

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1484**

In the Matter of)	
)	CLOSING BRIEF OF THE
)	CITIZENS' UTILITY BOARD
CENTURYLINK, INC. Application for)	OF OREGON
Approval of Merger between CenturyTel,)	
Inc. and Qwest Communications)	
International, Inc.)	
_____)	

I. INTRODUCTION

Although disappointed by CenturyLink-Qwest's misstatement of CUB's position as to the need for the two additional conditions (Broadband and Most-Favored State)¹ in order for the transaction to meet the "in the public interest, no harm" standard of review, CUB none-the-less continues to support the merger as one that is capable of being "in the public interest, no harm" – but only with the imposition of the final two conditions argued for by CUB.² CUB's position has been made very clear throughout this proceeding. CUB joined the Stipulation filed on December 2, 2010, because it felt the appended conditions went a long way towards meeting the "in the public interest, no harm" standard of review. CUB, however, wrote separately on the need for the two additional conditions because it believed, and continues to believe, that in order for the merger to be fully compliant with the "in the public interest, no harm" standard the

¹ *CenturyLink and Qwest's Opening Post-Hearing Brief* at 47 and especially footnote 45.

² UM 1484/CUB/100/Feighner/3 at lines 15 to 21 and at 4 lines 1-2. *Reply Testimony of the Citizens' Utility Board.*

Commission must impose the additional Broadband Trouble Report Complaint Reporting condition and the Most-Favored State condition.³

CUB writes again both to support the previously filed Stipulation and to add emphasis to its prior request for the imposition of the two additional, necessary conditions:

- a) A Trouble Report Complaint Reporting condition for DSL broadband, and
- b) A Most-Favored State condition.

II. ARGUMENT

1. The Standard of Review

It appears that there is general consensus on the standard of review for this merger transaction. Telecommunications companies that wish to merge operations in Oregon are subject to the provisions of ORS 759.375 and ORS 759.380, which have been interpreted to require the meeting of an “in the public interest, no harm” standard.⁴ No net benefit need be found in the telecom arena, but the telecom arena still requires that the merger cause “no harm.”⁵ As noted above, CUB believes that with the imposition of the conditions in the Stipulation and Staff’s requested conditions on Broadband Trouble Report Compliant Reporting and Most-Favored State issues the CenturyLink-Qwest merger transaction will meet the standard of “in the public interest, no harm.”

³ UM 1484/CUB/200/Feighner. *Testimony in Support of Imposition of Most-Favored State Commitment Condition and Broadband Trouble Report Complaint Reporting Condition of the Citizens’ Utility Board of Oregon.*

⁴ See for example, (UM 1416 In the Matter of EMBARQ CORPORATION and CENTURYTEL, INC. Order No. 09-169 at 3; UM 1431 Verizon Communications Inc. And Frontier Communications Corporation Order No. 10-067 at 6.

⁵ UM 1461 In the Matter of EMBARQ Corporation and CenturyTel, Inc. Order No. 09-169 at 3, Fn. 5.

2. The non-stipulating parties arguments for additional conditions.

As stated in CUB’s Opening Brief, it appears that those opposing the CUB, Staff, CenturyLink, and Qwest Stipulation do so not because they dispute the need for any of the conditions that CUB and Staff have requested, and CenturyLink-Qwest has Stipulated to, or that Staff and CUB continue to seek but rather because they wish to see those conditions enhanced.⁶ CUB has stated, however, that it thinks that the enhanced language requested by the non-settling parties, in all of the additional conditions they are requesting, would then go beyond meeting the “in the public interest, no harm” standard and would amount to “icing on the cake”.⁷ Staff has taken a similar position to CUB:

Staff understands the concerns underlying the objections to the Stipulation. However, they are adequately addressed by the Stipulation. Additionally, Staff does not support several of the additional conditions listed above because they appear likely to confer benefits on certain entities, rather than ensuring that these entities are not harmed by the Transaction, or are unnecessary because the stipulated conditions provide adequate protection. The stipulated conditions are a more careful balance of the interests of CenturyLink, Qwest, and other entities and are designed to satisfy the statutory standard.⁸

CUB is not an expert in wholesale telecom issues and therefore relies heavily on Staff’s analysis of wholesale conditions. But, after careful review of Staff’s underlying analysis, CUB finds that it does agree with Staff’s Opening Brief assessment of the additional conditions sought by the non-stipulating parties. While CUB understands the other intervenors’ positions, CUB believes the conditions that CUB helped craft, and the two additional conditions that CUB continues to advocate for, will on their own, without the addition of further restrictions, meet the “in the public interest, no harm” standard. Any of the non-stipulating parties’ proposed additions seem to amount to a net benefit,

⁶ *Citizens’ Utility Board of Oregon’s Opening Brief* at 6.

