

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

2011 SEP 9 PM 2 18

IN THE MATTER OF THE PETITION OF QWEST
CORPORATION DBA CENTURYLINK QC FOR A
DETERMINATION THAT TELECOMMUNICATIONS
SERVICES ARE SUBJECT TO EFFECTIVE COMPETITION
IN NEW MEXICO

Case No. 11-00340-UT

**CENTURYLINK QC'S PETITION FOR A DETERMINATION THAT
TELECOMMUNICATIONS SERVICES ARE SUBJECT TO EFFECTIVE
COMPETITION IN NEW MEXICO**

Qwest Corporation dba CenturyLink QC ("CenturyLink QC"),¹ pursuant to NMSA 1978,
§ 63-9A-8, petitions the Commission to determine that telecommunications service, including
but not limited to basic local exchange service and all associated features and services, is
subject to effective competition in New Mexico, as explained below. Petitioner's exact legal
name, mailing address, and telephone number are:

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¹ Qwest Corporation's parent corporation Qwest Communications International, Inc. was acquired by CenturyLink, Inc. in a merger that closed on April 1, 2011. Qwest Corporation will continue to remain intact as a corporation, but now conducts business under the CenturyLink trade name. However, this Petition applies only to Qwest Corporation dba CenturyLink QC and does not seek a determination of effective competition or reduced regulation for CenturyLink of the Southwest, Inc. or its New Mexico territory.

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Introduction

Nearly a decade ago, this Commission and the FCC concluded that “barriers to competitive entry in the [New Mexico] local exchange markets have been removed, and that these local exchange markets are open to competition.”³ The competition that began before the Commission’s 2002 declaration continues with great force today. As competition has flourished in New Mexico, consumers have clearly benefitted. More than half of New Mexico consumers have chosen a provider other than CenturyLink QC for the communications service. Thus, it is time to ensure that consumers have even greater opportunities to benefit from competition by extending the intended benefits under New Mexico telecommunications law. Consistent with NMSA 1978, § 63-9A-8, the competitive nature of today’s telecommunications marketplace requires a new approach to regulating telecommunications services. The Commission should no longer restrict CenturyLink QC’s ability as a competitor in the marketplace, but should regulate CenturyLink QC consistent with the regulatory treatment accorded to its competitors.

² A petition for *pro hac vice* admission for Mr. Goodwin is being filed along with this Petition.

³ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, ¶ 117, WC Docket No. 03-11, FCC Release No. FCC 03-81, 18 FCC Rcd 7325; 2003 FCC LEXIS 2013 (April 15, 2003, Released; April 15, 2003, Adopted); *accord* Final Order, Utility Case Nos. 3269, 3537, 3495, and 3750 (October 8, 2002).

Regulatory parity benefits consumers. By reducing unneeded regulatory burdens, CenturyLink QC will be able to be more responsive to customer demand, competition, and market conditions. CenturyLink QC will be better positioned to bring products, services, and targeted offers and promotions with greater speed and effectiveness, and prices for all services will reflect costs and market conditions rather than historical monopoly pricing models.

As the legislature determined nearly two decades ago, "the encouragement of competition in the provision of public telecommunications services will result in greater investment in the telecommunications infrastructure in the state, improved service quality and operations and lower prices for such services."⁴ To serve these policies and create a healthier telecommunications marketplace for consumers and providers alike, it is time for the Commission to take significant steps to forward "an orderly transition from a regulated telecommunications industry to a competitive market environment."⁵

Background

Competition for all forms of communications services, in all geographic areas, has exploded over the past decade. The effects of competition cross over lines of different technologies and methods of communication. Local telephone service (and related services and features) now competes for customers with wireless providers, voice over internet protocol providers (VoIP), cable telephony, and other wireline providers. And all of these services compete to some degree with other forms of communication, such as e-mail, text messaging, and even social media.

⁴ NMSA 1978, § 63-9A-2.

⁵ *Id.*

Each of these services competes with the others. Wireless, VoIP, and cable telephone service are functionally equivalent to CenturyLink QC's telephone service. Each offers the ability to place and receive telephone calls on the public switched telephone network ("PSTN"), including local and long distance calls, as well as access to E9-1-1 services. And, while services like email and social media are not identical substitutes for local telephone service, the emergence of multiple methods of communication means that with each passing day, month, and year, providers of traditional wireline services experience less demand for their services and possess less market power.

In just the market for voice communications services, the numbers tell a compelling story of radical change. The US Census Bureau reports that between 2000 and 2010, New Mexico population increased from 1,819,041 to 2,059,179, an increase of 13.2%.⁶ The percentage of consumers and households with some sort of telephone service has remained relatively constant, and has increased steadily since 2005.⁷ However, since 2000, CenturyLink QC's access line counts have decreased from 883,302⁸ to 541,955⁹ – a decrease of 39%, without even considering the increased size of the New Mexico telecommunications marketplace since 2001.¹⁰ These customers continue to use telephone service from some provider, just not CenturyLink QC.

