



CenturyLink™

805 Broadway, 8th Floor
Vancouver, WA 98660

August 9, 2010

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Ste 215
Salem, Oregon 97301-2551

RE: UM-1484 – Application for Approval of Merger between CenturyTel,
Inc. and Qwest Communications International, Inc.

Dear Commission:

Enclosed for filing is an original and three copies of CenturyLink's Opposition to Amended Joint Petition to Intervene in Docket No. UM-1484.

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

Sincerely,

William E. Hendricks

Encl.

WEH/rk

Ph: 360-905-5949
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1
2 **BEFORE THE PUBLIC UTILITY COMMISSION OF**
3 **OREGON**

4 UM 1484

5
6 In the Matter of)
7 CENTURYTEL, INC.) OPPOSITION TO AMENDED JOINT
8 Application for an Order to Approve the) PETITION TO INTERVENE
9 Indirect Transfer of Control of QWEST)
10 CORPORATION)

11 **CENTURYLINK’S OPPOSITION TO**
12 **JOINT PETITION TO INTERVENE**

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14 CenturyLink, Inc. (“CenturyLink”) opposes the Amended Joint Petition to
15 Intervene of the City of Lincoln City (the “City”) and Lincoln and Tillamook Counties
16 (“Counties”, collectively, “Petitioners”) and urges the Commission to deny it. The
17 Petitioner’s intervention in this proceeding will likely cause unreasonable delay and will
18 unreasonably broaden the issues, burden the record, and unreasonably delay the
19 proceeding in violation of the OAR 860-012-0001.

20 **ARGUMENT**

21 Oregon Administrative Rule 860-012-0001 governs intervention and requires that:

22 If the Commission or Administrative Law Judge (ALJ) finds the petitioner has
23 sufficient interest in the proceeding and the petitioner's appearance and
24 participation will not unreasonably broaden the issues, burden the record, or
25 unreasonably delay the proceeding, the Commission or ALJ will grant the petition.
The Commission or ALJ may impose appropriate conditions upon any intervenor's
participation in the proceeding.

1 The Amended Petition should not be granted because, even though there could possibly
2 be grounds for Petitioners to intervene, they have not stated them. Moreover, there can be
3 no question that Petitioner’s participation will, if not by design then by a consequence of
4 the extraneous issues they wish to pursue, unreasonably broaden the issues, burden the
5 record, and unreasonably delay the proceeding.

6 The Petitioners allege as their primary interest for intervention their desire for the
7 Commission to impose as a condition to the merger, “a requirement that infrastructure
8 investments be made to provide redundant wireline service for affected customers in
9 Lincoln and Tillamook Counties, including Lincoln City.” *See* Amended Joint Petition, at
10 p. 3, lines 20-24. This is not the appropriate forum for the Petitioners to address concerns
11 regarding the condition of service in the area. If the Petitioners believe that CenturyLink
12 has violated a Commission rule or state law, they should seek redress in an appropriate
13 forum, such as, for example, a Commission complaint proceeding or a court complaint.
14 The Petitioner’s bald contention that “it has no other effective¹ venue” to address its
15 allegations is not credible considering it appears the Petitioners have not even tried to
16 assert its claims in any other manner. The Commission certainly has broad jurisdiction to
17 address utility service issues and if there is some harm the Petitioners believes they have
18 incurred, it could certainly also seek an equitable remedy under common law before a
19 court.²

20 The very specific service complaint the Petitioners seek to insert into this
21 proceeding is not proper in a merger case conducted under ORS 759.375 and .380, which

23 ¹ That a venue is not “effective” does not mean that it is not appropriate. Nonetheless, certainly at
24 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 a minimal investment.

25 ² *See e.g.*, ORS 756.040, ORS 759.455, and Chapter 860-21 OAR.

1 requires the application of a “no harm” standard.³ The Petitioner’s overreaching should
2 not be allowed, especially now when it has filed the petition badly missing the date set by
3 the Commission for intervention (by 38 days) and after the parties have already begun
4 substantial, meaningful negotiations.⁴ The timing and the overreaching nature of the
5 Amended Joint Petition demonstrate that it is nothing more than an attempt to hold as
6 hostage this merger transaction in order to exact a condition which the Petitioners fail to
7 describe with any clarity, and that they have not even attempted to address through
8 proper legal means.

9 In addition, the Petitioners inappropriately rely on unsubstantiated factual
10 allegations to support their petition. While CenturyLink generally denies those
11 allegations, they prove that the Petitioners seek to unreasonably expand the issues in the
12 case and do not support the petition. Even if the Commission were to lend any credence
13 to the factual allegations that the Petitioners rely on to support their attempt to broaden
14 the scope of this proceeding, the Commission would have to make complete factual
15 findings, after a full hearing, in order to grant the intervention. Thus, the Amended Joint
16 Petition is improper procedurally and would burden the record and cause unreasonable
17 delay.

18 ³ *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger*
19 *between the Two Companies and their Subsidiaries*, Docket No. UM 1416, Order No. 09-169 (2009); see
20 also *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint*
21 *Application for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the*
22 *Indirect Transfer of Control of Verizon Northwest Inc.*, Docket No. UM 1431, Order No 10-067 (2009); *In*
the Matter of Malheur Home Telephone Company Application for an Order Approving Transaction, and
Request for Expedited Consideration, Docket No. UM 1451, Order No. 09-483 (2009).

23 ⁴ Showing further disregard for the schedule set by the Commission in this proceeding, the
24 Petitioners filed an amendment to its petition more than a week after the initial filing and just one
25 day prior to the due date for response. To ensure the Commission can address the petition
expeditiously, and because the amendment does not appear to add much to the original,
CenturyLink files this response now.

1 As a final point, if the Commission grants intervention as it is set forth in the
2 Amended Joint Petition, it would set a precedent that would encourage in future
3 proceedings a cavalcade of *interested persons* seeking to extract conditions that are beyond
4 the scope of the Commission's jurisdiction, in the context of a proceeding held in
5 accordance with ORS 860.375 and .380. Every city, county, and any other entity with
6 grievances, valid or not, would come knocking at the Commission's door with a laundry
7 list of conditions for the Commission to impose. Requests for such particularized relief
8 outside the scope of the Commission's statutory responsibility should be rejected and left
9 to the appropriate forum so as not to unreasonably burden this proceeding.

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24 For the reasons set forth above, the Amended Joint Petition should be denied and
25 the Joint Applicants should be granted *interested person* status in the proceeding. However,

1 should the Commission decide to grant the intervention, CenturyLink urges it to limit
2 Petitioner's participation to the issues that are relevant to the Commission's no harm
3 standard, and to specifically exclude the particular service issues that the Joint Applicants
4 raise.

5 Respectfully submitted this 9th day of August 2010.

6
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CERTIFICATE OF SERVICE

Docket No. UM-1484

I certify that a true and correct copy of CenturyLink's Opposition to Amended Joint Petition to Intervene was served on the following parties via electronic and US mail where applicable:

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DATED this 9th day of August, 2010.

Rhonda Kent