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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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AZ CORP COMMISSION
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COMMISSION INQUIRY INTO
POSSIBLE MODIFICATION OF THE
COMMISSION'S HOLDING
COMPANIES AND AFFILIATED
INTEREST RULES, A.A.C. ARTICLE 8,
R14-2-801

DOCKET NO. AU-00000A-15-0246

INFORMAL COMMENTS OF QWEST
CORPORATION D/B/A CENTURYLINK
QC, CENTURYLINK COMMUNICATIONS,
L.L.C., AND CENTURYLINK PUBLIC
COMMUNICATIONS, INC.

By its filing made November 16, 2015, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") invited affected telecommunications utilities and interested parties to provide informal written comments regarding changes to A.A.C. R14-2-801 et seq., the Affiliated Interest Rules (the "Rules"). In response, Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively, "CenturyLink") submit the following comments.¹

For the reasons stated below, CenturyLink fully endorses the proposal to amend the Rules by exempting telecommunications utilities whose retail services are classified as competitive by the Commission. Further, CenturyLink urges that the Commission amend the Rules for telecommunications separately from other types of public service corporations, because the competitive markets for

¹ Qwest Corporation d/b/a CenturyLink QC is one of the entities joining in the Application made in this docket on August 19, 2015, by industry representatives (the "Industry Applicants"), referred to by the Staff in its Request for Informal Comment.

1 telecommunications services present unique circumstances that compel expeditious action. The Rules
2 no longer serve a useful purpose in the competitive environment of telecommunications in Arizona and
3 should be eliminated for competitive carriers.

4 The Rules were promulgated by the Commission in its *Decision No. 56844* (March 14, 1990), six
5 years before Congress enacted the landmark Telecommunications Act of 1996, which opened local
6 telecom to competition. The Rules are extensive and arguably the most burdensome of regulations of
7 that type in any of the states in which CenturyLink operates. In adopting the Affiliated Interests Rules,
8 the Commission stated that the “singular purpose is to ensure that the ratepayers do not pay rates for
9 utility service that include costs associated with the holding company structure, financially beleaguered
10 affiliates, or sweetheart deals with affiliates intended to extract capital from the utility to subsidize non-
11 utility operations.” *Decision No. 56844*, Concise Explanatory Statement at 2.² Since the
12 implementation of the Telecommunications Act of 1996, however, as noted in the joint Application filed
13 by CenturyLink QC, AT&T, and Cox on August 19, 2015, the telecommunications industry in Arizona
14 (and nationwide) has grown substantially and become more fully competitive. In the current market,
15

16 ² The Arizona Supreme Court upheld the Commission’s promulgation of the Rules as reasonably related
17 to the Commission’s rate making discretionary authority:

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

23 The Commission must certainly be given the power to prevent a public utility corporation
24 from engaging in transactions that will so adversely affect its financial position that the
25 ratepayers will have to make good the losses. *Woods* at 817-818. *Ariz. Corp. Comm’n v.*
Ariz. Ex rel. Woods, 171 Ariz. 286, 830 P.2d 807 (1992) (“*Woods*”). (Underlining
emphasis added).

1 telecommunications customers have a variety of service options, including the option to obtain service
2 from entities not regulated by the Commission.

3 Retail customers are no longer in the thrall of monopoly telecom providers. In 2011,
4 CenturyLink QC, the incumbent local exchange carrier (ILEC) which provides local
5 telecommunications services in much of Arizona including the Phoenix and Tucson metropolitan areas,
6 applied to the Commission for classification of its retail local exchange services as competitive under
7 Commission rules (R14-2-1108). Ariz. Corp. Comm'n. Dkt. No. T-01051B-11-0378. That proceeding
8 has fully concluded, with the result that CenturyLink QC's retail services are designated competitive.
9 Decision No. 73354, August 21, 2012.

10 A competitive designation means that "customers of the service have reasonably available
11 alternatives." See, definition of "Competitive Telecommunications Service," *R14-2-1102(4)*. Indeed,
12 that is the case, as demonstrated by the precipitous declines in wireline subscribership across all wireline
13 carriers, and the steep increase in wireless. The telecommunications market has changed dramatically
14 since the Commission entered its Affiliated Transactions Rules in 1992, when captive ratepayers had to
15 make good the losses of imprudent holding company actions. Now, when faced with unsatisfactory
16 service or higher rates, retail telecom customers in Arizona simply move to another provider, choosing
17 from the many that are available. Competitive telecom companies cannot make up for their bad
18 business diversification decisions by passing the losses through to utility customers in the form of rate
19 increases. Companies that cannot pass costs through to customers as monopolies are able to do have no
20 incentive to engage in cross-subsidization or other activities that financially weaken the utility operation.

