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JUN 24 2009

June 23, 2009

Public Utility Commission of Oregon  
Administrative Hearing Division

Oregon Public Utility Commission  
Attn: Filing Center  
P.O. Box 2148  
Salem, OR 97308-2148

Re: Um 1431; Motion for an Order Declining Jurisdiction

Dear Commission,

Enclosed for filing are an original and three copies of Frontier Communications Corporation (Frontier) and Verizon Communications Inc.'s Motion for an Order Declining Jurisdiction over the indirect transfer of control of Verizon Northwest, Inc. to Frontier. If you have any questions regarding this filing, please don't hesitate to contact me.

Very truly yours,



Charles L. Best

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1431

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JUN 24 2009

Public Utility Commission of Oregon  
Administrative Hearing Division

In the Matter of )  
)  
VERIZON COMMUNICATIONS INC., )  
and FRONTIER COMMUNICATIONS )  
CORPORATION )  
)  
Joint Application for an Order Declining to )  
Assert Jurisdiction, or, in the )  
Alternative, to Approve the Indirect )  
Transfer of Control of )  
VERIZON NORTHWEST INC. )

**MOTION FOR AN ORDER  
DECLINING JURISDICTION**

Verizon Communications Inc. and Frontier Communications Corporation (collectively, “Applicants”) respectfully move that the Commission enter an order declining to assert jurisdiction over the proposed transaction that is the subject of this docket. As explained in the Application, the Applicants ask that the Commission revisit and not apply here the rationale used in Order No. 09-169 in UM 1416 (May 11, 2009) (“*CenturyTel Order*”) to assert jurisdiction over the CenturyTel/Embarq transaction. The rationale in the *CenturyTel Order* relied on two statutory provisions -- ORS 759.375 and 759.380 -- that the Commission had not used previously to assert jurisdiction over parent company telecommunications transactions. Based on the plain language used and principles of statutory construction, neither provision applies to this transaction.

1. The plain language of the statutes does not apply.

ORS 759.375(1) provides that a telecommunications utility doing business in Oregon shall not, without first obtaining Commission approval:

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other ... telecommunications utility.

The Verizon and Frontier entities that are “telecommunications utilities” in Oregon are Verizon Northwest Inc. (“Verizon Northwest”) and Citizens Telecommunications Company of Oregon (“Frontier Oregon”). These two entities will not be merged or consolidated by virtue of the transaction; each will remain a separate entity and continue to serve as a “telecommunication utility” in Oregon subject to Commission regulation. Indeed, the only real effect of the transaction will be that Verizon Northwest will undergo a name change and obtain a different ultimate parent company (Frontier Communications Corporation). Accordingly, with no merger or consolidation of the only relevant Verizon and Frontier “telecommunications utilities,” the terms of ORS 759.375(1) do not apply.

Turning to ORS 759.380(1), that section provides that, “[n]o telecommunications utility, shall directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes ... of any other ... telecommunications utility unless authorized by the ... Commission.” In this case, no stock, bonds or property of either telecommunications utility, Verizon Northwest or Frontier Oregon, will be acquired by or transferred to the other as part of the transaction. Thus, ORS 759.380(1) does not apply.

Given the clear statutory language, there is no need to “interpret that which has no need of interpretation.” *See State v. Young*, 74 Or. 399, 403, 145 P. 647, 649 (1915) (going on to state that “[i]t is only when the act in question is of doubtful or ambiguous meaning that the province of construction or interpretation begins.”). The Commission should decline to assert jurisdiction over the proposed transaction between Verizon and Frontier based on the plain language of ORS

759.375 and 759.380. Such a dismissal would be consistent with the Commission's treatment of previous parent company transactions involving telecommunications companies.

