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3 **BEFORE THE PUBLIC UTILITY COMMISSION**  
4 **OF OREGON**  
5 **UM 1484**  
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8 In the Matter of:  
9 **CENTURLINK, INC.**

**NPCC REPLY TO QWEST  
OBJECTION TO PETITION TO  
INTERVENE**

10 Application for an Order to Approve  
11 the  
12 Indirect Transfer of Control of  
13 QWEST CORPORATION

14 TO: Oregon Public Utility Commission

15 The NPCC respectfully Replies to the Objection by Qwest to the NPCC Petition to  
16 Intervene. This Reply is supported by the Declaration of Frank G. Patrick attorney for  
17 the Petitioner.

18 **REPLY TO TIMELINESS**

19 The claims of untimely filing of the Petition is specious for two reasons: First the  
20 cutoff is an administrative deadline and not one of substantive impact. There is no party  
21 prejudiced by the petition being late by two days. If Qwest could show some prejudice  
22 that would be a different matter, but in fact there is no prejudice to anyone by the  
23 Petition being granted.

24 The time for filing an intervention was in fact shorter than usual I have been  
25 informed. In the process of seeking to determine when the merger issue was going to be  
26 brought to the PUC, counsel herein had not only searched for the creation of what he

1 now knows to be UM 1484, but did not find it. Counsel called not less than twice staff  
2 and on the day of the filing of the Petition was assured by staff that there would be  
3 plenty of time to file the Petition. The request for the merger application details could  
4 not be immediately found by the Staff person at the PUC. It took not less than 5 minutes  
5 for her to find the Proceeding and then reported no such cut off.

6 In the prior month or more to the institution of UM 1484, Counsel had in fact  
7 discussed the anticipated procedure with an attorney for the PUC Staff. He also assured  
8 me that there would be more than adequate time to file a Petition to Intervene. Even  
9 after learning of the cutoff counsel was assured that it was a ministerial and not a  
10 substantive action which would not be a bar to the filing.

## 11 II. SUFFICIENT INTEREST IN THE PROCEEDING

12 Qwest focuses on the clear disclosure of the interest of the NPCC, but ignores why  
13 that disclosure in the Petition was made. It was made to show that this organization was  
14 the only one which represented the Payphone Service Providers in Oregon. The  
15 operation of its member's payphones is one of the greatest services to the poorest of the  
16 residents of Oregon. People who use payphones use them because they have no other  
17 option. The impact of any changes in the availability of the PAL services to the PSPs  
18 would have a potentially devastating effect on the persons, the public at large, who most  
19 need a payphone. There is no group in Oregon that is actually looking out for those  
20 users however marginal Qwest may find them.

21  
22 The telecommunications ACT of 1996 expressly was enacted by Congress to  
23 protect the PSPs who serve those users. It cannot be a disqualifying disclosure that the  
24 NPCC intends to assure the availability of PAL service and PSP operation of the  
25 payphones. The experience that the NPCC has over the last eleven years is the best  
26 indication of not only its qualification to be a watch guard but is also evidence that it not

1 only has a stake in the merger and the impact that it will have on the future service and  
2 policies of the surviving company, but also the incentive to monitor the proceeding to  
3 keep the PUC apprised of the future impact that information may reveal to substantiate  
4 and prove to be helpful to the PUC in looking out for the disenfranchised residents who  
5 do not have the luxury of a cell phone or even home phone service.

6 The position of Qwest belies the very concerns that the NPCC has, Centurylink and  
7 Qwest are motivated by profits and a rapid approval of the acquisition. Qwest history of  
8 poor service dating to 1995 when its AFOR was terminated by the PUC for service  
9 problems is more than enough to justify petition so that the PUC has someone who are  
10 motivated and knowledgeable to look out for that part of the ratepayers, whether they  
11 be residential or a PSP, who need the availability of a payphone.

### 12 **III. BROADENING OF THE ISSUES**

13 Qwest's objection assumes two things that should be patently self serving. First  
14 that the PUC will not be able to control its management of the proceedings. For Qwest to  
15 make that suggestion simply ignores the competence of the PUC. There is nothing in the  
16 allegation that the NPCC intervention could broaden the issues or delay the proceedings.  
17 If there is something that would delay the proceedings it would be in the clear discretion  
18 fo the PUC to stop such conduct. If however the NPCC were to raise an issue that the  
19 bright light of scrutiny by the PUC would dictate inquiry, then that is exactly what the  
20 proceedings are instituted to provide, scrutiny.

