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February 1, 2011

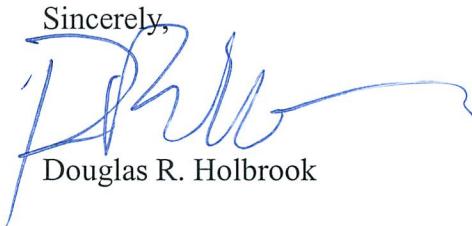
Public Utility Commission for Oregon
Attn: Filing Center
PO Box 2148
Salem OR 97308-2148

RE: UM 1484 CenturyLink/Qwest
Intervenors' City of Lincoln City, Lincoln County, Tillamook County & Parker
Telecommunications ("Coastal Intervenors")

Dear Filing Center:

I enclose the original and five copies of the Coastal Intervenor's Closing Rebuttal brief submitted post-hearing.

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

[110201 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.)
9 Application for merger between CenturyTel,)
10 Inc. and Qwest Communications International,)
11 Inc.)

COASTAL INTERVENORS'
CLOSING REBUTTAL BRIEF

11 **INTRODUCTION**

12 The Coastal Intervenors, consisting of Lincoln City, Parker Telecommunications,
13 Lincoln County and Tillamook County jointly submit this Closing Rebuttal Argument Brief
14 and incorporate herein their Objection to Stipulation, filed December 14, 2010, and the
15 condition language therein.

16 **ARGUMENT**

17 It seems obvious to point out that a problem has to be defined before the solution may
18 be formulated. However, the stipulation's Condition 26 fails to do that. See Coastal
19 Intervenor's Closing Brief.

20 Commission decisions must be supported by substantial evidence. *Citizens Utility*
21 *Board v. Public Utility Commission*, 128 Or. App. 650, 877 P.2d 116, rev. den 320 Or. 272
22 (1994). OAR 860-0012-0450.

23 The Applicants' brief first denies there is a problem (despite the overwhelming
24 evidence in the record to the contrary), and then trots out an argument already dismissed at
25 the hearing: that the provisions in the order granting intervenor status limits what the Coastal

1 Intervenors can ask in this merger¹. As Judge Arlow aptly pointed out at the hearing, because
2 the Applicants have agreed to Condition 26, the Coastal Intervenors may argue whether its
3 terms are adequate. It would be unfair to allow the applicants to agree to “specific direction
4 of resources or managerial decisions. . . with respect to the provision of particular services to
5 a particular area. . .” and silence the supposed beneficiaries of that merger condition from
6 challenging its sufficiency. Any party may file objections to a stipulation, and the Coastal
7 Intervenors have done that.

8 The Applicants complain that an adequate factual record could not be developed, yet
9 they agreed to the condition, and failed to rebut any of the Coastal Intervenors’ August, 2010
10 testimony which overwhelmingly establishes the problem and the solution. More importantly
11 it is Applicants and Staff’s burden to establish a factual basis for their stipulation.

12 Applicants next point to the unsupported and discredited testimony of Michael
13 Dougherty to support the Condition. See discussion in Coastal Intervenors’ Closing Brief. In
14 contrast, Dr. Edwin B. Parker’s testimony (Parker 100) states his qualifications as an expert
15 in rural telecommunications, his knowledge of the problem with the existing telephone
16 network serving the Coastal Intervenors’ geographic areas, and its solution. Neither
17 Applicants nor staff have attempted to rebut this expert testimony, but instead support a
18 condition that does not address the problem, or at the very least, they have failed to explain
19 how the condition will address the problem. This despite the Applicants having 100% of the
20 technical resources to do so, they have failed to present any evidence to support the condition
21 as it is written.

22 Applicants then rely upon Mr. Dougherty’s hearsay statement that the Office of
23 Emergency Management (OEM) supports the condition as written. Besides being hearsay,
24

25
26 ¹ CenturyLink and Quest’s Opening Post-Hearing Brief (“Applicants’ Post Hearing
Brief”) pages 44-46.

1 this record does not establish what qualifications the OEM has for advancing any opinion on
2 the technical solutions for the network problem. Thus, this is not substantial evidence.
3

4 Applicants are wrong to state that CUB “concurs that the conditions the Coastal
5 Intervenors propose are unnecessary.” (Applicants’ Opening Post Hearing Brief, page 46.)
6 There is no position taken in CUB’s brief on this condition and CUB’s position is not
7 evidence the condition is adequate. In Gordon Feighner’s testimony, he noted the high rate of
8 outages and community isolation from lack of telecommunications access, and then stated,
9 “CUB thoroughly supports the upgrading of the telecommunications infrastructure in this part
10 of the state, either through a physical link between Newport and Lincoln City or some other
11 form of network redundancy.” CUB/100 Feighner/3.

12 The PUC Staff makes most of the same arguments as did Applicants. Staff
13 incorrectly states the limit of the Commission’s jurisdiction to “doing no harm.” Opening
14 Brief by Staff, page 3. The Commission’s jurisdiction per statute is also to ensure adequate
15 service. See ORS 756.040(1).

16 After correctly summarizing the Coastal Intervenor’s objections and recommended
17 added language for the condition, Staff baldly states at page 23:

18 Staff does not recommend that the Commission impose these
19 conditions. The construction of a physical link addresses concerns
20 regarding lack of network redundancy. To the extent that stakeholders
 want additional protection, it is not necessarily appropriate to impose
 those costs on the Merged Company. CLECS in the affected areas are
 also able to address the redundancy issues.

21 Staff’s argument presents no evidence rebutting the overwhelming evidence in Parker
22 100-400. Staff’s reference to CLECS is mystifying, since the CLECS’ have no control over
23 the existing network infrastructure. This statement is not substantial evidence.

24 Staff’s brief goes on to discuss the Coastal Intervenors’ second condition, saying that
25 “...ISP operators can contract with the incumbent for Special Access services using the
26 physical facility required by stipulated condition 26.” This statement displays a lack of

1 understanding of the condition requested and does not constitute substantial evidence. The
2 requested condition would require Applicants to, whenever possible, enter into agreements to
3 route intrastate Internet traffic only in Oregon, rather than being routed through Seattle and
4 California before traveling back to Oregon. The condition is supported in Parker 100.
5

CONCLUSION

6 The Commission's decision must be based on substantial evidence. The condition as
7 written is not supported by substantial evidence. The substantial evidence is that Condition
8 26 is inadequate to address the network reliability in the Coastal Intervenor's geographic
9 area, and must be modified as the Coastal Intervenors recommend.
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11 The substantial evidence is that Parker Telecommunications' second condition
12 requiring intrastate Internet traffic remain in Oregon when possible, is reasonable, will
13 increase reliability and efficiency of Internet traffic to the benefit of all Oregon citizens and
14 businesses.

15 Dated this 1st day of February, 2011.

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4

5 **UM 1484**

6

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8 I certify that on this 1st day of February, 2011 I served the foregoing **Coastal Intervenors'**

9 **Closing Rebuttal Brief** in docket UM 1484 on each party listed in the UM 1484 PUC Service List

10 by email and, where paper service is not waived, by U.S. mail, postage prepaid.

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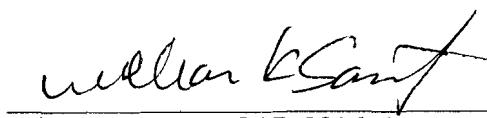
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I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1484 on the following named person(s) on the date indicated below by email and U.S. Mail addressed to said person(s) at his or her last known address(es) indicated below.

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