⁷ *Citizens’ Utility Board of Oregon’s Opening Brief* at 6.

⁸ *Opening Brief by Staff of the Public Utility Commission of Oregon* at 11, lines 24-26 and at 12 lines 1-4.

and the telecom standard, whether for good or ill, requires only a finding of “in the public interest, no harm.”

3. CenturyLink-Qwest’s opposition to the Broadband Trouble Report Complaint Reporting Condition

CenturyLink-Qwest, in their overwhelming desire to avoid the two additional conditions advocated for by CUB and Staff, have misstated CUB’s position as to the need for this and the Most-Favored State condition. CUB believes that both the Broadband Trouble Report Complaint Reporting condition and the Most-Favored State condition are necessary in order for this merger transaction to meet the “in the public interest, no harm standard.” While the 53 conditions set forth in the Stipulation do go a long way to meeting that standard, alone they do not get there.

CenturyLink-Qwest continues to argue that the imposition of this condition would exceed the Commission’s jurisdiction. But the Commission’s jurisdiction extends to finding whether or not a merger transaction is “in the public interest”. The public interest in extending broadband is clear and has been clearly acknowledged by CenturyLink-Qwest through their acceptance of the underlying Broadband condition. If it is in the public interest to expand broadband access, then it is clearly in the public interest to monitor that expansion. Regardless of this fact, CUB agrees one hundred percent with the arguments put forth in Staff’s eloquent briefing on this matter:

Whether the Commission has jurisdiction to impose such a condition absent the merger is not an issue.

If the Commission adopts Staff’s recommendation, and conditions approval of the Application on CenturyLink[-Qwest]’s willingness to accede to the condition, CenturyLink[-Qwest] can choose whether it is willing to go forward with the merger notwithstanding the requirement that it file an annual report for five years regarding its DSL subscription in Oregon and any complaints it has received regarding its Oregon DSL service. In other words, the choice will be CenturyLink[-Qwest]’s as to

whether it wishes to proceed with the merger and operate in Oregon subject to reporting requirement, or not.⁹

CUB has already responded in its Opening Brief (in anticipation thereof) to all of the other arguments raised by CenturyLink-Qwest and does not believe that detailed elaboration is necessary. However, in summary, CUB supports Condition 14. CUB believes this condition is necessary for the Commission to effectively monitor CenturyLink-Qwest's commitment to increase broadband availability in Oregon.¹⁰ CUB believes it is within the Commission's domain to ensure that unregulated services provided by the merging companies are maintained during and after the merger in a manner that is also in the public interest and causes no harm.¹¹ CUB further believes that a Commission requirement for the merged companies to issue reports on the quality of broadband services is not an unduly burdensome request and should provide an incentive for the merged companies to continue to provide a quality product to Oregon customers.¹²

CUB respectfully requests that the Commission impose the requested Trouble Report Complaint Reporting condition upon CenturyLink-Qwest in this docket.

4. CenturyLink-Qwest's opposition to the Most-Favored State condition

Again CenturyLink-Qwest begin their arguments in opposition to the additional requested Most-Favored State condition by misstating CUB's position in regard to the need for this condition in order for the merger transaction to meet the "in the public interest, no harm" standard.¹³ CUB reiterates its position once more that only when the

⁹ *Opening Brief of Staff of the Public Utility Commission* at 6 lines 14-22.

¹⁰ But see, CTL/1100/Jones/2 lines 5-9.

¹¹ But see, *Id.* at lines 19-21.

¹² But see, *Id.* at lines 21-23 and at UM 1484/CUB/200/Feighner/5 lines 1-3.

¹³ *CenturyLink and Qwest's Opening Post-hearing Brief* at 50.

Commission imposes the final two requested conditions will the merger transaction meet the “in the public interest, no harm” standard.

CenturyLink-Qwest argues that the requested Most-Favored State condition is not a reasonable condition. The companies argue that “[a] condition or commitment in one jurisdiction may not be a necessary or even appropriate condition for adoption in Oregon.”¹⁴ This is true. However, as noted by Staff:

Because the MFS condition is designed to only capture conditions in other states that address harms present in Oregon but not identified by Oregon parties in this proceeding, or that more effectively address harms in Oregon than the conditions stipulated to by Oregon parties, CenturyLink’s arguments opposing the condition are misplaced.

