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November 20, 2012

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

Re: UM 1481; Joint Response of Frontier and CenturyLink to OCTA Motion to Compel

Dear Commission,

Enclosed for filing are an original and three copies of the Joint Response of Frontier and CenturyLink to OCTA's Motion to Compel 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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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1481

In the Matter of)
)
PUBLIC UTILITY COMMISSION OF) JOINT RESPONSE OF FRONTIER
OREGON) AND CENTURYTEL TO OREGON
Staff investigation of the Oregon Universal) CABLE TELECOMMUNICATIONS
Service Fund) ASSOCIATION MOTION TO
) COMPEL
)

Pursuant to OAR 860-001-0420, Frontier Communications Northwest Inc. (“Frontier”) and Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon (“CenturyLink”), (collectively “Joint Respondents”) provide the following Response to the November 14, 2012 Oregon Cable Telecommunications Association (“OCTA”) Motion to Compel (“Motion”) which seeks information regarding Joint Respondents’ provision of residential and business broadband services in Oregon, including broadband line counts in each of the wire centers CenturyLink and Frontier provide service in Oregon and the associated revenues Joint Respondents generate from residential and business broadband services on a per line and per wire center basis.

OCTA maintains that the data requests at issue are seeking “relevant evidence” as defined by ORCP 36 B(1). To overcome Joint Respondents’ objections, OCTA must show the “...information sought is reasonably calculated to lead to the discovery of admissible evidence.”¹ Producing information regarding Joint Respondents’ broadband services and revenues will not lead to the discovery of admissible evidence and the Motion should be denied for several reasons. The first reason that the Motion should be denied is that it seeks broadband data which

¹ ORCP 36B(1)

is clearly beyond the scope of this docket as determined by the Ruling issued August 29, 2012 in this matter. Second, OCTA's purported reason for seeking Frontier residential and business broadband data regarding lines counts and revenues is barred by ORS § 759.218. The third reason that the Motion should be denied is that it seeks information regarding broadband services which are outside the scope of the Oregon PUC's jurisdiction. And finally, if for no other reason, the OCTA's motion and request to obtain residential and business broadband subscribership counts by wire center and average broadband revenues per line by wire center should be denied because the request is unduly broad and burdensome, in contravention of OAR 860-001-0500.

1. Broadband Subscribership and Revenues is Beyond the Scope of this Proceeding.

The purpose of the Oregon Universal Service Fund ("OUSF") is ". . . to ensure basic telephone service is available at a reasonable and affordable rate." ORS § 759.425(1). In the Administrative Law Judge's Ruling dated August 29, 2012, the Judge declined to include the question of the purpose of the OUSF in the scope of the pending proceeding.² He noted that the legislature enacted ORS § 759.425 to ensure basic telephone service was available to Oregon residents. The Order further noted that although several parties had previously suggested that the Commission should move forward with laying a foundation for the transition to include broadband within the scope of the OUSF, the Oregon Legislature and the Commission had not taken the necessary steps to expand the purpose and scope of the existing OUSF program and the definition of "basic telephone service" to encompass broadband service.

OCTA improperly relies on Staff's comments on an Issues List and options presented by

² See UM 1481 ALJ Ruling dated August 29, 2012, Pages 1-2.

Staff as an attachment to a Memorandum of Understanding in an earlier phase of UM 1481 as support for its position that Frontier should be required to produce broadband subscribership and revenues.³ Staff comments and proposed options at an earlier phase of this proceeding are not binding and were provided in the context of determining what changes might be made to the structure and breadth of the OUSF. As noted above, the Administrative Law Judge has determined that the bigger picture questions regarding the purpose of the OUSF fund and the inclusion of broadband as part of the OUSF were not going to be addressed in this part of the UM 1481 proceeding. Accordingly, the broadband subscribership and revenue information sought by OCTA is not relevant to this docket and OCTA's motion seeking broadband data so as to indirectly expand the scope of the proceeding should be denied.

2. Using Broadband Revenues to Offset the Cost of Basic Telephone Service is Unlawful.

To support its argument that the disputed data requests are reasonably calculated to lead to the discovery of admissible evidence, OCTA argues that Joint Respondents' broadband revenues should be considered by the Commission to potentially offset the cost of basic telephone service. OCTA asserts:

A central issue in the docket is "[w]hat changes should be made to the existing OUSF related to the calculation, the collection, and the distribution of funds." Calculation of OUSF support must take into consideration whether a carrier actually *needs* support. Carrier revenues that can be used to off-set the cost of providing service are relevant to that analysis⁴ (emphasis in original, footnote omitted).

