturyLink. Given that characteristic of the discontinued Table, Staff searched for and located what it believes to be an acceptable alternative set of information.

The FCC annually produces its Broadband Progress Report on whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. Included in its Eighth Broadband Progress Report⁷ is Appendix C *Americans Without Access to Fixed Broadband Meeting the Speed Benchmark by State* and in its 2015 Broadband Progress Report⁸ the relevant appendix is *Appendix G— Americans Without Access to Fixed 3 Mbps/768 kbps or 10 Mbps/768 kbps Services by State and U.S. Territory*. These Appendices provide relative information on the portion of the total population of Arizona that has access to broadband service rather than households as was previously included in the FCC's Internet Access Services reports. Staff believes that this information is an adequate substitute for the information required by the Settlement Agreement. The following is information from the Appendices:

⁷ Federal Communications Commission, *Eighth Broadband Progress Report*, In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 11-121, Released: August 21, 2012.

⁸ Federal Communications Commission, *2015 Broadband Progress Report And Notice Of Inquiry On Immediate Action To Accelerate Deployment*, In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, Released: February 4, 2015.

	2012 (8th) FCC Report	2015 (11th) FCC Report
Population without access to 3Mbps/768 kbps	312000	268000
Percent of population without access to 3Mbps/768 kbps	4.70%	4%

The information indicates that the percent of the Arizona population that has access to Fixed 3 Mbps/768 kbps broadband service (a much greater capacity than that reported in the discontinued Table information and required in the Settlement Agreement) has increased given that the percentage of the population without access has declined. Using this data, access to VoIP is available to 96% of the population of Arizona. Therefore, Staff concludes that current access levels are the same or greater than the levels CenturyLink's testimony and evidence claim exist at the time of the filing of the Application in this docket.

V. STAFF'S RECOMENDATIONS

Pursuant to Section 2.4 of the Settlement Agreement, no objections to CenturyLink's Arizona Competitive Report have been filed by Staff or any other interested party. In addition, Staff through this Memorandum has verified that CenturyLink has met the criteria set out in Section 2.4 of the Agreement. Thus, Staff recommends that the Commission enter an order finding that CenturyLink has met the criteria contained in Section 2.4 of the Settlement Agreement adopted in Decision No. 73354 and that Conditions 2.2, 2.3 and 2.4 should terminate August 24, 2015.

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ORIGINATOR: Wilfred Shand

SERVICE LIST: Qwest Corporation dba CenturyLink QC
Docket No. T-01051B-11-0378

Mr. August Ankum
1520 Spruce Street, Suite 306
Philadelphia, Pennsylvania 19102

Mr. Stephen Melnikoff
9275 Gunston Road
Fort Belvoir, Virginia 22060-5546

Mr. Patrick Phipps
3504 Sundance Drive
Springfield, Illinois 62711

Ms. Joan Burke
Law Offices of Joan S. Burke, P.C.
1650 North First Avenue
Phoenix, Arizona 85003

Arizona Reporting Service, Inc.
2200 North Central Avenue, Suite 502
Phoenix, Arizona 85004

Mr. Gary Yaquinto
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

Mr. Daniel Pozefsky
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

Mr. Norman Curtright
Qwest Corporation
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

Mr. Michael Grant
Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225

Mr. Daniel Haws
ASJA, Attn: ATZS-JAD
USA Intelligence Center and Ft. Huachuca
Ft. Huachuca, Arizona 85613-6000

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing
Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007