Qwest, as anticipated, also argues that, “MFS conditions effectively serve as disincentives to negotiating a settlement”¹⁵ But, as noted in CUB’s Opening Brief, CenturyLink-Qwest have been on notice since August 2010 that several intervening parties in Oregon would seek a Most-Favored State provision. And, on September 17, 2010, CenturyLink-Qwest received an order from the Louisiana Public Service Commission containing provisions similar to, but not called, “a Most-Favored State” condition.¹⁶ Even receipt of the Louisiana order did not deter CenturyLink-Qwest from entering into the Stipulation with Staff and CUB in this docket, or from entering into settlement agreements with other entities in this docket. So while some might consider

¹⁴ *CenturyLink and Qwest’s Opening Post-hearing Brief* at 50.

¹⁵ *CenturyLink and Qwest’s Opening Post-hearing Brief* at 51.

¹⁶ Louisiana Public Service Commission Docket No. U-31379, Order no. U-31379, September 17, 2010, page 3:

- “1. The Commission hereby states its non-opposition to the transaction as proposed.
2. This statement of non-opposition is done without prejudice to the authority of the Commission to make investigations and require any reasonably necessary change it may find legally to be in the public interest.
3. The Applicants shall provide notice to the LPSC of any conditions imposed upon the merger, or agreed to in other jurisdictions, for the Commission’s review and possible adoption if deemed in the public interest.
4. This Order shall be effective immediately.”

CenturyLink-Qwest's argument to be technically correct that "no other Commissions reviewing this Transaction have adopted an MFS provision",¹⁷ CUB would beg to differ. It is CUB's position that this evidence clearly refutes CenturyLink-Qwest's argument that a Most-Favored State condition would pose any disincentive to their entering into settlement agreements with parties in the remaining dockets in other states.

CenturyLink-Qwest also argues that the proposed MFS condition would be inequitable in its application.¹⁸ They argue that the proposed condition is "one-sided" because it does not "*eliminate* conditions the Merging companies have agreed to in Oregon as part of their negotiation process but not ordered elsewhere."¹⁹ But as Staff points out, "[w]hether another jurisdiction finds a particular harm is not present in that jurisdiction is not necessarily probative of whether that potential harm is present in Oregon."²⁰

CenturyLink-Qwest's argument that it is also inequitable to include the FCC in the Most-Favored State condition is also wide of the mark. As noted by Staff, "[t]he FCC is probably the best positioned to identify harms of the Transaction presented to wholesale customers. It makes no sense for the Commission to ignore the expertise of the FCC simply because it has not included the FCC in MFS conditions adopted in previous cases."²¹

While CenturyLink-Qwest may not like this condition, because the good conditions negotiated in one state can be applied in other states and the bad conditions will likely stay at home, it would be less than prudent for the Commission to fail to wield

¹⁷ *CenturyLink and Qwest's Opening Post-hearing Brief* at 53.

¹⁸ *CenturyLink and Qwest's Opening Post-hearing Brief* at 51.

¹⁹ *CenturyLink and Qwest's Opening Post-hearing Brief* at 51 (*emphasis in the original*).

²⁰ *Opening Brief By Staff of the Public Utility Commission of Oregon* at 10 lines 4-5.

²¹ *Opening Brief By Staff of the Public Utility Commission of Oregon* at 10 lines 18-21.

the powers that it has to ensure that this agreement is fully in the Oregon public's interest and that no harm is done to the Oregon public by this transaction being better in one state than another. This condition is one of the best tools in the Commission's merger tool box. CUB respectfully requests that the Commission utilize this tool and wield it forcefully.

CUB supports the imposition of this condition with, as noted in CUB's Opening Brief, one small correction. The requested correction is shown in italics, "Within fifteen (15) calendar days after a final order adopting a new condition or stipulation with new or amended commitments by a commission in another state jurisdiction and the FCC *is entered*, CenturyLink will send a copy of the stipulation and commitment to Oregon Commission Staff and to all parties in UM 1484."²²

III. CONCLUSION

The conditions appended to the Stipulation are important, and do go a long way towards protection of the public, but those same conditions do not meet the "in the public interest, no harm" standard without the imposition of the final two requested conditions – Trouble Report Complaint Reporting and Most-Favored State.

