



# THE RETIREE GUARDIAN

Newsletter of AUSWR —Representing Retirees of CenturyLink  
—formerly Qwest, U S WEST and their predecessor companies  
www.uswestretiree.org www.qwestretiree.org

2011 Issue 2

## AUSWR Leaders Meet With CenturyLink Benefits' Executives

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by Mimi Hull, AUSWR President

On Tuesday, March 9, 2011, Jim Heinze, AUSWR Retiree Advocate Ombudsman, Judy Stenberg, Oregon-Washington AUSWR president, and I were invited to meet in Vancouver, Washington with CenturyLink (CTL) executives, Marina Pearson, Vice President-Compensation & Benefits, and Frances Brown, who directs the Pensions Group.



During a lengthy meeting, we discussed a full agenda of retiree issues including:

- relationships between the CenturyLink company, its management and its retirees,
- potential changes to retiree benefit plans,
- protection of Qwest pre-1991 health care agreements,
- continued use of the Qwest Service Center,
- retiree concession phone service,
- preservation of the AUSWR Retiree Advocate program,

(...continued on page 3...)

## Group Life Insurance Case Awaits Federal Appeals Court Decision

by Curtis L Kennedy, AUSWR Litigation Attorney

First, at the courthouse hearing March 9, there was plenty of support from AUSWR members. Nelson Phelps sat with me at counsel's table. My heartfelt thanks are extended to all those who made the effort and attended the hearing.



third judge, Monroe McKay, who has been on the appellate court since 1977, was unable to attend. He will listen to the proceedings from audio tape. Judge Paul Kelly presided. He is important to our case because he wrote rulings in the Allison case that I emphasize must be applied in our Kerber v. Qwest Group Life Insurance case. The second judge present was Judge Scott Matheson who was most recently appointed to the appeals court from his job as a Professor of

There were two judges present because the

(...continued on page 4...)

*"To preserve and protect the pension and benefits that we earned."* — AUSWR Mission

# Retiree Advocates Here To Help YOU!

If you have questions about your benefits, contact the **Qwest Service Center...800-729-7526**  
 Press **Option 2**, then select the appropriate options. To put your question or claim in writing, send to the:  
**Qwest Service Center, 950—17th St., Box 46, Denver, CO 80202**

► *If you are unable to resolve your question after contact with the Qwest Service Center, contact your state Retiree Advocate.*

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*(CTL meeting...continued from page 1...)*

- pension plan management and funding, and
- CenturyLink relationships in local communities.

We introduced our retiree organization, explaining our Mission (see bottom of page 1 for mission statement), describing a brief AUSWR history, referencing our website, and agreeing to send our quarterly *Retiree Guardian*. Judy outlined our relationship with the NRLN and its advocacy efforts for federal legislation on behalf of all retirees.

#### ***My Impressions of the Meeting***

Initial impressions were very favorable. The conversation was open, honest, sincere and down-to-earth on both sides. We were warmly received and very much felt that we were listened to. The message that we gleaned was the intention that all of CTL management values their employees and honors their retirees. However, we also heard that CTL will always balance the needs of employees and retirees with the financial health of the company.

#### ***CTL History of Benefits Following Mergers***

Before the Qwest merger, CTL had about 11,000 retirees who are receiving pensions and of that group about 10,000 receive some 'welfare' benefits, such as health care and life insurance.

CTL started as a small rural phone company and was created into its current size through numerous acquisitions of other small and medium-sized phone companies. Historically, CTL has kept pensions and benefits for retirees. The CTL retiree plans tend to mirror the active employee plans, but the premiums levied usually differ between active employees and retirees.

No changes to Qwest retiree benefits are anticipated in the short term, but CTL will be looking for consolidation opportunities across their various employee groups and to some degree retiree groups.

#### ***Qwest Pre-1991 Health Care Agreement***

Marina and Frances assured me that they fully understand the pre-1991 health care obligation (known as the *Phelps settlement*). They appeared to be aware of our litigation history against Qwest. We did not discuss specific legal cases.

