

HOLBROOK & SEIFERT LLC  
Attorneys at Law

P.O. Box 2087 Newport OR 97365

Phone (541) 265-2080 Fax (541) 265-2131

Douglas R. Holbrook

Ronald H. Seifert

August 12, 2010

Public Utility Commission for Oregon  
Attn: Filing Center  
PO Box 2148  
Salem, OR 97308-2148

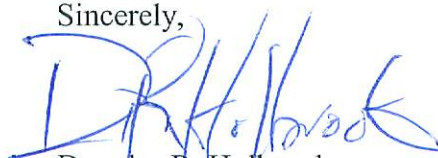
RE: UM 1484 CenturyLink/Qwest - Response to CenturyLink's Opposition to Petition

Dear Francis:

I enclose the original and three copies of a response by the joint petitioners to CenturyLink's opposition to the amended joint petition of Lincoln City, Lincoln and Tillamook Counties.

Thank you for your attention.

Sincerely,



Douglas R. Holbrook

cc: Service List

[100812 ltr to PUC.wpd]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1484

In the Matter of	)	
	)	RESPONSE TO
CENTURYLINK, INC.	)	CENTURYLINK'S
	)	OPPOSITION TO PETITION
Application for merger between CenturyTel,	)	TO INTERVENE
Inc. and Qwest Communications International,	)	
Inc.	)	

CenturyLink's opposition to the joint petition to intervene by Lincoln City, Lincoln County, and Tillamook County should not be well taken and these intervenors should be granted full party status.

CenturyLink argues these interested governments' intervention will cause unreasonable delay, unreasonably broaden the issues, and burden the record in violation of OAR 860-012-0001. The joint petition itself anticipates this boiler-plate argument, but the more specific arguments will be addressed here.

STANDING TO INTERVENE.

CenturyLink first argues that the petitioners have not stated any grounds to intervene. CenturyLink Opposition page 2. The only grounds necessary to intervene is that an intervenor have an interest in the proceedings. The Joint Petitioners are each governmental entities, which oversee the health, welfare and safety of thousands of Oregonians who are wireline subscribers under CenturyLink. Each of these governments operates a PSAP which is or will be served exclusively by CenturyLink's wireline network and serve the same rate payers. This is as sufficient an interest as any party representing a large body of rate payers.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

FORUM/OTHER VENUES ARGUMENT.

CenturyLink broadly states often that this is not a “proper” forum to address the condition of its network and its unreliable service. To the contrary, it is a perfect forum to address conditions of service affecting tens of thousands of wireline ratepayers, and CenturyLink provides no authority to the contrary. CenturyLink continues its argument in a footnote on page 2, stating

“That a venue is ‘effective’ does not mean that it is appropriate. Nonetheless, certainly at the very least one should be tried before resorting to a more convenient (and improper) venue in which Joint Petitioners can attempt to leverage the Applicants with minimal investment.”

This is specious argument. CenturyTel keeps repeating it is an “improper” venue, but the only reasons for its argument seems to be that it is too “convenient” for these governments, and gives leverage to the Joint Petitioners. These are not disqualifying characteristics for any known venue in American jurisprudence. Indeed, CenturyTel admits that the Commission has broad authority to address utility service issues, and then utterly fails to point to any authority that prevents the Commission from exercising that power in the context of a merger. <sup>1</sup>

On page 4 of its memo, CenturyLink continues the argument that any conditions the Joint Petitioners seek are beyond the scope of a merger application under ORS 759.375 and ORS 759.380, and therefore “improper.” Any action before the commission is also subject to ORS 756.040's direction to represent consumers and ensure adequate service. Judicial economy, if nothing else, is served by considering the proposed merger conditions now.

---

<sup>1</sup> Joint Petitioners predicted this argument in their petition, page 6, with some accuracy, but wrongly predicted CenturyLink would say it also was working on the reliability problem. Apparently it isn't, making the matter even more ripe for consideration under the public interest no harm standard.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Nowhere has it been held that ORS 759.375 and ORS 759.380 are the defining parameters of the Commission’s authority in a merger. In fact, the commission has addressed service issues in telecommunication mergers before. See *Verizon Communications Inc. and Frontier Communications Corporation* UM 1431 where a condition was imposed to make costly infrastructure improvements to address reliability concerns. Joint Petitioners are in no different territory than the Commission was in the *Verizon* matter.