22 Qwest's pitch is based on a claim that it is the NPCC that has been litigating for  
23 many years at the PUC, but in fact it was the failure of Qwest to comply with Federal law,  
24 and its ability to persuade the PUC to approve of unlawful rates in 2001 that has been  
25 the source of the long standing litigation. Qwest has been the transgressor by failing to  
26 comply with Federal law which the Oregon Court of Appeals clearly determined by its

1 finding that the tariffs proposed in PUC order 01-810 were unlawful and remanded to  
2 the PUC for corrective action. That it took from 1996 to 2007 to get Qwest to stop  
3 seeking to continue its illegal practice is a brush that tars Qwest not the NPCC. The NPCC  
4 was correct both legally and morally. The interest of the public was served by its  
5 diligent and legally vindicated behavior. That Qwest is continuing to attempt to avoid  
6 refunding unlawfully charged billings, which was judicially determined indicates that its  
7 motives to exclude the NPCC are not pure in heart, but rather are a pattern of seeking to  
8 avoid accountability for its conduct.

9 The conduct by Qwest in its protraction of the UT 125 with respect to the  
10 payphones is evidence of the same bad conduct on the part of Qwest which it seeks to  
11 blame the NPCC for. It was not the NPCC which overcharged and kept the funds but  
12 Qwest. If the PUC is afraid that it cannot manage the NPCC then certainly Qwest is the  
13 more formidable force about which it should be concerned.

#### 14 CONCLUSION

15 The NPCC seeks to know how the PAL service is going to be affected. How the public is  
16 going to continue to have access to the payphone. It is not motivated by another venue  
17 to seek retribution, it has that. In addition to the motion to dismiss which is pending so  
18 also is the NPCC motion for summary judgment on the refunds not yet paid. Litigation is  
19 a two party line, both parties are speaking about their relative rights. The PUC should  
20 not be afraid of that communication.

21 The NPCC Petition should be allowed.

22 DATED: July 22, 2010

23 /S/

24 \_\_\_\_\_  
25 FRANK G. PATRICK, OSB 76022  
26 Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, the undersigned below, hereby certify that I served the foregoing Reply to Qwest Objection For The Northwest Public Communications Council on: C on the following by mail and electronic service of those waiving as follows: by the following indicated method or methods:

    X     by mailing & emailing ( as indicated below) a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the party or its attorney as shown below, the last known office address of such party, and deposited with the United States Postal Service at Portland, Oregon, and by electronic mail on the date set forth below;

And Certify that I did electronically file same with the PUC Filing Center, with a hard copy to PUC, Filing Center, 550 Capitol Street NE, Ste 215, PO Box 2148, Salem, OR 97308-2148.

Charles L. Best, Esq. (**via U.S. Mail**)  
1631 NE Broadway, Suite 538  
Portland, OR 97232-1425  
chuck.charlesbest.com

William E. Hendricks, III  
CenturyLink, Inc.  
805 Broadway Street  
Vancouver, WA 98660-3277  
tre.hendricks@centurylink.com

Gordon Freighner, Energy Analyst  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 308  
Portland, OR 97205  
gordon@oregoncub.org

Robert Jenks, Exec. Dir. (**via U.S. Mail**)  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 308  
Portland, OR 97205  
bob@oregoncub.org

G. Catriona McCracken (**via U.S. Mail**)  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 308  
Portland, OR 97205  
catriona@oregoncub.org

Raymond Myers, Esq. (**via U.S. Mail**)  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 308  
Portland, OR 97205  
ray@oregoncub.org

1 Kevin Elliott Parks (**via U.S. Mail**)  
Citizens' Utility Board of Oregon  
2 610 SW Broadway, Suite 308  
Portland, OR 97205  
3 kevin@oregoncub.org

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

7 Michael Dougherty  
Oregon Public Utility Commission  
8 P.O. Box 2148  
Salem, OR 97308-2148  
9 michael.dougherty@state.or.us

10 Alex M. Duarte (**via U.S. Mail**)  
Qwest Corporation  
11 421 SW Park Ave. 11<sup>th</sup> Floor  
Portland, OR 97205  
12 [alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

13 Dated July 22, 2010

14 /s/  
FRANK G. PATRICK, OSB 760228

15 by the following indicated method or methods:

16   X   by mailing & emailing (as indicated above) a full, true, and correct copy thereof in a  
sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-  
17 known office address of the attorney, and deposited with the United States Postal Service at  
Portland, Oregon, and by electronic mail on the date set forth below;

18 \_\_\_\_\_ by sending full, true and correct copies thereof via overnight courier in sealed,  
19 prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of  
the attorneys, on the date set forth below;

20 \_\_\_\_\_ by handing/delivering true and correct copies thereof to the attorney or one of the  
21 clerks at the above address, on the date set forth below;

22 And Certify that I did electronically file same with the PUC Filing Center, with a hard copy to  
23 PUC, Filing Center, 550 Capitol Street NE, Ste 215, PO Box 2148, Salem, OR 97308-2148.