#### ***CTL Management of Benefit Plans***

Currently, the CTL employee and retiree plans (there are about 50 plans because of numerous acquisitions) are managed in-house by CTL staff. Under study is whether or not they want to outsource to an administration and service center model such as the Qwest Service Center.

#### ***Telephone Concession Services***

CTL current employees and retirees do have 'concession' telephone service, but it is handled by another work group on the Operations side and no fur-

ther discussion followed about concession in this meeting. However, Marina stated that the management of CTL are believers in having their employees and retirees showcase their product lines. CTL may consider future bundled, discounted packages broader than just land-line concession.

#### ***AUSWR Retiree Advocate Program***

Marina and Frances were enthusiastic about our AUSWR Retiree Advocate program and seemed to be well informed by the Qwest benefits staff about its merits. They identified for us several of the Qwest benefits personnel we currently coordinate with who will stay on with CTL in Denver and encouraged us to maintain close association through our Retiree Advocates.

#### ***Pension Plan Funding Obligations***

We discussed Pension Plans and Pension funding. CTL has maintained separate pension plans for each acquired company. Many of the plans are 'frozen,' just as Qwest's is for Management employees. Funding remains separate because of the disparate funding levels of so many plans. One example cited to us was of a small company that was acquired which had a pension funding level of only 61% which CTL has gradually contributed to bringing the plan to 80% presently. CTL will continue to contribute until it is fully funded.

The original Century Tel pension plan is fully funded. CTL is aware that the Qwest pension plan is 93% funded. They plan to contribute additional dollars over time to bring the Qwest pension plan to a fully-funded status.

#### ***Pension Fund Management***

CTL pension funds (for all groups) are currently managed by Towers Perrin, but they foresee moving the management of the funds to the Qwest Asset Management Group (QAM) to manage all of the funds.

#### ***Retiree Relationships***

Marina indicated that CTL welcomed a dialogue with retirees and appeared very receptive to working with AUSWR. She stated that several of the acquired companies have retiree associations, albeit much smaller than AUSWR. She offered to put us in touch with them so we could all work together. She will facilitate the introductions some time after the merger is completed.

#### ***CTL Community Commitments***

Lastly, Marina said that CTL fosters a strong sense of community involvement wherever it does business. Employees and retirees are encouraged to participate and 'wave the CTL banner' as they do good works. To that end she recommends that AUSWR leaders meet with the CTL Regional executives and consider the roles we may each play in the community. (More on this topic after the merger). The March meeting between AUSWR leaders and CTL executives is a new beginning that each of us is committed to maintaining.

*Mimi Hull*

*(...Group Life Ins Appeal continued from page 1...)*

Law at the University of Utah. He had some prepared questions, and he actively participated equally as much as Judge Kelly in asking those questions.

#### **Appeals Court Oral Arguments Time-Limited**

Keep in mind that an oral argument appellate court session is a really brief. Only 15 minutes is allowed for each side. This procedure is simply a supplemental exercise so as to allow the litigant parties to emphasize whatever certain points they choose to and to answer questions from the judges.

#### **Appeals Court Focus on Written Briefs & Court Filings**

The judges' main focus, when deciding the appeal, will be on the written briefs, the material submitted, and the lower court rulings. All of the appellate court filings will be meticulously considered by the judges and their individual staff of law clerks.

#### **AUSWR Oral Argument Approach**

I first started out my oral argument by advocating the judges should consult a dictionary and apply plain and simple definitions, as any ordinary non-lawyer person would do, to the contested terms, words and rules in the group life insurance documents. I explained that for all years clear up to the 1990 offering of the '5+5 Option', the plan stated that the Company reserved the "right to terminate or amend" the plan. Stated simply, that means the Company had the right to either end the plan or make it much better, improve it. It did not state the Company reserved the right to reduce benefits.

Judge Matheson seemed to absorb those facts and my arguments which focus on the fact that the Company never disclosed or warned retirees during the '5+5 Option' of any risk that benefits might be reduced after taking early retirement.