2. The statutory construction relied upon in the *CenturyTel Order* should be revisited.

Notwithstanding the plain language of the statutes and its previous practice with regard to transactions of this type, the Commission advanced novel interpretations of ORS 759.375 and 759.380 in the *CenturyTel Order* that should be revisited as to this transaction. The Commission's statutory interpretation in the *CenturyTel Order* focused on the wording "[b]y any means whatsoever, directly or indirectly" in ORS 759.375 and "directly or indirectly" in ORS 759.380. Relying on such wording, the Commission found that: (i) ORS 759.375 applied because the CenturyTel and Embarq telecommunications utilities in Oregon were ultimately being merged "through the stock swap of their respective parent holding companies" and (ii) ORS 759.380 applied because the "CenturyTel ILECs are 'indirectly' acquiring Embarq's ILEC's stock, bonds, or other utility property through the acquisition activities of its parent holding company." *CenturyTel Order* at 5-6.

The Commission should revisit that rationale because it conflicts with the statutory language. First, ORS 759.375 applies only if two Oregon telecommunications utilities *ultimately end up merged together*, regardless of the method utilized to accomplish that merger. Similarly, ORS 759.380 applies only if one Oregon telecommunications utility becomes the owner of the stocks or bonds or property of another Oregon telecommunications utility, regardless of how the telecommunications utility ends up with the stock or bonds or property of the other. But in this case, neither of the statutory triggers will occur: (i) Verizon Northwest and Frontier Oregon will *not* be merged after the transaction closes; they will remain separate entities, and (ii) neither

Verizon Northwest nor Frontier Oregon will end up with the “stocks or bonds or property” of the other as a result of this transaction.

It is not enough that Verizon Northwest and Frontier Oregon will ultimately, as a result of the transaction, have the same direct or indirect corporate parent. Had the legislature intended that the Commission possess jurisdiction over transactions involving parent company mergers or causing telecommunications utilities to become affiliates, it would have said as much. Indeed, when the legislature wants to address common ownership under the same corporate parent, it does so expressly.

For example, in the affiliated interest statute (ORS 759.390), the legislature included a specific definition of an affiliated interest as “[e]very corporation five percent or more of whose voting securities are owned by any person owning five percent or more of the voting securities of the telecommunications utility or by any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.” ORS 759.390(c). This language clearly captures operating companies that share the same parent. The legislature, however, chose *not* to use such language when describing the types of transactions over which the Commission has jurisdiction under ORS 759.375 and 759.380. The legislature’s use of a description in one statute but not another is presumed to be intentional. *See Emerald PUD v. Pacific Power & Light Co.*, 302 Or. 256, 269, 729 P.2d 552, 560 (1986) (quoting *Oregon Business Planning Council v. LCDC*, 290 Or. 741, 749, 626 P.2d 350 (1981) (“Ordinarily, when the legislature includes an express provision in one statute but omits such a provision in another statute, it may be inferred that such an omission was deliberate.”)).

In short, the legislature’s omission of transactions involving a common parent company from the list of transactions governed by ORS 759.375 and 759.380 ensures that the Commission

does not possess jurisdiction over a transaction solely because it will cause two telecommunications utility entities to become affiliated through the same ultimate corporate parent. Accordingly, the Commission does not have jurisdiction over the transaction by virtue of Verizon Northwest and Frontier Oregon ultimately sharing the same parent company.

And there are no other means under which ORS 759.375 and 759.380 would apply to the transaction, as it was described in the Application. Accordingly, the Applicants respectfully request that the Commission decline to assert jurisdiction over the transaction. If the Commission would prefer to reserve judgment until later in the docket to ensure that it fully understands the nature of the transaction for purposes of applying ORS 759.375 and 759.380, the Commission could withhold a ruling on this motion until that time.

Respectfully submitted this 23<sup>rd</sup> day of June, 2009.

VERIZON COMMUNICATIONS INC. and FRONTIER  
COMMUNICATIONS CORPORATION

By:  \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I certify that on June ~~23<sup>rd</sup>~~ 2009, I served the foregoing document upon all parties of record in Docket No.UM 1431 by email and for parties who have not waived paper service, by U.S. mail, postage prepaid.

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By:

A handwritten signature in black ink, appearing to read "Charles L. Best", written over a horizontal line.

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