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December 17, 2012

Oregon Public Utility Commission
Attn: Filing Center
P.O. Box 2148
Salem, OR 97308-2148

Re: UM 1481; Joint Response of Frontier, CenturyLink and the Oregon
Telecommunications Association to the Joint Motion of Staff and OCTA to Certify
Ruling to the Commission

Dear Commission,

Enclosed for filing are an original and three copies of the Joint Response of
Frontier, CenturyLink and the Oregon Telecommunications Association to the Joint
Motion of Staff and the Oregon Cable Telecommunications Association to Certify the
Administrative Law Judge's Ruling to the Commission in UM 1481. If you have any
questions regarding this filing, please don't hesitate to contact me.

Very truly yours,



Charles L. Best

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1
2 **BEFORE THE PUBLIC UTILITY COMMISSION OF**
3 **OREGON**
4 **UM 1481**

5 In the Matter of)
6 PUBLIC UTILITY COMMISSION OF) CENTURYLINK, FRONTIER AND
7 OREGON) OTA RESPONSE TO MOTION OF
8 Staff investigation of the Oregon Universal) OCTA AND STAFF TO CERTIFY
9 Service Fund) QUESTIONS TO THE
) COMMISSION
)

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11 **JOINT RESPONSE TO MOTION TO CERTIFY**

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13 On November 14, 2012, the Oregon Cable Telecommunications Association
14 (“OCTA”) filed a Motion to Compel in this docket seeking information regarding
15 revenues for broadband services.¹ Administrative Law Judge Alan Arlow denied that
16 motion on December 3, 2012 (“Ruling”). On December 10, 2012, OCTA and
17 Commission Staff (“Movants”) filed a Motion to Certify Questions to the Commission
18 (“Motion”) pursuant to OAR 860-001-0110. CenturyLink,² Frontier Communications
19 Northwest, Inc., and the Oregon Telecommunications Association (collectively
20 “Respondents”) jointly file this Response pursuant to OAR 860-001-0420(5).
21 Respondents incorporate their Responses to the Motion to Compel by reference and
22 assert that the ALJ need not exercise his discretion to grant the Motion.

23
24 ¹ Staff did not participate in, or respond to, the Motion to Compel and has stated that they take
no position on the Motion to Compel. Motion at fn 1.

25 ² CenturyLink consists of United Telephone Company of the Northwest, CenturyTel of
Oregon, CenturyTel of Eastern Oregon, and Qwest Corporation.

1 Movants seek to broaden the issues beyond the scope of the proceeding and
2 open an issue that Oregon law prohibits the Commission from reviewing; specifically
3 the use of broadband revenues to affect the rates for basic telephone service. Injecting
4 that issue into the proceeding is inconsistent with Oregon law and beyond the scope of
5 the issues in the case. Further, it would require substantially more time in the case
6 schedule than the Commission has currently established in the procedural schedule.
7 The bottom line is that broadband revenues are not relevant to this proceeding and the
8 Motion does not meet the requirements to oblige the ALJ to certify the Ruling to the
9 Commission. The motion should therefore be denied.

10 Before proceeding with the questions presented in the Motion, Respondents
11 note that Movants have improperly used pre-filed testimony to support the Motion.
12 Movants attach and refer to the pre-filed direct testimonies of August H. Ankum
13 (OCTA/100-103) and Roger White (Staff/100-101) as Attachments B and C to the
14 Motion. That testimony has neither been admitted to the record nor subjected to
15 cross-examination. It is therefore not appropriate for Movants to refer to it and it
16 should not be considered in the disposition of the Motion.

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18 **ARGUMENT**

19 Movants have failed to demonstrate that there is any legitimate reason to
20 certify the Ruling to the Commission. The entire motion hinges on one question;
21 whether the ALJ's decision would result in "substantial detriment to the public
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1 interest.”³ That is clearly not the case and, in fact, the Ruling is entirely consistent with
2 both the law and the issues that the Commission adopted in this proceeding.⁴

3 The Issues List clearly and precisely sets forth the issues that are relevant to the
4 Commission’s inquiry in this case. Specifically, Issue 2 precludes the consideration of
5 unregulated broadband revenues for purposes of its review in this proceeding, stating:

6
7 **Issue 2: What changes should be made to the existing OUSF related to
8 the calculation, the collection, and the distribution of funds?**

9 **Ruling:** The issue is relevant to the purposes of these proceedings. ORS
10 759.425(3) authorizes the Commission to review the methods used to
11 determine the support that companies receive. The critical elements of
12 this methodology are the setting of the benchmark and determining the
13 cost of providing basic service. In light of the changes that have taken
14 place in the telecommunications industry since the *benchmark* and the
15 *method of calculating basic service costs* were developed, *it is*
16 *appropriate to review both within the context of this investigation.*