#### **Plan Rules Do Not Allow Certain Reductions**

Moving forward in time to the 1998 Master Plan Document, I emphasized that the new rules then put in place, while clearly allowing the Company to reduce benefits also forbid reductions below certain levels for retirees. And those rules are not incompatible and should be enforced.

There was hardly any feedback from the judges that would signal to me they had any level of disagreement with my presentation. Hopefully that will turn out to be our ticket for a winning result in this appeal.

#### **Qwest Failed to Properly Amend the Group Plan**

However, when I addressed our alternative claims that the controlling plan documents were not properly amended prior to the Company sending out reduced payments to deceased retirees' beneficiaries, and that the necessary amendment to the Group Contract was not even co-signed until January 21, 2009, the judges

seemed a little less prepared about the facts and intricacies. They asked a number of questions so as to clarify the dates certain documents were created and unfortunately took up valuable time. All the key documents in this case are accurately and methodically laid out in the legal briefs which the judges and law clerks will most certainly refer to and discuss in the weeks ahead.

I kept emphasizing that just because the Company had the right to terminate the plan did not give it the right to flout all the rules.

#### **Supreme Court Ruled: "Must Follow the Plan Rules"**

I also repeatedly stressed that the judges had to follow the emphatic guidelines by the Supreme Court that ruled judges must enforce the rules without regard to whom they benefit. Of course, in this case, enforcement of the rules works in favor of the retirees.

#### **Qwest Attorney's Response**

Qwest's attorney argued that the Company when making the attempted change to retiree benefits might have failed to "dot their 'i's" (eyes) and cross their 't's" (tees), and that the intense scrutiny that I subjected the Company to was the kind of action that causes companies to choose not to even want to offer plan benefits to workers and retirees.

At no time during the oral argument did Qwest's attorney either refer to a single case decision or emphasize any legal principle that would prove to doom my arguments and the retirees' position. Qwest's attorney seemed too focused on arguing that Qwest did its best to tell retirees about the decision to reduce life insurance benefits and, therefore, it should not matter that all the necessary paperwork was not done in exacting format.

#### **My Time For Rebuttal**

During the one minute I was allowed for rebuttal, I quoted the passage that has often been cited by federal courts, including the Supreme Court that ERISA cases have to be decided on the basis of the exact written terms of the benefit plans.

In other words, there should be no excuses for Qwest's failure to comply with all the rules and that meant the Company had to act exactly in accordance with both the Master Plan Document's and the Group Contract's stated rules.

#### **Expect Decision in 90-100 Days**

I expect to see a written decision from the appellate court within 90-100 days —and I will promptly report that decision to you.

Everyone is reminded that the appellate legal briefs - the papers containing all of the significant arguments - are posted at the retiree website:

[www.uswestretiree.org/legal2.htm#Group\\_Life\\_Insurance\\_Litigation\\_-\\_Kerber,\\_et\\_al,\\_v.\\_Qwest](http://www.uswestretiree.org/legal2.htm#Group_Life_Insurance_Litigation_-_Kerber,_et_al,_v._Qwest)



# 'Experts' Say Customer Service Will Suffer After Merger

Excerpts from reporting by  
Andy Vuong, *Denver Post*

The University of Michigan's 2010 American Customer Satisfaction Index, which includes results from surveys of about 17,000 consumers nationwide, ranks customer service at Qwest and CenturyLink No. 4 and 5, respectively, out of six fixed-line phone service companies. (Comcast, offering Internet-based phone service, ranked last in the annual index).

Business professor Claes Fornell of the University of Michigan was quoted by the *Denver Post* as stating the merger puts already low customer service ratings at further risk because "efficiency and cost savings are important objectives for most mergers, [and]...usually customer service suffers in big mergers."

CenturyLink chief executive Glen Post said Friday, April 1, the day the merger was effective, that customers will continue to receive "honest and personal service." CenturyLink has pledged to maintain service levels and bolster broadband speeds as part of agreements reached with regulators during the approval



Glen Post, CenturyLink CEO said Friday, April 1 —on the day the merger was effective—that "*customers will continue to receive "honest and personal service."*

process. The company also plans to offer a television service called IPTV in some Qwest markets. CenturyLink, based in Monroe, La., said combining the companies will shave \$625 million in annual costs.