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FRANK G. PATRICK, OSB 76022

26 Attorney for The Northwest Public Communications Council

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INTERVENE**

**Declaration of Frank Patrick in  
Support of Reply**

14 TO: Oregon Public Utility Commission

15 I Frank G. Patrick, do declare and say:

- 16 1. I am counsel for the Petitioner, NPCC in the pending matter.  
17 2. The statements regarding the inquiry and responses from PUC staff are as they were made to the

18 Declarant which relied thereon.

19 3. There is no indication that the statements were made other than in good faith, they were simply  
20 inaccurate.

21 "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I  
22 understand it is made for use as evidence in a PUC (court) proceeding and is subject to penalty for perjury."

23 Dated: July 22, 2010

/S/ \_\_\_\_\_

24 FRANK G. PATRICK, OSB 76022  
25 Attorney for Complainants  
26

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4 CERTIFICATE OF SERVICE

5 I, the undersigned below, hereby certify that I served the foregoing Declaration in  
6 Support of Reply to Qwest Objection For The Northwest Public Communications Council  
7 on:

8 C on the following by mail and electronic service of those waiving as follows:  
9 by the following indicated method or methods:

10  X  by mailing & emailing ( as indicated below) a full, true, and correct copy thereof in  
11 a sealed, first-class postage-prepaid envelope, addressed to the party or its attorney as shown below,  
12 the last known office address of such party, and deposited with the United States Postal Service at  
13 Portland, Oregon, and by electronic mail on the date set forth below;

14 And Certify that I did electronically file same with the PUC Filing Center, with a hard copy to  
15 PUC, Filing Center, 550 Capitol Street NE, Ste 215, PO Box 2148, Salem, OR 97308-2148.

16 Charles L. Best, Esq. (via U.S. Mail)  
17 1631 NE Broadway, Suite 538  
18 Portland, OR 97232-1425  
19 chuck.charlesbest.com

20 William E. Hendricks, III  
21 CenturyLink, Inc.  
22 805 Broadway Street  
23 Vancouver, WA 98660-3277  
24 tre.hendricks@centurylink.com

25 Gordon Freighner, Energy Analyst  
26 Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 308  
Portland, OR 97205  
gordon@oregoncub.org

27 Robert Jenks, Exec. Dir. (via U.S. Mail)  
28 Citizens' Utility Board of Oregon  
29 610 SW Broadway, Suite 308  
30 Portland, OR 97205  
31 bob@oregoncub.org

32 G. Catriona McCracken (via U.S. Mail)  
33 Citizens' Utility Board of Oregon  
34 610 SW Broadway, Suite 308  
35 Portland, OR 97205  
36 catriona@oregoncub.org

37 Raymond Myers, Esq. (via U.S. Mail)  
38 Citizens' Utility Board of Oregon  
39 610 SW Broadway, Suite 308  
40 Portland, OR 97205

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1 ray@oregoncub.org

2 Kevin Elliott Parks (**via U.S. Mail**)  
3 Citizens' Utility Board of Oregon  
4 610 SW Broadway, Suite 308  
5 Portland, OR 97205  
6 kevin@oregoncub.org

7 Jason W. Jones, Asst. AG  
8 Department of Justice  
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10 1162 Court Street, NE  
11 Salem, OR 97301-4096  
12 jason.w.jones@state.or.us

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14 Oregon Public Utility Commission  
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16 Salem, OR 97308-2148  
17 michael.dougherty@state.or.us

18 Alex M. Duarte (**via U.S. Mail**)  
19 Qwest Corporation  
20 421 SW Park Ave. 11<sup>th</sup> Floor  
21 Portland, OR 97205  
22 [alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

23 Dated July 22, 2010

24 /s/ \_\_\_\_\_  
25 FRANK G. PATRICK, OSB 760228

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1 FRANK G. PATRICK, OSB 76022  
2 Attorney for The Northwest Public Communications Council

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