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Douglas R. Holbrook

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September 23, 2010

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

RE: UM 1484 CenturyLink/Qwest - Intervenors Reply to Response

Dear Filing Center:

I enclose the original and one copy of Intervenors Reply To Response to Motion to Certify Questions being submitted in this matter on behalf of the City of Lincoln City, Lincoln County and Tillamook County.

Thank you for your attention. If you have any questions or concerns, please feel free to contact me.

Sincerely,



Douglas R. Holbrook

cc: Service List

[100923 ltr to PUC.wpd]

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4 **BEFORE THE PUBLIC UTILITY COMMISSION**
5 **OF OREGON**

6 UM 1484

7 In the Matter of)
8 CENTURYLINK, INC.) REPLY TO RESPONSE TO
9 Application for merger between CenturyTel,) MOTION TO CERTIFY
10 Inc. and Qwest Communications International,) QUESTIONS
Inc.)

11 CenturyLink & Qwest's ("Companies") response to the joint Intervenors, City of
12 Lincoln City, Lincoln County and Tillamook County is wide of the mark.

13 The legal standard for determining the Intervenors' motion is OAR 860-014-0091:

14 (1) A ruling of the Administrative Law Judge (ALJ) may not be
15 appealed during the proceeding except where the ALJ certifies the
16 question to the Commission pursuant to OAR 860-012-0035(1)(i),
upon a finding that the ruling:

17 (a) May result in substantial detriment to the public
interest or undue prejudice to any party; or

18 (b) Denies or terminates any person's participation.

19 (2) A request for certification of a ruling of the ALJ must be filed
20 within ten days of the date of service of the ruling, or the date of the
oral ruling.

21 The Companies' response does not address this standard, but instead creates a new
22 one. The Companies respond to the motion by asserting their new legal standard, that the
23 motion "will delay these proceedings and burden the record." Response, page 1. The
24 Companies' assertions of delay and burdening the record are made without offering any
25 supporting evidence. Neither delay nor burdening the record are part of the legal criteria for
26 deciding this motion.

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However, even if delay and burdening the record were part of the criteria, there is no evidence the Commission would not act diligently if these important questions were certified to it. The Commission surely understands the Companies' desire to keep the merger on the original schedule. But the Companies surely know this is a very large telecommunications merger for Oregon, and its varied and complicated issues are not significantly more complicated by service quality/safety issues nor by certifying a central legal question to the Commission. If the Companies truly believed the Commission did not have jurisdiction over service quality and safety issues in a merger, they could save their argument for the Commission and let the final arbiter(s) of this issue decide. It should not go unnoticed that Sprint also has filed a motion to certify questions to the Commission. What the chain of events is really proving is that the Companies may have an unrealistic schedule in mind.

The Companies response also argues that the legal issues are "misplaced" and "beyond the scope of this case." Response, page 1. That may be their opinion, but whether the legal questions are beyond the scope of this case has not been finally determined. Intervenors believe the Court of Appeals has likely addressed the fundamental question in *Chase Gardens, Inc. v. Public Utility Commission*, 131 Or. App 602, 607-08. 886 P2d 1087 (1994). Intervenors are asking the Commission to decide.

The Companies response then turns to OAR 860-012-001 regarding standards for intervention. Response, page 2. The Companies response cites the wrong law for the motion, and their argument begs the question. If ORS 756.040 requires the Commission to consider the public interest and therefore public safety in its proceedings (including a merger), to raise this issue does not "unreasonably" broaden the issues because the public interest will be a fundamental part of the merger approval standards. The Companies' argument hinges on an supposed *a priori* knowledge that ORS 756.040 has nothing to do with telecommunications mergers.

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The Companies response imputes malicious intent to the Intervenor by taking words out of context from earlier filings. Response pages 2-3. The Intervenor's intent is to obtain a negotiated or ordered condition that will make the telephone service as reliable as more metropolitan areas of Oregon enjoy, with the added life and property safety of a working 911 system. The Intervenor is accustomed to being last on the list for resources on a declining phone system, but is entitled to the safety which basic reliable telephone service provides. These Intervenor should not be forced to spend scarce public funds litigating their right to have a functional 911 system for the basic safety of their citizens and visitors.