There are no plans at this time to migrate customers using Qwest-branded email addresses to a new email domain. Customer-service phone numbers will remain the same.

Qwest's partnership with Microsoft, which offered MSN Premium to Qwest broadband subscribers at no charge, will end in the middle of this year. Subscribers can choose to switch to the [MyQwest.com](http://MyQwest.com) portal or pay Microsoft for access to MSN Premium.

Qwest customers with MSN email addresses can access those accounts for free using [hotmail.com](http://hotmail.com) after the Qwest-Microsoft deal ends. Qwest said termination of the partnership is unrelated to the CenturyLink merger.

As part of the regulatory-approval process, CenturyLink committed to spending at least \$385 million on broadband expansion over the next five years in nine of Qwest's 14-state local-phone service territories.

## Promises to FCC For Merger Approvals

by Peter Svensson, *AP Technology Writer*

To get FCC approval, Monroe, La.-based CenturyLink is promising to offer low-income households computers for \$150 and broadband starting at \$10 per month for the first year after the merger. The minimum price will then rise to \$15. Households will be able to qualify for the deal a number of ways, including by income level or participation in Medicaid or school lunch programs.

"This program holistically tackles the principal barriers to broadband adoption," said FCC chairman Julius Genachowski. The FCC expects 2 million to 2.3 million households to qualify for the discounts. CenturyLink is committed to actively marketing them and providing training in computer use. (The FCC applied

a similar condition to cable company Comcast Corp.'s acquisition of NBC Universal).

CenturyLink is also committing to doubling the number of homes and businesses that can get fast broadband, with speeds of 12 megabits per second or more, in Qwest's 14-state service area, and tripling the number that can get ultra-fast speeds of 40 megabits or more.

Phone companies like Qwest and CenturyLink have seen cable companies snag most new cable customers, since they're having trouble matching their download speeds.

Together, the combined company will have about 5.3 million broadband subscribers, making it the fifth-largest provider of fixed-line Internet access in the country.

# Nacchio Sues Lawyers For Malpractice, Overbilling

**Excerpts from reporting by David Voreacos, Bloomberg, and Andy Vuong, Denver Post**

Joe Nacchio sued his former defense lawyers claiming they were negligent and “grossly overbilled him” for costs including underwear and in-room movies during his insider trading trial that started in March 2007.

Nacchio is seeking compensatory and punitive damages, as well as attorney’s fees.

He claimed in a lawsuit filed March 23, 2011, that he was convicted “as a result of” professional negligence by attorney Herbert Stern and Stern’s partner, Kevin Kilcullen, of their law firm, Stern & Kilcullen LLC in Roseland, New Jersey.

“He’s innocent, and he didn’t get his best shot with the lawyer he had,” said attorney Bruce Nagel of Nagel Rice in Roseland, New Jersey, who represents Nacchio in his new complaint.

“As a result of bad lawyering, my client has a 70-month jail and nearly \$70 million in fines,” said Nagel.

The Stern & Kilcullen firm billed Nacchio more than \$25 million to defend criminal and civil matters, charging tens of thousands of dollars for staff breakfasts, attorney underwear and in-room movies during the trial in federal court in Denver, according to the complaint in state Superior Court in Newark, New Jersey.

“S&K was negligent and careless in handling the defense of the criminal action...among other things, they were barred by the trial court from calling a critical expert witness by virtue of their blatant failure to comply with basic litigation procedures” according to the complaint.

However, Denver attorney Anthony Accetta, a former federal prosecutor who observed the Nacchio case, said Stern’s work was sound.

“Herb Stern came as close to getting a guilty man acquitted as any lawyer I’ve ever seen,” he said.



**Former Qwest CEO Joe Nacchio with Attorney Herbert Stern (right) at first day of insider trading lawsuit in March 2007.**

Nacchio reported to a federal prison camp in Schuylkill County, Pa., in April 2009. His projected release date is May 2014

“To accuse him of negligence is typical of what guilty people do — they always blame someone else.”