21 In 2013, the Arizona Legislature recognized that open markets satisfactorily address the same
22 concerns that prompted the Commission to issue the Rules, and amended the Arizona Corporation
23 Commission statute. The Legislature amended A.R.S. §40-285 to exempt competitive telecom providers
24 from the requirement to secure Commission approval of the disposition of assets by public service
25

1 corporations and the acquisition of the stock of public service corporations. The amendment added the
2 following to the statute:

3 40-285. F. This section does not apply to a telecommunications corporation whose retail
4 telecommunications services are all classified as competitive by the Commission, except
5 as may otherwise be determined by a Commission order after the effective date of this
6 amendment to this section.

7 The language the Industry Applicants propose to add to Rule 14-2-802³ follows the legislative example.
8 The logic supporting the removal of competitive retail telecom providers from the statute as the
9 Legislature did in 2013 applies equally to the Commission's Rules.

10 The Rules allow for waivers, but the Commission routinely has granted numerous limited
11 waivers to telecom providers. The widespread granting of waivers shows that (i) the scope of the Rules
12 was over-broad, (ii) separate company waiver applications have resulted in disparate levels of relief, and
13 in no case complete exemption from the full effect of the Rules, and (iii) the industry and the
14 Commission and Staff are spending inordinate amounts of time and energy on waivers for matters which
15 are better addressed by a total exemption from the rule for competitive providers.⁴

16 The Commission opened the current inquiry docket to consider possible modifications to the
17 Rules beyond the revisions proposed in these Applications involving other types of regulated utilities.
18 Modifications for other types of regulated entities may be more extensive and take more time than is
19 necessary for telecommunications entities. CenturyLink submits that the request to amend the Rules
20 that has been requested by the Industry Applicants should proceed expeditiously because of the unique,
21 compelling circumstances of telecommunications competition. Retail telecom in Arizona is
22 competitive; the Legislature has acted in recognition of the effect of such competition by its

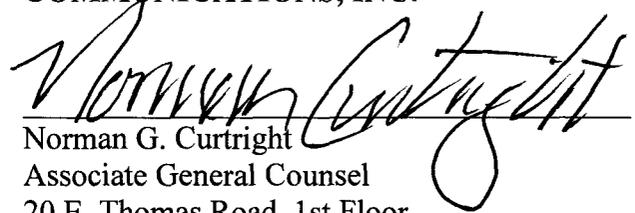
23 ³ See, Attachment 1 to the Industry Applicants' Application filed August 19, 2015.

24 ⁴ CenturyLink holds a limited waiver granted in Decision No. 74092. Notwithstanding that waiver,
25 CenturyLink joins in requesting that the Rules be amended to completely exclude competitive
telecommunications carriers.

1 amendments to A.R.S §40-285; and, the language proposed by the Industry Applicants to exclude
2 competitive telecommunications carriers from the Rules is narrowly tailored and simple. Therefore,
3 CenturyLink asks the Commission to separately consider telecommunications from its broader inquiry,
4 and move expeditiously to amend the Rules by adopting the amendment proposed by the Industry
5 Applicants

6 RESPECTFULLY SUBMITTED, this 10th day of December, 2015.

7 **QWEST CORPORATION D/B/A**
8 **CENTURYLINK QC, CENTURYLINK**
9 **COMMUNICATIONS, L.L.C., AND**
10 **CENTURYLINK PUBLIC**
11 **COMMUNICATIONS, INC.**



12 Norman G. Curtright
13 Associate General Counsel
14 20 E. Thomas Road, 1st Floor
15 Phoenix, Arizona 85012
16 Telephone: (602) 630-2187

17 ORIGINAL and thirteen (13) copies filed
18 this 10th day of December, 2015, with:

19 Docket Control
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Copy of the foregoing hand delivered
24 this 10th day of December, 2015, to:

25 Sarah Harpring
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Lyn Farmer
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Dwight Nodes
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2927