Presumably, OCTA seeks to analyze the broadband service revenues and seek to use those revenues to reduce its revenue requirement thereby subsidizing the cost of basic telephone

³ Motion at p.5.

⁴ Motion at p.4.

service. However, this type of cross-subsidy scheme is illegal in Oregon. Oregon Revised Statutes, section 759.218, provides in pertinent part:

(2) The Public Utility Commission may not require revenues or expenses from an activity that is not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility.

(3) The commission may approve a telecommunications utility rate proposal for basic local service rates that utilize revenues from other regulated services to partially cover the costs of providing basic local service.

OCTA is attempting to artificially reduce Joint Respondents' costs of providing service to high cost areas by attributing unregulated revenues to its regulated operations. This in turn would reduce the amount Frontier could draw from the OUSF to help support its high cost exchanges. It is exactly this type of cross subsidy that ORS § 759.218 is meant to prevent. Consequently, OCTA's reasons for wanting Joint Respondents' broadband data and its claim of relevance in this proceeding are not legitimate and would result in the use of such information in violation of ORS § 759.218.

3. The Commission Has No Jurisdiction Over Broadband Services.

The Commission is a creature of statute and can only exercise the powers granted by the legislature.⁵ It is clear that broadband services and the revenues from broadband services are not regulated under Chapter 759 ORS. It is well-established that broadband services are primarily interstate in nature and fall within the jurisdiction of the FCC.⁶ Not only is the information sought not relevant, the Commission should be wary about OCTA's request to compel Frontier to provide information regarding broadband services. If these services are outside the

⁵ SAIF Corp v. Shipley, 326 Or 557, 561, 955 P2d 244 (1998).

⁶ See FCC CC Docket 98-79, Order 98-292

Commission's regulatory purview, how can it have the authority to compel Frontier or anyone else to provide this information to competitors?

4. Other Matters.

In addition to the other grounds for not compelling discovery, the OCTA discovery requests seek information that is not discoverable under OAR 860-001-0500(4), which provides:

A party will not be required to develop information or prepare a study for another party, unless the capability to prepare the study is possessed uniquely by the party from whom discovery is sought, the discovery request is not unduly burdensome, and the information sought has a high degree of relevance to the issues in the proceedings.

Thus, for OCTA to obtain the information it must demonstrate that the data is (1) only obtainable from Joint Respondents, (2) that the request is not unduly burdensome, *and* (3) that the information has a "high degree" of relevance. Joint Respondents submit that OCTA cannot demonstrate each of these elements, with the possible exception of element (1). The data requests seek subscriber line counts, broken out between business and residential customers, by wire center. Frontier has 58 wire centers in Oregon and in several wire centers Frontier does not even receive OUSF support. CenturyLink serves 166 wire centers. Similarly, OCTA seeks information regarding broadband revenue per line, broken out by business and residential customers, on a wire center by wire center basis. In the normal course of its business, Frontier and CenturyLink do not track data in this manner or format. Thus, to respond to that portion of data requests would require Joint Respondents to pull historical data from 2011 and perform a special analysis, which would be time consuming and burdensome. And finally, as described in the substantive portions of this Response, the information certainly cannot be characterized as "highly relevant," as required by the rule.

Conclusion

OTCA's Motion to Compel Joint Respondents to provide information about their broadband services and revenues is not seeking relevant information because those services are outside of the Commission's regulatory authority, it would be illegal to use broadband revenues to subsidize Frontier's regulated service offerings and broadband services are beyond the scope of the issues already identified for the proceeding. The Motion should be denied.

Respectfully submitted this 20th day of November, 2012.

By:



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CERTIFICATE OF SERVICE

I certify that on November 20, 2012, I served the foregoing document(s) upon all parties of record in Docket No.UM 1481 by e-mail.

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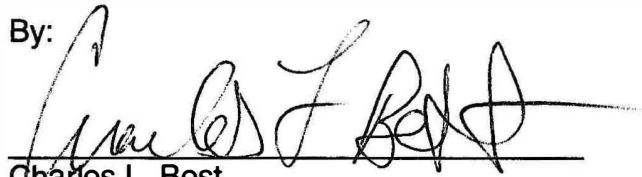
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By:

A handwritten signature in black ink, appearing to read "Charles L. Best", written over a horizontal line.

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