Accetta said he has no knowledge of Stern’s billing practices but said routine travel expenses are appropriate.

At times during the trial, as many as seven attorneys represented Nacchio in the courtroom.

“These were out-of-town lawyers who came to Denver to defend him. They were going back and forth from New Jersey.

“Billing for meals and an occasional change of clothes is not inappropriate. But I personally would never bill hotel movies to a client,” Accetta said.

Nacchio continues to serve a 70-month prison sentence after his conviction in 2007 for illegally selling \$52 million of stock in Denver-based Qwest in 2001 based on inside information.

Nacchio was re-sentenced last year by U.S. District Judge Marcia Krieger in Denver after a federal appeals court ruled a different trial court judge incorrectly calculated his gains from stock sales. Krieger’s 70-month sentence reduced Nacchio’s original term by two months.

After his conviction, Nacchio was fined \$19 million and agreed to forfeit \$44.6 million. In February 2011, he withdrew an appeal of his sentence.

### **Editor’s note:**

Joe’s newest law suit has created no end of words from Qwest retirees who commented that his ‘taking it in the shorts’ cannot begin to compare with how many employees and retirees he ‘took to the cleaners’ as stock prices plummeted from the \$50 range to near worthless amounts —about \$1 — during Joe’s time at the top of Qwest.

Part of Joe’s severance package from Qwest was payment of his legal bills. We wonder how many retirees lost their life insurance benefits so Qwest could pay lawyers to defend Joe’s criminal behavior?

# Help Lower Prescription Drug Costs

**Bill Kadereit, President,  
National Retiree Legislative Network**

Are you aware that there are currently three prescription drug bills in the U.S. Senate that are in direct support of three of the four NRLN prescription drug cost reduction proposals for retirees?

We have been advocating legislation:

- (1) S.319; Enables re-importation and importation of safe prescription drugs approved by the FDA;
- (2) S.44; Enables Medicare to develop formularies and take competitive bids for prescription drugs (similar to process allowed for veterans' health care but currently prohibited for Medicare) ;
- (3) No bill yet; Proposal to staff and fund the FDA to reduce generic drug approval backlogs;
- (4) S.27; Prevents drug companies from colluding with one another to control drug pricing or subvert free markets.

We—the NRLN staff and state Grassroots Network members—have worked hard over a three-year period to get these three numbered bills on the table.

We'll push for Senate passage of these three bills and, if possible, our fourth proposal.

Lowering the cost of medicines would free up purchasing power that would help fuel economic recovery without having a negative effect of the nation's deficit. In fact, more purchasing power translates to jobs, more tax revenue and a lower deficit!

The NRLN regularly receives dozens of emails from individuals who are faced with the high and ever increasing cost of prescription drugs. I want to share with you excerpts from four examples of those emails:

*"My spouse is a cancer survivor and has type 2 diabetes. She has to have 9 annual prescription drugs plus a couple of other drugs as needed."*

*"I take 8 prescription drugs. Three of these drugs are generic. The others are costing me \$542.00 per month... There are some prescription drugs which I do not even order because things have gotten out of hand since I go into the "doughnut hole" within 3 months into the beginning of the year."*

*"My husband was very ill in 2008 and due to his illness he has to take several very expensive drugs. It is July 31st and he is already in the proverbial 'donut hole.' I take one drug that does not have a generic*

*and my co-pay for a 3-month supply is \$165.00."*

*"I am 83 years old and have been retired for 21 years. My wife is also 83 years old and has many medical problems. She now is taking seven different drugs, two of which are brand name. Her drug costs now exceed \$500 per month which needless to say has put a tremendous strain on our budget."*

During March 29-31, Marta Bascom, NRLN Executive Director, and I lobbied on Capitol Hill for passage of these three bills and two other NRLN top priorities. We met with 13 members and Congressional staffs from the House and Senate who serve on committees that have jurisdiction over these three bills and others important to retirees.