CenturyLink argues unconvincingly that the Joint Petitioners actually have other venues to bring those very legitimate concerns and that therefore, they can’t appear in this one, or at least shouldn’t without trying the others first<sup>2</sup>. Oregon statutes do not appear to create an actionable case from the fact of an unreliable network on the ground. CenturyLink provides no example of such a case, nor of it’s suggested action directly before the PUC. Even if the statutes did create a separate right of action, that is not alone a basis for ejecting this petition because the PUC unquestionably has concurrent authority to consider all issues, including those under ORS 756.040 in a merger. The Oregon Court of Appeals has confirmed the broad power under ORS 756.040. See *Chase Gardens, Inc. v. Public Utility Commission*, 131 Or.App. 602, 607-08,886 P.2d 1087 (1994) (the court reviews PUC's construction of its delegated statutory authority in accordance with the general legislative policy underlying that authority, including general powers under ORS 756.040).

CenturyLink recognizes the PUC’s jurisdiction over service issues, but fails to explain why then, it is inappropriate to address it during the merger under the “no harm” and “public interest” standard. The Joint Petitioners’ evidence is expected to include that further dilution of management and technical staff and resources devoted to the merger itself will prevent

---

<sup>2</sup> If CentryLink wishes to hold this merger open while the petitioners try their suggested other venues, and potentially come back to where we are now, that would probably be acceptable

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

attention to the network reliability problem in the legacy Embarq system. Joint Petition pages 4-5. This is the adverse change the merger might bring. CenturyLink perhaps will take the position it was never intending to work on the network reliability problem, which may well be true, but that is a position contrary to what it has been promising the last year or more to Lincoln City’s manager. Without a merger condition directing infrastructure changes, CenturyLink may never build the necessary fiber ring for the former Embarq territory.

UNDULY BURDEN THE RECORD & UNDULY DELAY PROCEEDINGS.

CenturyLink makes more specious argument that the Joint Petition requires a full evidentiary hearing to determine the basis for factual allegations in the petition, and that therefore the record is burdened and delay will occur. CenturyLink opposition page 3. There simply is no such rigorous requirement for granting a petition to intervene. The standards are in OAR 860-012-0001 and make no requirement for a hearing or specific factual findings. CenturyLink’s argument is really about what evidence will be allowed, not whether the Joint Petitioners qualify as parties under the law. Its argument also underestimates the competency and control the ALJ can assert over the hearing, schedule and evidence to resolve the matter on the current time line. If there is something at the hearing that would unduly delay the proceedings, it would be the clear discretion of the ALJ at that time, to stop such conduct.

In this case, the ALJ has already ruled concerning those same objections to Parker Telecommunications’ petition to intervene in this same matter, stating that:

“No entity at the prehearing conference interposed any comment or objection to the Petitions except with respect to questions raised regarding the scope of matters to be explored in the hearing raised in the Petition of Parker. The ALJ indicated that the scope of the issues was an evidentiary question that did not go to the overall question of allowing participation in the proceeding by Parker as a party. Any questions regarding the scope of the issues sought to be raised by Parker could be addressed in the evidentiary phase.”

See Order/Conference Report UM 1484 dated June 10, 2010.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CenturyLink is really seeking an improper motion *in limine* before the evidentiary hearing. It is improper at the very least because its timing is before the Joint Petitioners are even a party. But even if CenturyLink’s argument was taken as substantive, proposed merger conditions related to service level issues should not bar party status. See for example UM 1431 *Verizon* (cited in the joint petition). In fact, in this case there are no less than 34 pending conditions that are being discussed in settlement. The joint petitioners are only interested in one of them, which has been described in great particularity in submissions to PUC staff and the parties by Parker Telecommunications, and endorsed by the Joint Petitioners.

LATE PETITION.

CenturyLink complains about the lateness of the petition on page 3 of its memo, but fails to identify how it is prejudiced in any way by the lateness where Joint Petitioners have stated they will abide by the current schedule. Its faux complaint is that the merger is being “held hostage.” How can it be held hostage when the schedule is unaffected? The real concern appears to be CenturyLink’s desire to leave the network in substandard condition for the years it needs to devote to the details of redrawing organizational charts and downsizing technicians and management in the name of corporate synergy and savings. Joint Petition pages 4-5. The Commission is charged with a “public benefit and no harm” standard<sup>3</sup>.” See Order 09-169. Conditions which are “in the public interest” and which mitigate harm, are within the PUC’s jurisdiction, and are all Joint Petitioners assert.

