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VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM 1431

Enclosed for filing in the above-referenced docket are an original and one copy of Level 3 Communications LLC's and 360netowrks (USA) inc.'s Response to Request for Order Declining Jurisdiction.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in cursive script that reads "Wendy McIndoo".

Wendy L. McIndoo

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 UM 1431 on the following named person(s) on the date indicated below by email and first-
4 class mail addressed to said person(s) at his or her last-known address(es) indicated
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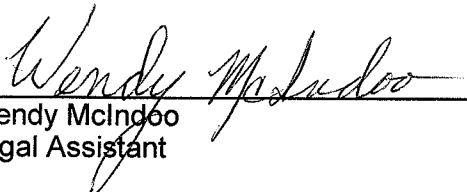
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1 **TWFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1431**

4 In the Matter of the Joint Application of
5 Verizon Communications Inc. and Frontier
6 Communications Corporation for an Order
7 Declining to Assert Jurisdiction Over, or, in
8 the Alternative, Approving the Indirect
9 Transfer of Control of Verizon Northwest
10 Inc.

**LEVEL 3 COMMUNICATIONS, LLC'S AND
360NETWORKS' RESPONSE TO
REQUEST FOR ORDER DECLINING
JURISDICTION**

11 Pursuant to the Prehearing Conference Report and Ruling issued by the
12 Administrative Law Judge on June 19, 2009, Level 3 Communications, LLC ("Level 3") and
13 360networks (USA) inc. ("360networks") file this Response to the Motion for an Order
14 Declining Jurisdiction ("Motion") filed by Frontier Communications Corporation ("Frontier")
15 and Verizon Communications, Inc. ("Verizon") (together, "Joint Applicants").

16 **INTRODUCTION**

17 In Docket UM 1416, the Public Utility Commission of Oregon ("Commission") found
18 that it had jurisdiction under ORS 759.375 and ORS 759.380 to review the proposed
19 merger between Embarq Corporation ("Embarq") and CenturyTel, Inc. ("CenturyTel") (the
20 "Embarq/CenturyTel Transaction").¹ In so doing, the Commission held that the Oregon
21 statutes require Commission approval for mergers and acquisitions between parent
22 corporations of Oregon telecommunications utilities (or, alternatively, "incumbent local
23 exchange carriers" or "ILECs").² It follows then that the Commission has jurisdiction to

24 ¹ *In the Matter of Embarq Corporation and CenturyTel, Inc., Joint Application for Approval of*
25 *Merger between the Two Companies and their Regulated Subsidiaries, Docket UM 1416 See Order*
No. 09-169 (May 11, 2009) (hereinafter, "CenturyTel Order").

26 ² *Id.* at 5-6.

1 review the acquisition by Frontier of Verizon's ILEC operations in Oregon (the "Proposed
2 Transaction").

3 In their Motion filed in this case, Joint Applicants argue that the Commission's
4 jurisdictional holding in the *CenturyTel Order* was wrongly decided and should not be
5 applied to the Proposed Transaction. Specifically, Joint Applicants argue that the statutes
6 granting the Commission authority to review telecommunications utility mergers apply only
7 to those mergers wherein one Oregon utility directly acquires or merges with another.
8 Conversely, Joint Applicants argue the Commission lacks authority to review the Proposed
9 Transaction wherein the ownership of one Oregon utility will be transferred to the parent of
10 another Oregon utility.

11 The Joint Applicants are wrong. ORS 759.375 and ORS 759.380 are broadly
12 drafted to require Commission approval of mergers and acquisitions that will—like the
13 Proposed Transaction—result in the indirect control of one Oregon utility by the parent of
14 another Oregon utility. The statutes' plain language supports this result, as does the public
15 interest. For this reason, the Joint Applicants' Motion must be denied.

16 **DISCUSSION**

17 In UM 1416, the Commission considered its jurisdiction to review the merger
18 between two non-Oregon corporations in the context of the Embarq/CenturyTel
19 Transaction. The transaction at issue in that case was similar to the Proposed Transaction.
20 Embarq was the parent of Oregon ILEC, United Telecom of the Northwest ("United"), and
21 CenturyTel the parent of two Oregon ILECs, CenturyTel of Oregon and CenturyTel of
22 Eastern Oregon. Under the proposed merger, Embarq would merge with Cajun Acquisition
23 Company—a holding company wholly owned by CenturyTel and created to effect the
24 merger—and as a result would become a wholly-owned subsidiary of CenturyTel. In the
25 end, CenturyTel would become the parent of three Oregon ILECs.

26

1 In finding that it had jurisdiction to review the Embarq/CenturyTel Transaction, the
2 Commission relied on ORS 759.375 and ORS 759.373, which provide, in relevant part:

3 **ORS 759.375(1)** A telecommunications utility doing business in
4 Oregon shall not, without first obtaining the ***Commission's approval
of such transaction:

5 *****
6 (c) *By any means whatsoever, directly or indirectly*, merge or
7 consolidate any of its lines, plant, system or other property
8 whatsoever, or franchise or permit to maintain any
telecommunications utility property or perform any service as a
telecommunications utility, or any part thereof, with any other ***
telecommunications utility (emphasis added);

9 *****
10 **ORS 759.380(1)** No telecommunications utility shall, *directly or*
11 *indirectly*, purchase, acquire or become the owner of any stocks or
12 bonds or property utilized for utility purposes *** of any other
***telecommunications utility unless authorized by the *** Commission
(emphasis added).