There are some influential Senators—Democrats, Republicans and an Independent—who are supporting the three prescription drug bills. Let's do everything we can to get the bills out of committee, passed by the Senate and sent to the House for action there.

NRLN Grassroots Network members have already emailed 4,648 letters to Senators urging passage of S. 27, S. 44 and S. 319 and to Representatives requesting introduction and passage of similar bills in the House.

If you have not yet contacted your members of Congress, you can still do your part. Go to the NRLN website at [www.NRLN.org](http://www.NRLN.org) and click on the Action Alerts —and you can send your message to your members of Congress using the NRLN site.



**National Retiree Legislative Network is the only nationwide organization solely dedicated to representing the interests of retirees and future retirees. Our mission is to secure federal legislation to protect retirees' employer-sponsored pensions and benefits plus keep Social Security and Medicare strong.**

# Medicare Part B Rate Increase in 2012

By Kitty Kennedy, AUSWR Regional & Arizona Retiree Guardian Editor

**Remember: Health benefits are guaranteed for Pre-1991 and ERO Retirees including Medicare Part B reimbursements according to the 'Phelps settlement' —thanks again to Curtis Kennedy, AUSWR Litigation Attorney.**

At a recent meeting of AUSWR members, a post-1991 retiree asked if Medicare rates will increase in 2012 and cause more money to be deducted from Social Security to pay the higher premiums.

Amid all of the news reports about balancing budgets, reducing deficits and the national debt, it has become difficult to understand the immediate changes effecting retirees who receive Social Security and Medicare. Here's what to expect for 2012 according to the trustee reports for Medicare and Social Security and the Social Security Administration.

A slight cost-of-living adjustment (COLA) for Social Security benefits is projected for 2012 —the first increase since 2009. But for most beneficiaries, rising Medicare premiums threaten to wipe out any increase in Social Security payments, leaving them without a raise for a third straight year.

About 45 million people - one in seven in the nation - receive both Medicare and Social Security.

By law, beneficiaries have their Medicare Part B premiums, which cover doctor visits, deducted from their Social Security payments monthly. Social Security recipients spend, on average, 9 percent of their benefits on Medicare Part B premiums, plus 3 percent on premiums for the Medicare prescription drug program.

When Medicare premiums rise more than Social Security payments, millions of people living on fixed incomes don't get raises. By law, Social Security cost-of-living adjustments, or COLAs, are determined each year by a government measure of inflation. When consumer prices go up, payments go up. When consumer prices fall,

payments stay flat until prices rebound.

On the other hand, most don't get Social Security cuts either. A harmless provision prevents higher Medicare Part B premiums from reducing Social Security payments for most people.

Most estimates are that as many as three-fourths of Social Security beneficiaries will have their entire Social Security increase swallowed by rising Medicare premiums next year.

We could very well

be entering a period where we're all stuck with flat benefits because of the growth in health care costs according to some policy analysts.

It's a tough development for retirees who have lost much of their savings when the stock market collapsed, who then lost value in their homes when the housing market crashed and who can't find work because the job market is weak or they're in poor health.

## How average Social Security recipients will be affected:

### 2011

- Average monthly Social Security benefit: \$1,077.
- Average monthly Medicare Part B premium: \$96.40
- Average monthly Social Security payment: \$980.60.

### 2012

- Average monthly Social Security benefit: \$1,090, based on a 1.2 percent cost-of-living increase.
- Average monthly Medicare Part B premium: \$113.80.
- Average monthly Social Security payment: \$976.20.
- Actual average monthly Social Security payment: \$980.60, based on a provision that prevents Medicare Part B premiums from reducing Social Security payments for most beneficiaries.

## Medicare Part B

Premiums have been frozen at the 2009 level of \$96.40 for about 75 percent of beneficiaries (\*) because there has been no increase in Social Security payments.

(\*) Medicare recipients with incomes of \$85,000 or more (or \$170,000 or more for joint filers) pay a higher Medicare Part B premiums.

Sources: Associated Press, Medicare and Social Security trustee reports, and Social Security Administration.