---

<sup>3</sup> Not the “no harm” standard CenturyLink misleadingly states on page 3 of its Opposition memo. The genesis of this merger standard is not well established, but it must encompass ORS 756.040's standards to be valid, particularly in ensuring adequate service in this case.

1 The PUC would be outside its jurisdiction to hold that governments cannot appear as  
2 parties representing the safety of their citizens.

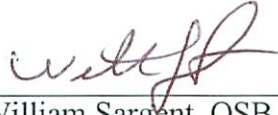
3 Dated this 12<sup>th</sup> day of August, 2010.

4 

5  
6 Douglas R. Holbrook OSB 872576  
7 Holbrook & Seifert LLC  
8 Special Counsel to Petitioner Lincoln City  
9 PO Box 2087  
10 Newport, Oregon 97365  
11 (541) 265-2080  
12 Fax (541) 265-2131  
13 [doug@lawbyhs.com](mailto:doug@lawbyhs.com)



14 William Hall, Chairman  
15 Lincoln County Commissioners  
16 225 W Olive Street  
17 Newport OR 97365  
18 (541) 265-4100  
19 Fax (541) 265-4176  
20 [WHall@co.lincoln.or.us](mailto:WHall@co.lincoln.or.us)



21 William Sargent, OSB 891678  
22 Tillamook County  
23 1134 Main Avenue  
24 Tillamook OR 97141  
25 (503) 842-4921  
26 Fax (503) 842-8862  
[wsargent@oregoncoast.com](mailto:wsargent@oregoncoast.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE  
UM 1484**

I certify that on this day I served the foregoing **RESPONSE TO CENTURYLINK'S  
OPPOSITION TO PETITION TO INTERVENE** in docket UM 1484 on each party listed  
in the UM 1484 PUC Service List by email and, where paper service is not waived, by U.S.  
mail, postage prepaid.

Michel Singer Nelson  
360Networks(USA) Inc  
370 Interlocken Blvd Ste 600  
Broomfield CO 80021-8015

Penny Stanley  
360Networks(USA) Inc  
370 Interlocken Blvd Ste 600  
Broomfield CO 80021-8015  
penny.stanley@360.net

Arthur A Butler  
Atter Wynne LLP  
601 Union Street, Ste 1501  
Seattle WA 98101-3981  
aab@aterwynne.com

Joel Paisner  
Atter Wynne LLP  
601 Union Street, Ste 1501  
Seattle WA 98101-2327  
jrp@aterwynne.com

Richard Stevens  
Central Telephone Inc  
PO Box 25  
Goldendale WA 98620  
rstevens@gorge.net

John Felz  
Century Farm Court  
5454 W 110<sup>th</sup> St KSOPKJ0502  
Overland Park KS 66211  
john.felz@centurylink.com

Rhonda Kent  
Centurylink  
805 Broadway 8<sup>th</sup> Floor  
Vancouver WA 98660  
ronda.kent@centurylink.com

William E Hendricks  
Centurylink, Inc.  
805 Broadway St  
Vancouver WA 98660-3277  
tre.hendricks@centurylink.com

Michael R Moore  
Charter Fiberlink OR - CCVII LLC  
12405 Powercourt Dr  
St Louis MO 63131  
michael.moore@chartercom.com

Gordon Feighner  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97208  
gordon@oregoncub.org

Robert Jenks  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97208  
bob@oregoncub.org



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

G. Catriona McCracken  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97208  
catriona@oregoncub.org

Raymond Myers  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97208  
ray@oregoncub.org

Kevin Elliott Parks  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97208  
kevin@oregoncub.org

Marsha Spellman  
Converge Communications  
10425 SW Hawthorne LN  
Portland OR 97225  
marsha@convergecomm.com

Frank G Patrick  
Corporate Lawyers PC  
PO Box 231119  
Portland OR 97281  
fgplawpc@hotmail.com

Katherine K. Mudge  
Covad Communications Co  
7000 N Mopac Expwy 2<sup>nd</sup> Fl  
Austin TX 78731  
kmudge@covad.com

K C Halm  
Davis Wright Tremaine LLP  
1919 Pennsylvania Ave NW 2<sup>nd</sup> Fl  
Washington DC 20006-3458  
kchalm@dwt.com

Gregory J. Kopta  
Davis Wright Tremaine LLP  
1201 Third Ave Ste 2200  
Seattle WA 98101-1688  
gregkopta@dwt.com

