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Douglas R. Holbrook

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September 2, 2010

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


RE: UM 1484 CenturyLink/Qwest
Intervenors' City of Lincoln City, Lincoln County and Tillamook County

Dear Filing Center:

I enclose the original and five copies of a Motion to Certify Questions to the Commission being submitted in this matter on behalf of the above-referenced Intervenors.

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

[100831 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.) MOTION TO CERTIFY
9 Application for merger between CenturyTel,) QUESTIONS TO
10 Inc. and Qwest Communications International,) COMMISSION
11 Inc.)
12)

13 Comes now Intervenors, City of Lincoln City, Lincoln County and Tillamook County
14 (“Intervenors”) pursuant to OAR 860-014-0091 and move for certification of the following
15 questions to the Public Utility Commission pursuant to the Administrative Law Judge’s
16 powers under OAR 860-012-0035(1)(i).

17 **Question 1:** Whether the Commission’s general jurisdiction, duties and powers
18 pursuant to ORS 756.040 authorize the Commission, in a merger
19 proceeding, to require adequate service at a reasonable price within
20 any portion of the merger parties’ service area which has inadequate
21 service?

22 **Question 2:** Whether pursuant to that broad authority and duty under ORS 756.040,
23 the Commission can condition the merger to require specific actions to
24 insure the provision of adequate services to Lincoln and Tillamook
25 Counties, and thereby direct financial, technical and managerial
26 resources to that service area?

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On page two of the Intervenor’s Response to CenturyLink’s Opposition to Petition to Intervene, the Intervenor argued that any action before the Commission is also subject to ORS 756.040, which directs the Commission to make use of its jurisdiction and powers to represent consumers to ensure adequate service. Because the statute extends the Commission’s jurisdiction to examining Intervenor’s questions related to adequate telecommunications utility services it necessarily includes the power to add merger conditions to address inadequate service.

Fundamentally, the ALJ’s Order relies on but characterizes the *Verizon/Frontier* Order in too limited a fashion. The Commission, in *Verizon/Frontier*, ordered a bench request asking those Applicants to explain why certain Verizon customers were excluded from being assured broadband services, and to provide estimates of costs to make improvements to certain wire centers. *Verizon/Frontier Order* at 15. Intervenor is asking for the same consideration here. CenturyLink needs to explain why certain CenturyLink customers are excluded from being assured adequate telephone service necessary to support an adequate E-911 as required by Oregon law (ORS 403.115). CenturyLink is free to provide estimates of the cost to make improvements to certain wire centers serving Lincoln and Tillamook County, just as the Commission required in *Verizon*. The similarities are striking, except basic telephone services are more important for communications infrastructure than broadband is for most communities.

Thus, a legacy Verizon area was ordered to provide/upgrade infrastructure to insure a **high level** broadband system in the *Verizon/Frontier* case, where Intervenor here seek an order to provide/upgrade infrastructure in the legacy Embarq area to insure **adequate** telephone service. Intervenor is left to ask at what point did broadband become more important to the Commission than basic telephone service allowing E-911? While it is a given that urban centers’ telephone service is redundant and reliable, that is not the case in many rural areas, including

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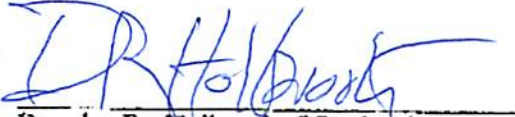
Lincoln and Tillamook Counties. While the Commission’s jurisdiction is not conditioned on the number of affected subscribers with inadequate service, if the problem is simply that the affected geographic area is somehow too small to meet the *Verizon/Frontier* standard for concern, the Commission must know the legacy Embarq territory served with a single fiber line is much larger than Lincoln and Tillamook Counties. The ALJ’s order and findings are incorrect on this issue, and *Verizon/Frontier* is in accord with the direction of ORS 756.040 and *Chase Gardens, Inc. v. Public Utility Commission*, 131 Or. App 602, 607-08. 886 P2d 1087 (1994) to protect consumer service interests.

The ALJ’s August 26, 2010 Order did not formally address ORS 756.040, held that this was an inappropriate venue for the Intervenors’ specific issues, and therefore excluded the Intervenors from presenting evidence on those issues. The Order meets the standards of OAR 860-014-0091 in that “. . .the ruling: (a) may result in substantial detriment to the public interest or undue prejudice to any party. . .” If Intervenors are prevented from providing evidence of the inadequacy of CenturyLink’s service and ask the Commission to order appropriate conditions in the merger hearing, the public interest will be detrimentally affected. The application of the Commission’s jurisdiction in all authorized matters, including adequate service, cannot be deemed to create delay or unduly burden the proceeding by expanding issues into legitimate areas of concern the Commission is mandated to watch over for the public.

Therefore it would be appropriate for the Administrative Law Judge to certify these questions to the Commission for consideration and disposition regarding its jurisdiction.

1 This motion is joined in by Lincoln County and Tillamook County, whose legal counsel
2 will affirm by separate signature pages.
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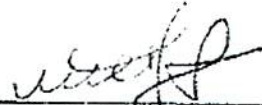
4 Dated this 2nd day of September, 2010.

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**CERTIFICATE OF SERVICE
UM 1484**

I certify that on September 2, 2010 I served copies of Motion to Certify Questions to Commission 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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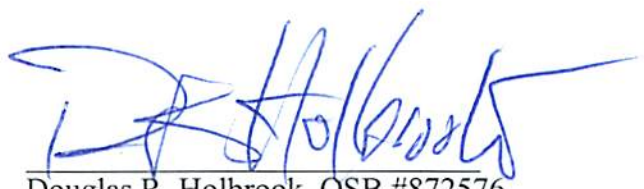
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DATED this 2nd day of September, 2010.



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