⁶ US Census Bureau State and County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/35000.html>

⁷ *Telephone Subscribership In The United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (May 2011), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0519/DOC-306752A1.pdf.

⁸ Access lines as of December 31, 2000, as reported in Qwest's Annual Report filed on April 1, 2001.

⁹ Access lines as of December 31, 2010, as reported in Qwest's Annual Report filed on April 6, 2011.

¹⁰ During the last decade, the emergence of broadband services from wireline and wireless telephone companies, cable companies, and others has reduced the demand for second lines formerly used for dial-up internet access, but only to a limited extent. Even after accounting for decreases in demand for dial-up internet access, overall demand for telephone service in New Mexico has increased significantly since 2001.

Many of these customers choose wireless service. Statistics from the National Center for Health Statistics show that nationwide, 29.7% of households had only wireless telephones by December 2010 (“wireless only”), and another 15.7% received all or almost all calls on wireless telephones despite having a landline.¹¹ These nationwide wireless substitution figures show that “cord cutting” has more than doubled since 2007. Wireless substitution in New Mexico parallels national trends. By June 2010, 27.2% of New Mexico adults lived in wireless-only households, and another 11.7% lived in “wireless mostly” households – households where there is a landline telephone line, but which is seldom used.

Direct competition does not come only from wireless services. Cable video providers are offering telephone service throughout CenturyLink QC’s New Mexico territory, as are VoIP providers and other wireline carriers.¹² FCC estimates indicate that non-ILEC wireline carriers and interconnected VoIP providers¹³ account for 19% of New Mexico access lines as of June 30, 2010¹⁴ – nearly double the 9% figure reflected in the same FCC report available to the Commission during the AFOR 3 proceedings.¹⁵ Wireline competition is fiercer in business

¹¹ Blumberg SJ, Luke JV, *Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2010*. National Center for Health Statistics. June 2011. Available from: <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

¹² Many of these other wireline providers lease network elements from Qwest at Commission-regulated rates. Importantly, Qwest is not requesting any changes to the regulation of its relationships with competitive local exchange providers or the prices Qwest charges for unbundled network elements as provided by federal law.

¹³ The FCC’s figures exclude VoIP providers like Skype that do not provide access to the public switched telephone network.

¹⁴ *Local Telephone Competition: Status as of June 30, 2010*, Industry Analysis and Technology Division Wireline Competition Bureau, FCC, March 2011, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf

¹⁵ *Local Telephone Competition: Status as of June 30, 2008*, Industry Analysis and Technology Division Wireline Competition Bureau, FCC, July 2009, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf (Note: the 2008 FCC figures did not include interconnected VoIP providers)

markets than residential ones: 28% of New Mexico business access lines are served by CLECs or VoIP providers.¹⁶

Together, wireless-only, non-ILEC wireline, and interconnected VoIP households represent approximately 43%¹⁷ of all New Mexico households. Adding the vulnerable “wireless mostly” households, it becomes clear that more than half of New Mexico households either subscribe to some other provider for their local telephone service or rarely use their wireline telephones.

Beyond the numbers, government grants and stimulus funds are supporting competition in much of CenturyLink QC’s New Mexico territory. Many of these projects are creating facilities-based communications networks in CenturyLink QC territory, overbuilding CenturyLink QC networks to provide not only broadband internet access, but facilitate VoIP and traditional telecommunications services also. For example, ENMR is deploying fiber in the CenturyLink QC exchanges of Raton, Las Vegas, Springer, Roswell, and perhaps others. Kit Carson is deploying fiber in the CenturyLink QC communities of Cuesta and Taos. NMDoIT is building facilities that will enable the state to meet many of its own communications needs without CenturyLink QC and provide “broadband access to [other]community anchor institutions.” These are just a few examples. Hundreds of millions of dollars of governmental stimulus subsidies are pouring into New Mexico, and many of these subsidies are being used to provide alternatives to existing CenturyLink QC service, not just provide service to unserved or underserved areas.

¹⁶ *Local Telephone Competition: Status as of June 30, 2010*, n. 14, *supra*.

¹⁷ The FCC figures use access lines, while the CDC figures measure wireless penetration by households. Therefore, the 19% CLEC market share of access lines applies only to wirelines; with 27.2% of New Mexico households “wireless only,” all wireline providers together serve only 72.8% of New Mexico households.

Competition is therefore effective and clearly evident for all of CenturyLink QC's services in all of its New Mexico territory, and CenturyLink QC requests regulatory parity with CLECs in all of the areas CenturyLink QC serves in New Mexico. While competition in some areas may be more robust than in others, competition is effective in every CenturyLink QC New Mexico exchange. Wireless, VoIP, and competitive wireline services are available in every New Mexico exchange. In many exchanges, cable companies also offer telephone service.

And effective competition exists for both business and residential customers. Competition first emerged for business customers, because those customers offer greater revenue opportunities for competitors and tend to be concentrated in in-town areas that are relatively inexpensive to serve. More recently, however, competitors have offered VoIP to residential customers, cable providers have leveraged their networks and customer relationships to compete for telephone services, and the pervasiveness of wireless services have offered functionally equivalent alternatives to CenturyLink QC's wireline service to residential customers as well.