Mark P Trincherro  
Davis Wright Tremaine LLP  
1300 SW Fifth Ave Stee 2300  
Portland OR 97201-5682  
marktrincherro@dwt.com

Jason W Jones  
Department of Justice  
Regulated Utility & Business Section  
1162 Court Street NE  
Salem OR 97301-4096  
jason.w.jones@state.or.us

Edwin B Parker  
Economic Development Alliance  
PO Box 402  
Gleneden Beach OR 9788  
edparker@teleport.com

Judith Endejan  
Graham & Dunn PC  
2801 Alaskan Way, Suite 300  
Seattle WA 98121  
jendejan@grahamdunn.com

Gregory Merz  
Gray Plant Mooty  
500 IDS Center  
80 S Eighth St  
Minneapolis MN 55402  
gregory.merz@gpmlaw.com

Karen L. Clauson  
Integra Telcom Inc  
6160 Golden Hills Dr  
Golden Valley MN 55416-1020  
klcauson@integratelecom.com

Greg L. Rogers  
Level 3 Communications LLC  
1025 Eldorado Blvd  
Broomfield CO 80021  
greg.rogers@level3.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Adam Lowney  
McDowell Rackner & Gibson PC  
419 SW 11<sup>th</sup> Ave Ste 400  
Portland OR 97205  
adam@mcd-law.com

Wendy McIndoo  
McDowell Rackner & Gibson PC  
419 SW 11<sup>th</sup> Ave Ste 400  
Portland OR 97205  
wendy@mcd-law.com

Lisa F Rackner  
McDowell Rackner & Gibson PC  
419 SW 11<sup>th</sup> Ave Ste 400  
Portland OR 97205  
lisa@mcd-law.com

PriorityOne Telecommunications Inc  
Kelly Mutch  
PO Box 758  
La Grande OR 97850-6462  
managers@p1tel.com

Bryan Conway  
Public Utility Commission of Oregon  
PO Box 2148  
Salem OR 97308-2148  
bryan.conway@state.or.us

Michael Dougherty  
Public Utility Commission of Oregon  
PO Box 2148  
Salem OR 97308-2148  
michael.dougherty@state.or.us

Patrick L Phipps  
QSI Consulting Inc  
3504 Sundance Dr  
Springfield IL 62711

Alex M Duarte  
QWEST Corporation  
310 SW Park Ave 11<sup>th</sup> Fl  
Portland OR 97205-3715  
alex.duarte@qwest.com

Mark Reynolds  
QWEST Corporation  
1600 7<sup>th</sup> Ave Rm 3206  
Seattle WA 98191  
mark.reynolds3@qwest.com

Diane Browning  
Sprint Communications Co LP  
3450 Sprint PKWY  
Overland Park KS 66251  
diane.c.browning@sprint.com

Kenneth Schifman  
Sprint Communications Co LP  
3450 Sprint PKWY  
Overland Park KS 66251  
kenneth.schifman@sprint.com

Kristin L Jacobson  
Sprint Nextel  
201 Mission St Ste 1500  
San Francisco CA 94105  
kristin.l.jacobson@sprint.com

Dave Conn  
T-Mobile USA Inc  
12920 E 38<sup>th</sup> St  
Bellevue WA 98006  
dave.conn@t.-mobile.com

Lyndall Nipps  
TW Telecom of Oregon LLC  
9665 Granite Ridge Dr Ste 500  
San Diego CA 92123  
lyndall.nipps@twtelecom.com

Barbara Young  
United Telephone Company of the Northwest  
902 Wasco St ORHRA0305  
Hood River OR 97031  
barbara.c.young@centurylink.com

Adam Haas  
WSTC  
10425 SW Hawthorne LN  
Portland OR 97225  
adamhaas@convergecomm.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Rex M Knowles  
XO Communications Services Inc  
7050 Union Park Ave Ste 400  
Midvale UT 84047  
rexknowles@xo.com

DATED this 12<sup>th</sup> day of August, 2010.



Douglas R. Holbrook, OSB #872576  
Holbrook & Seifert LLC  
PO Box 2087  
Newport, OR 97365  
T 541-265-2080 F541-265-2131  
doug@lawbyhs.com

Holbrook & Seifert LLC  
Attorneys at Law  
PO Box 2087  
Newport, OR 97365  
Telephone (541) 265-2080 Facsimile: (541) 265-2131  
doug@lawbyhs.com