17 Similarly, Section (4) authorizes the Commission to impose a charge on
18 all retail telecommunications services "sold in this state" except as
19 provided in Section (6). Discussion of policy questions regarding
20 imposing charges on telecommunications service providers currently
21 exempted by Section (6) is outside the scope of these proceedings. *The*
22 *issue of collection of funds may include identifying entities on whose*
23 *retail services the OUSF charge should be imposed, consistent with the*
24 *statutory limitations.*

25 Section (2) provides that the OUSF "shall provide explicit support to an
eligible telecommunications carrier," thus giving the Commission the
authority to determine the means to target support explicitly (and
prevent a situation where the funds could be used to cross-subsidize
competitive services, either directly or indirectly) and establishing the

³ Motion at p. 7.

⁴ See *Ruling: List of Issues Designated for Inclusion in These Proceedings* (August 29, 2012)(“Issues List”).

1 classes and criteria of those carriers eligible to receive such funds.
2 (Emphasis added)

3 The first paragraph of the Issues List contemplates review of (1) the benchmark and (2)
4 the method of calculating basic service costs. There is no mention of reviewing the
5 revenues and costs of providing broadband or other unregulated services,⁵ or
6 considering the manner in which those costs might be used to determine OUSF
7 distributions. And this is only logical. Oregon law unquestionably prohibits
8 considering broadband revenues in the calculation of basic telephone service costs for
9 OUSF distributions.⁶ As stated in ORS 759.218(2): The Commission "may not require
10 revenues or expenses from an activity that is not regulated under this chapter to be
11 attributed to the regulated activities of a telecommunications utility." What the
12 Movants seek to do is precisely what is prohibited – attribute revenues from an
13 activity that is not regulated under Chapter 759 ORS to the regulated activities of a
14 telecommunications utility. Thus, the public interest has been determined by the
15 Legislature and the bases offered by the Movants for certification fall short.

16 The second paragraph of the issues list clearly limits the issues to those that are
17 "consistent with the statutory limitations." As noted in the Respondents' November
18 20, 2012 responses to OCTA's motion to compel,⁷ and as described above,
19 consideration of broadband revenues as a means of calculating the cost of basic
20 telephone service for OUSF distributions is inconsistent with Oregon law.

22 ⁵ The xDSL portion of broadband is provided as an interstate service, either through
23 the NECA tariff or on a detariffed basis and thus falls outside of Chapter 759 ORS.
24 The ISP portion of broadband service is clearly an unregulated service.

24 ⁶ ORS 759.218(2).

25 ⁷ See Response to Motion to Compel, at p. 3-4.

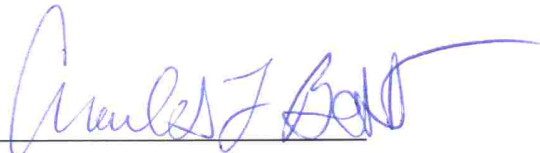
1 Last, paragraph 3 from Issue 2 recognizes that the law permits the Commission
2 to target support explicitly, thus preventing cross-subsidization of competitive
3 services. This of course is why funding is based on the cost incurred by carriers to
4 provide *basic telephone service*, and why a mechanism is already in place, consistent
5 with Oregon law, to ensure that competitive services do not subsidize regulated
6 services. Thus, Movants' insistence that broadband revenues be considered in this
7 docket is a red herring – there is absolutely no reason, whether as practical matter,
8 under the issues list as adopted by the Commission, or as a matter of law, that
9 revenues from a service not regulated under Chapter 759 ORS should be the subject of
10 this proceeding.

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1 CONCLUSION

2 Accordingly, there is no reason or justification for certifying the Ruling to the
3 Commission and the Motion should be denied.

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5 Respectfully submitted this 17th day of December 2012.

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8 By: 

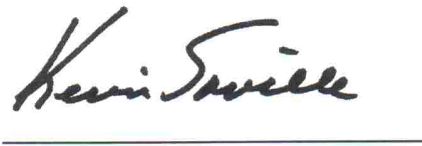
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CERTIFICATE OF SERVICE

I certify that on December 17, 2012, I served the foregoing document(s) upon all parties of record in Docket No.UM 1481 by e-mail.

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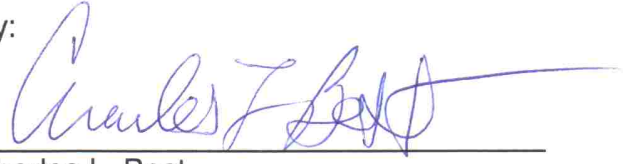
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