The Companies' response next asserts that "Individual complaints about service quality. . ." don't belong in this proceeding. Again, to make that statement the Companies must already know the answer to the very questions the motion is seeking to certify to the Commission. Of course, the fact the joint Intervenor represent approximately 69,000 Oregon citizens¹ is a far cry from an "individual" making a complaint². Instead, the number of affected persons only increases the scope and importance of the public interest at stake.

The Companies' response misrepresents the nature and content of the last settlement conference (September 8, 2010) in order to criticize Intervenor's diligence. Response, page 3. The September 8, 2010 settlement conference did not consider the Intervenor's retail/safety conditions. It would have unduly extended that conference for Intervenor to have attended to advocate their condition(s). The retail/safety conditions were discussed in

¹ See 2000 Census data at <http://factfinder.census.gov> for Lincoln and Tillamook Counties. This does not include the thousands of visitors and vacationers that flock to the coast.

² Indeed, the ALJ found the City of Lincoln City alone had approximately 7400 affected persons in the former case, *In the Matter of Embarq Corp. and CenturyTel, Inc. Joint Applications of Merger, Docket No. UM 1416, Ruling dated March 12, 2009.*

1 the August 3, 2010 conference and are to be discussed again at the upcoming September 27,
2 2010 conference, but were not even on the agenda for the September 8th conference.

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4 The Companies' response also claims the Intervenors have not acted diligently
5 because they have not been conducting discovery, and because they "sat on their rights . . . for
6 nearly 2 years now. . . ." Response page 2-3. The Intervenors right to proceed in this merger
7 is not affected by actions they might have taken at some other time, or the Companies view
8 on what discovery the Intervenor's should do to support their issues. In the
9 Embarq/CenturyTel merger, the ALJ recited CenturyTel's response to the petition, stating
10 "Century also noted that Embarq and the City are currently working on the issue and that the
11 legal entity serving Lincoln City will not change. . . ." ³ If that was a true statement by
12 CenturyTel's lawyers then, any supposed delay is explained. Indeed, the City has been
13 willing to help identify the problems in its geographic area, but nothing substantial has been
14 designed or repaired by any of the telephone entities so far. Of course, the Companies'
15 complaint could not equally apply to Intervenors other than the City in any case.

16 The Companies also respond that if the Commission were to agree with the
17 Intervenors, delay and prejudice to the parties would somehow inevitably result. Response
18 page 3-4. They provide no evidence to back that up. Indeed, the Intervenors have been
19 preparing as if the Commission will agree with them, and expects no need to delay the
20 October hearing dates.

21 Thus, the issue is whether the ALJ's ruling limiting the issues these Intervenors may
22 raise "may result in substantial detriment to the public interest or undue prejudice to any
23 party." The answer is clearly yes to both standards. If the Intervenors are not allowed to
24 address a quintessential public interest issue - safety of thousands of citizens - then what is
25 the point of either ORS 756.040 or OAR 860-014-0091. Not only are the restrictions on the

26 ³ *In the Matter of Embarq Corp. and CenturyTel, Inc. Joint Applications of Merger,*
Docket No. UM 1416, Ruling dated March 12, 2009, page 1.


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issues seriously detrimental to the public interest and prejudice the Intervenor, they are tantamount to denying participation.


These Intervenor do not oppose the merger *per se*, but only have in mind their constituents' interests to protect the safety of lives and property. If the PUC has the jurisdiction and authority in a merger to order upgrades to broadband in a geographic area, it surely has the authority to consider phone service reliability in a merger. While Intervenor believe this issue has likely been settled by the Court of Appeals opinion they cited, it seems unaddressed in the Commission's standards so far.

In conclusion, the motion meets the legal standard found in found in OAR 860-014-0091, and the Companies' obfuscation by arguing other legal standards apply should be ignored. But even if the Companies' issues are relevant, they do not outweigh the public interest standard mandated by ORS 756.040 and incorporated into this OAR in this proceeding. Intervenor are not farcical parties trying to stop this merger, they are raising substantial life/safety issues and substantial legal issues for the Commission to determine in order to get this merger completed, but done correctly in both process and substance. The motion should be granted.


Dated this 23rd day of September, 2010.



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CERTIFICATE OF SERVICE
UM 1484

I certify that on September 23rd, 2010 I served copies of Reply to Response to Motion To Certify Questions filed on behalf of Intervenor City of Lincoln City, Lincoln County and Tillamook County 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.

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