13 The Commission pointed to the italicized phrases, “[b]y any means whatsoever”,
14 and “*directly or indirectly*,” noting that the language of the statute is “very broad.”
15 Accordingly, in this context, the Commission found that “the Embarq ILEC is properly
16 viewed as ‘indirectly’ merging with the CenturyTel ILECs through the stock swap of their
17 respective parent holding companies.”³ Similarly, the Commission found that as a result of
18 the merger, “the CenturyTel ILECs are ‘indirectly’ acquiring the Embarq ILEC’s stock,
19 bonds, or other utility property through the acquisition activities of its parent holding
20 company.”⁴ Based upon these statutes, the Commission concluded that its approval of the
21 merger was a precondition for the transfer of ownership and control of United.

22 The Commission's ruling in the *CenturyTel Order* applies with equal force to the
23 Proposed Transaction. Here, Verizon is the parent of Oregon ILEC Verizon Northwest, and
24

25 ³ *CenturyTel Order* at 5.

26 ⁴ *CenturyTel Order* at 5-6.

1 Frontier is the parent of Oregon ILEC Citizen's Telecommunications of Oregon ("Frontier
2 Oregon"). In the Proposed Transaction, a new entity ("NHC") will serve as a holding
3 company for Verizon's local exchange and other assets to be transferred to Frontier, and
4 NHC will then be merged into Frontier. As a result, Frontier will be the surviving entity, and
5 will own and control the Verizon assets being transferred. In the Joint Applicants' own
6 words, "Verizon Northwest's . . . ILEC operations will become controlled by Frontier"⁵

7 The Joint Applicants do not attempt to distinguish their Proposed Transaction from
8 the Embarq/CenturyTel Transaction, but in effect argue that the Commission's decision in
9 that case was wrongly decided. The Joint Applicants argue that because the acquisition is
10 occurring at the parent level (like the CenturyTel/Embarq Transaction), the Oregon ILECs—
11 Verizon Northwest and Frontier Oregon—will not be merged or consolidated, and therefore
12 the statutes granting the Commission jurisdiction to review do not apply. For the same
13 reason, the Joint Applicants maintain that no stock, bonds, or other property of either of the
14 Oregon ILECs will be acquired or transferred as a part of the transaction.

15 The flaw in the Joint Applicant's argument is that it makes no attempt to understand,
16 and in fact completely ignores, the critical language upon which the *CenturyTel Order* rests:
17 "*By any means whatsoever, directly or indirectly...*" The fact is that under the Proposed
18 Transaction, Frontier Oregon will not directly, **but will indirectly merge with Verizon**
19 **Northwest**. Similarly, Frontier Oregon will not directly **but will indirectly acquire stock of**
20 **Verizon Northwest**. Indeed, mergers and acquisitions such as the Proposed Transaction
21 are precisely the transactions that the statute was drafted to include.

22 The Joint Applicants argue that that had the legislature intended that the
23 Commission possess jurisdiction over transactions involving corporate parent mergers or
24 causing telecommunications utilities to become affiliates, it would have said as much. In

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26 ⁵ Joint Application, at p. 2.

1 support of this argument, the Joint Applicants point to the affiliated interest statute,
2 ORS 759.390(1)(c), which specifically includes a definition of affiliated interest as “[e]very
3 corporation five percent or more of whose voting securities are owned by any person
4 owning five percent or more of the voting securities of the telecommunications utility or by
5 any person in any chain of successive ownership of five percent or more of the voting
6 securities of the telecommunications company.”⁶ The Joint Applicants point out that the
7 legislature chose not to use such language, intended to capture operating companies that
8 share the same parent, when it adopted ORS 759.357 and ORS 759.380.

9 Here again, the Joint Applicants are picking and choosing, attending only to those
10 portions of the statute that suit its purposes. In fact, in defining “affiliated interest”, the
11 legislature provides not just one but rather seven separate definitions of affiliated interest.
12 In two of those definitions, the Commission uses the phrase “*directly or indirectly*” to
13 expand the reach of the statute. Specifically, the following are affiliated interests of a
14 telecommunications utility under the statute:

- 15
- 16 (a) Every person owing or holding directly or indirectly five percent or
more of the voting securities of the telecommunications utility;
- 17 *****
- 18 (f) Every entity five percent or more of which is directly or indirectly
19 owned by a telecommunications utility.

20 ORS 759.390(1).

21 Thus, in context, the legislature appears here, as in ORS 759.375 and 759.380, to be
22 attempting to capture entities in parent-subsidiary relationship to a utility. The language
23 cited by the Joint Applicants in definition ORS 759.390(1)(c) goes one step further,
24 clarifying that the statute’s reach extends to *every* company in a *chain* of parent-

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26 ⁶ ORS 759.390(1)(c).

1 subsidiaries. For these reasons, the Joint Applicants' attempts to limit the reach of the
2 relevant statutes should be rejected.

3 Moreover, sound public policy requires the Commission to review the Proposed
4 Transaction. In this case, Frontier proposes to obtain control over the state's second
5 largest ILEC, serving approximately 310,000 access lines in the State.⁷ To date, nine
6 separate parties have filed petitions to intervene in the docket, many raising serious
7 questions as to Frontier's ability to provide maintain high quality services to wholesale and
8 retail customers in Oregon. Commission review and approval are essential to ensure that
9 Oregon consumers are protected.

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26 ⁷ Joint Application, p. 9.

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CONCLUSION

For all of the above reasons, the Commission should deny the Joint Applicants'

Motion.

DATED: July 8 2009

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