Moreover, dozens of competitors that use CenturyLink QC unbundled network elements ("UNEs"), their own facilities, or some combination thereof, offer consumers in every CenturyLink QC wire center a competitive alternative.

Of course UNE rates are, and will be, regulated by this Commission and are set at CenturyLink QC's forward-looking cost, which means that CenturyLink QC enjoys no cost advantage over potential competitors. To the contrary, competitors relying on unbundled network elements can purchase pieces of the CenturyLink QC network in exactly the quantities needed to serve their current customers without incurring the costs required to serve an entire

wire center like CenturyLink QC or other facilities-based providers would face. The Commission's continuing oversight of wholesale pricing and wholesale service quality will ensure that competitors will continue to provide effective discipline to CenturyLink QC's market behavior for the foreseeable future.

Request for Determination of Effective Competition

Against this background, continuing to regulate telephone service in New Mexico using the same model that was used in 1988 – or even 2008 – makes no sense. New Mexico lawmakers foresaw that competition in telecommunications markets was evolving, and provided the Commission with a path to more appropriate regulation in a competitive marketplace. NMSA § 63-9A-8 provides:

A. In accordance with the policy established in the New Mexico Telecommunications Act [63-9A-1 NMSA 1978], the commission shall, by its own motion or upon petition by any interested party, hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market area. When the commission has made a determination that a service or part of a service is subject to effective competition, the commission shall, consistent with the purposes of the New Mexico Telecommunications Act, modify, reduce or eliminate rules, regulations and other requirements applicable to the provision of such service, including the fixing and determining of specific rates, tariffs or fares for the service. The commission's action may include the detariffing of service or the establishment of minimum rates which will cover the costs for the service. Such modification shall be consistent with the maintenance of the availability of access to local exchange service at affordable rates and comparable message telecommunication service rates, as established by the commission, for comparable markets or market areas, except that volume discounts or other discounts based on reasonable business purposes shall be permitted. Upon petition or request of an affected telecommunications company, the commission upon a finding that the requirements of Subsection C of this section are met shall modify the same or similar regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets, so that there shall be parity of regulatory standards and requirements for all such providers.

B. In determining whether a service is subject to effective competition, the commission shall consider the following:

- (1) the extent to which services are reasonably available from alternate providers in the relevant market area;
- (2) the ability of alternate providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and
- (3) existing economic or regulatory barriers.

By this application, CenturyLink QC requests a bifurcated, two-phase process. CenturyLink QC proposes that the Commission first declare that telecommunications services, including but not limited to basic local exchange service and all associated features and services are subject to effective competition throughout New Mexico. To the extent that the Commission finds effective competition, CenturyLink QC proposes a second phase to determine the appropriate regulatory changes to “modify, reduce or eliminate rules, regulations and other requirements applicable to the provision of such service,” including modifications to “the same or similar regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets, so that there shall be parity of regulatory standards and requirements for all such providers.”

Though CenturyLink QC does not ask the Commission to adopt any particular changes during the first phase, CenturyLink QC believes it would be helpful to provide the Commission and interested parties with a general idea of the relief CenturyLink QC intends to seek in the second phase assuming the Commission finds effective competition in the first phase. CenturyLink QC does not seek deregulation, but intends to request that the Commission modify its regulation of service quality of retail telecommunications service throughout its New Mexico

service territory,¹⁸ such that CenturyLink QC becomes subject to the same service quality regulatory scheme as applies to competitive local exchange providers in New Mexico.

Importantly, CenturyLink QC will not request in any phase of these proceedings regardless of any finding of effective competition any change to the current regulatory treatment of services provided to CLECs that are governed by federal law, intrastate switched access services, or emergency (9-1-1) services.

Rather, upon a finding of effective competition, CenturyLink QC intends to request that its retail telecommunications services be regulated by appropriate Commission orders or AFOR plans that apply the same rules and regulations that apply to CLECs today, including, for example, the minimum pricing rules applicable pursuant to NMAC § 17.11.13.17. CenturyLink QC does not intend to seek in this proceeding any competitive advantage over regulated CLECs; indeed, differential treatment would be at odds with NMSA 1978, § 63-9A-8, which requires the Commission, upon a finding of effective competition, to “modify the same or similar regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets, so that there shall be parity of regulatory standards and requirements for all such providers.” Of course, in this proceeding, CenturyLink QC does not request regulatory parity with its most significant competitors – wireless and cable telephony – because those providers are not regulated by the Commission at all.

Request for Procedural Conference

Finally, to facilitate the timely and efficient consideration of this Petition, CenturyLink QC requests that the Commission promptly schedule a procedural conference to establish a

¹⁸ Qwest is not seeking a finding of effective competition or changes to regulation in territory served by CenturyTel of the Southwest, Inc. in New Mexico; only the Qwest Corporation territory in New Mexico.

schedule for intervention, discovery, testimony, and other necessary proceedings to facilitate the two-phase bifurcated process CenturyLink QC proposes.

Respectfully submitted,

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