CUB respectfully requests that the Commission adopt the Stipulation and adopt the Trouble Report Complaint Reporting and Most-Favored State condition (amended as CUB suggests) because then, and only then, will the merger fully meet the standard of "in

²² *Citizens' Utility Board of Oregon's Opening Brief* at 10.

the public interest, no harm”. The enhanced language sought by the other intervenors appears to CUB to exceed the standard.

DATED this 1st day of February, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. C. M.", written in a cursive style.

G. Catriona McCracken #933587
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org

UM 1484 – CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of February, 2011, I served the foregoing **CLOSING BRIEF OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1484 upon 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, and upon the Commission by email and by sending one (1) original and five (5) copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)
(HC denotes highly confidential material authorized)

(C denotes service of Confidential material authorized)

W CHARLES L BEST
HC ATTORNEY AT LAW
1631 NE BROADWAY #538
PORTLAND OR 97232-1425
chuck@charleslbest.com

W 360 NETWORKS(USA) INC
PENNY STANLEY
370 INTERLOCKEN BLVD STE 600
BROOMFIELD CO 80021-8015
penny.stanley@360.net

W 360 NETWORKS(USA) INC
MICHEL SINGER NELSON
370 INTERLOCKEN BLVD STE 600
BROOMFIELD CO 80021-8015
mnelson@360.net

W ATER WYNNE LLP
C ARTHUR A BUTLER
HC 601 UNION STREET, STE 1501
SEATTLE WA 98101-3981
aab@aterwynne.com

W ATER WYNNE LLP
JOEL PAISNER
601 UNION ST STE 1501
SEATTLE WA 98101-2327
jrp@aterwynne.com

W CENTRAL TELEPHONE INC
RICHARD STEVENS
PO BOX 25
GOLDENDALE WA 98620
rstevens@gorge.net

W CENTURY FARM COURT
JOHN FELZ
REGULATORY OPERATIONS
5454 W 110TH ST KSOPKJ0502
OVERLAND PARK KS 66211
john.felz@centurylink.com

W CENTURYLINK
RHONDA KENT
805 BROADWAY 8TH FL
VANCOUVER WA 98660
rhonda.kent@centurylink.com

W CENTURYLINK, INC.
C WILLIAM E HENDRICKS
ATTORNEY
805 BROADWAY ST
VANCOUVER WA 98660-3277
tre.hendricks@centurylink.com

W CHARTER FIBERLINK OR
MICHAEL R MOORE
12405 POWERSCOURT DR
ST LOUIS MO 63131
michael.moore@chartercom.com

W CITY OF LINCOLN CITY
DAVID HAWKER
CITY MANAGER
801 SW HIGHWAY 101
LINCOLN CITY OR 97367
davidh@lincolncity.org

W CITY OF LINCOLN CITY
DOUGLAS R HOLBROOK
ATTORNEY
PO BOX 2087
NEWPORT OR 97365
doug@lawbyhs.com

W COMM. CONNECTION
CHARLES JONES
14250 NW SCIENCE PARK DR STE B
PORTLAND OR 97229
charlesjones@cms-nw.com

W CONVERGE COMMUNICATIONS
MARSHA SPELLMAN
10425 SW HAWTHORNE LN
PORTLAND OR 97225
marsha@convergecomm.com

W CORPORATE LAWYERS PC
FRANK G PATRICK
PO BOX 231119
PORTLAND OR 97281
fgplawpc@hotmail.com

COVAD COMMUNICATIONS CO
KATHERINE K MUDGE
STATE AFFAIRS ILEC RELATIONS
7000 N MOPAC EXPWY 2ND FL
AUSTIN TX 78731
kmudge@covad.com

W DAVIS WRIGHT TREMAINE LLP
C KC HALM
HC 1919 PENN AVE NW 2ND FL
WASHINGTON DC 20006-3458
kchalm@dwt.com

W DAVIS WRIGHT TREMAINE LLP
C MARK P TRINCHERO
HC 1300 SW FIFTH AVE STE 2300
PORTLAND OR 97201-5682
marktrincher@dwt.com

W DEPARTMENT OF JUSTICE
C JASON W JONES
HC BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

W GRAHAM & DUNN PC
C JUDITH ENDEJAN
2801 ALASKIAN WAY STE 300
SEATTLE WA 98121
jendejan@grahamdunn.com

W GRAY PLANT MOOTY
C GREGORY MERZ
HC 500 IDS CENTER
80 S EIGHTH ST
MINNEAPOLIS MN 55402
gregory.merz@gpmlaw.com

