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Carla M. Butler
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September 17, 2010

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM-1484

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and one (1) copy of Centurylink and Qwest's Response to Motion of Intervenors to Certify Questions to the Commission, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler

Enclosures
cc: Certificate of Service

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF**
2 **OREGON**

3 UM 1484

4 In the Matter of)
5) CENTURYLINK AND QWEST
6 CENTURYTEL, INC.) RESPONSE TO MOTION OF
7) INTERVENORS TO CERTIFY
8 Application for an Order to Approve the) QUESTIONS TO THE
9 Indirect Transfer of Control of QWEST) COMMISSION
CORPORATION)
_____)

10 **RESPONSE TO MOTION TO CERTIFY**

11
12 On September 2, 2010, the City of Lincoln City, Lincoln County and Tillamook
13 County (collectively, "Intervenors") filed a Motion to Certify Questions to the Commission
14 ("Motion"), pursuant to OAR 860-014-0091. CenturyLink, Inc. ("CenturyLink") and Qwest
15 Communications International, Inc. ("Qwest") file this Response pursuant to OAR 860-
16 013-0050. CenturyLink and Qwest assert that the presiding administrative law judge
17 ("ALJ") need not exercise his discretion to grant Intervenors Motion.

18
19 Intervenor's Motion, by its very nature, will delay these proceedings and burden
20 the record. By all indications, Intervenors have largely ignored the guidance being given
21 by the Commission and ALJ as to the applicable administrative rules and appropriate
22 topics of the proceeding through a number of rulings not only in this case, but in UM 1416
23 as well. They filed their petition to intervene 38 days after the deadline, have attempted to
24 broaden the issues beyond the scope of the proceeding, and now seek to address legal
25 issues that are misplaced and, once again, beyond the scope of this case and the review of
which would cause substantial and unreasonable delay.

1 While it might be tempting to assume a lack of familiarity with the Commission's
2 process is to blame, it appears more likely that the Intervenors are trying to
3 inappropriately gain advantage over CenturyLink by holding this proceeding hostage
4 until CenturyLink accedes to Intervenors' infeasible demands. In fact, Intervenors have all
5 but admitted their rather dubious objectives stating that they can justifiably use this
6 proceeding as "leverage," which they say is not a "disqualifying characteristic" in
7 American jurisprudence.¹ But the Commission's intervention rule expressly prohibits
8 intervenors from using such tactics:

9 If the Commission or Administrative Law Judge (ALJ) finds the petitioner
10 has sufficient interest in the proceeding and the petitioner's appearance
11 and participation will not unreasonably broaden the issues, burden the
12 record, or unreasonably delay the proceeding, the Commission or ALJ will
13 grant the petition. The Commission or ALJ may impose appropriate
14 conditions upon any intervenor's participation in the proceeding.²

15 The Commission's order granting the Intervenors' petition and limiting the issues
16 Intervenors can properly address is entirely consistent with the rule. Individual
17 complaints about service quality, like the issues that Intervenors seek to raise, are not the
18 appropriate subjects of a merger proceeding. Under the Commission's Rules, intervention
19 cannot practically or legally be granted to every interested person who has a remotely
20 cognizable dispute with a party to a docket. If intervention were allowed on such a basis,
21 the Commission would see private and public interests of all kinds seeking to intervene in
22 any docket where they might gain some "leverage" to get what they want. Make no
23 mistake, sophisticated parties like the Intervenors understand the critical importance of
24 this case to CenturyLink and Qwest and that is precisely why they have chosen this forum,

25 ¹ See *Intervenors' Response to CenturyLink's Opposition to Petition to Intervene*, at p. 2; See also
ALJ Ruling on Intervenors' Petition to Intervene ("Intervention Ruling"), at p. 3.

² OAR 860-012-0001 (emphasis added).

1 rather than appropriately bringing their dispute before the Commission in the form of a
2 complaint or some other request for relief.

3 Moreover, as noted in the *Intervention Ruling*, the ALJ in the Embarq-CenturyTel
4 merger entered a similar order granting, with conditions, the intervention of Lincoln City.
5 In the final order approving that merger, the Commission specifically acknowledged the
6 ALJ's ruling:

7 By ALJ ruling of March 12, 2009, the Lincoln City intervention was granted
8 in part and denied in part. In that Ruling, the ALJ concluded that Lincoln
9 City had an interest in seeing that the proposed merger would not harm
10 the financial ability of Embarq to serve its customers, and was therefore
11 granted party status.³

12 The result should be no different in this case. And having sat on their rights, by their own
13 account for nearly 2 years now,⁴ they should not be rewarded with an opportunity to
14 unreasonably delay the schedule and burden the record in this proceeding with issues that
15 they should have attempted to address in another more appropriate and lawful forum.

16 Moreover, Intervenors have not exercised their rights diligently in this case. They
17 have not conducted any discovery on the predominately factual issues for which they seek
18 review and did not attend a recent settlement conference in this matter (for which
19 telephone conferencing was available) where broader issues related to service quality and
20 reliability were discussed. Substantial delay would result if the Commission were to
21 entertain the Intervenor's Motion and indulge the Intervenors interest in a review of the
22 issues excluded in the *Intervention Ruling*. Certifying the issues to the Commission would
23 create substantial delay and going a step further to include the issues in the case would

24 ³ *In the Matter of Embarq Corp. and CenturyTel, Inc. Joint Application for Approval of Merger*,
Docket No. UM 1416, Order No. 09-169 (May 11, 2009).

25 ⁴ *See Petition to Intervene of Lincoln City*, Docket No. UM 1416, at p. 2, alleging issues with
E911 during December of 2008.


1 require substantial additional proceedings, factual findings, legal briefing, and therefore
2 even more delay and prejudice to the Parties.

3 CenturyLink and Qwest assert that the questions that Intervenors ask the ALJ to
4 certify to the Commission are soundly addressed in the *Intervention Ruling*, have a firm
5 basis in Oregon law, and need not be reviewed directly by the Commission. The grounds
6 for the limitations on Intervenors' participation in this docket are rational and appropriate
7 and the Intervenors have other ways in which to have their complaint heard.

8 Respectfully submitted this 17th day of September 2010.

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11
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CERTIFICATE OF SERVICE

UM 1484

I hereby certify that on the 17th day of September, 2010, I served the foregoing CENTURYLINK AND QWEST'S RESPONSE TO MOTION OF INTERVENORS TO CERTIFY QUESTIONS TO THE COMMISSION in the above entitled docket on the following persons via e-mail and via U.S. Mail (on September 20th) by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 17th day of September, 2010.

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(w) denotes waiver of paper service

* denotes signed Protective Order No. 10-192

** denotes signed Protective Order Nos. 10-192 and 10-291