W INTEGRA TELCOM INC
C KAREN L CLAUSON
VICE PRESIDENT, LAW & POLICY
6160 GOLDEN HILLS DR
GOLDEN VALLEY MN 55416-1020
klclauson@integratelecom.com

W LEVEL 3 COMMUNICATION
C GREG L ROGERS
SR CORPORATE COUNSEL 1025
ELDORADO BLVD
BROOMFIELD CO 80021
greg.rogers@level3.com

W LINCOLN COUNTY COUNSEL
WAYNE BELMONT
225 W OLIVE ST, RM 110
NEWPORT OR 97365
wbelmont@co.lincoln.or.us

W MCDOWELL RACKNER GIBSON
C ADAM LOWNEY
HC 419 SW 11TH AVE, STE 400
PORTLAND OR 97205
adam@mcd-law.com

W MCDOWELL RACKNER GIBSON
C WENDY MCINDOO
OFFICE MANAGER
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
wendy@mcd-law.com

W MCDOWELL RACKNER GIBSON
C LISA FRACKNER
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
lisa@mcd-law.com

W NW PUBLIC COMM. COUNCIL
GREG MARSHALL
2373 NW 185TH AVE - # 310
HILLSBORO OR 97124
gmarshall@corbantechologies.com

W PACIFIC NW PAYPHONE
RANDY LINDERMAN
PMB 300, 2373 NW 185TH AVE
HILLSBORO OR 97124-7076
rlinderman@gofirestream.com

W PARKER TELECOM.
EDWIN B PARKER
PO BOX 402
GLENEDEN BEACH OR 97388
edparker@teleport.com

W PRIORITYONE TELECOM. INC
C KELLY MUTCH
PO BOX 758
LA GRANDE OR 97850-6462
managers@p1tel.com

C PUBLIC UTILITY COMMISSION
HC BRYAN CONWAY
PO BOX 2148
SALEM OR 97308-2148
bryan.conway@state.or.us

C PUBLIC UTILITY COMMISSION
HC MICHAEL DOUGHERTY
PO BOX 2148
SALEM OR 97308-2148
michael.dougherty@state.or.us

C QSI CONSULTING, INC
HC PATRICK L PHIPPS
VICE PRESIDENT
3504 SUNDANCE DR
SPRINGFIELD IL 62711

C QWEST CORPORATION
ALEX M DUARTE
CORPORATE COUNSEL
310 SW PARK AVE 11TH FL
PORTLAND OR 97205-3715
alex.duarte@qwest.com

QWEST CORPORATION
MARK REYNOLDS
1600 7TH AVE RM 3206
SEATTLE WA 98191
mark.reynolds3@qwest.com

W SPRINT COMMUNICATIONS
DIANE BROWNING
6450 SPRINT PKWY
OVERLAND PARK KS 66251
diane.c.browning@sprint.com

W SPRINT COMMUNICATIONS
KENNETH SCHIFMAN
6450 SPRINT PKWY
OVERLAND PARK KS 66251
kenneth.schifman@sprint.com

W SPRINT NEXTEL
C KRISTIN L JACOBSON
201 MISSION ST STE 1500
SAN FRANCISCO CA 94105
kristin.l.jacobson@sprint.com

T-MOBILE USA INC
DAVE CONN
12920 SE 38TH ST
BELLEVUE WA 98006
dave.conn@t-mobile.com

W TILLAMOOK COUNTY
WILLIAM SARGENT
TILLAMOOK COUNTY COUNSEL
1134 MAIN AVE
TILLAMOOK OR 97141
wsargent@oregoncoast.com

C TW TELECOM OF OREGON
LYNDALL NIPPS
S9665 GRANITE RIDGE DR STE 500
SAN DIEGO CA 92123
lyndall.nipps@twtelecom.com

UNITED TELCO OF THE NW
BARBARA YOUNG
902 WASCO ST ORHDRA0305
HOOD RIVER OR 97031
barbara.c.young@centurylink.com

W WSTC
ADAM HAAS
10425 SW HAWTHORNE LN
PORTLAND OR 97225
adamhaas@convergecomm.com

**XO COMMUNICATIONS
SERVICES INC**
REX M KNOWLES
7050 UNION PARK AVE - STE 400
MIDVALE UT 84047
rex.knowles@xo.com

Respectfully submitted,



John C. Sturm, OSB #105174
Staff Attorney
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
john@oregoncub.org