

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1484

In the Matter of

CENTURYLINK, INC.,

Application for Approval of Merger  
between CenturyTel, Inc., and Qwest  
Communications International, Inc.

RULING

**DISPOSITION: PETITION TO INTERVENE GRANTED WITH  
CONDITIONS**

In this ruling, the Administrative Law Judge (ALJ) grants the Petition to Intervene (Petition) filed by Northwest Public Communications Council (NPCC), with conditions.

**BACKGROUND**

On May 24, 2010, CenturyLink, Inc. (CenturyLink or Applicant) filed an Application for approval of merger between CenturyTel, Inc., and Qwest Communications International, Inc. (Qwest). A prehearing conference was held on June 8, 2010 at which time a schedule was adopted for the proceeding, including the establishment of June 22, 2010 as the suggested date for filing petitions to intervene.

On June 28, 2010 NPCC filed a Petition to Intervene in this proceeding. In its Petition, NPCC states that it has been continuously involved in litigation with Qwest before the Commission since 1996 and that "the Intevenor intends to raise the outstanding proceedings before the Commission which are still unresolved after eleven years \* \* \*."<sup>1</sup>

On July 9, 2010, Qwest filed Objections to the NPCC Petition on five separate grounds. First, Qwest notes that the Commission gave broad notice about the proceedings and that, by the time of the June 8 prehearing conference, no fewer than thirteen parties had sought to intervene and that additional parties subsequently filed timely petitions.

Second, Qwest argues that NPCC lacks sufficient interest in the proceeding because, by its own admission, NPCC intends to raise issues that are unrelated to the forward-looking focus of the merger transaction between CenturyLink and Qwest's parent.

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<sup>1</sup> NPCC Petition at 2.

Rather, NPCC intends to raise matters currently being litigated in dockets DR 26/UC 600. Thus, Qwest asserts that NPCC has no interest in the instant proceeding.<sup>2</sup>

Third, Qwest argues that NPCC's participation would unreasonably broaden the issues, burden the record and/or delay the proceedings.<sup>3</sup> This proceeding is about the merger of parent companies and not about claims for refunds and their surrounding issues under other dockets.

Fourth, Qwest states that NPCC already has a forum available for Commission consideration of its concerns, as well as the judicial system for addressing its claims and an additional forum is not necessary.

Finally, Qwest asserts that NPCC has a track record that will "clearly show that the Commission can reasonably expect the NPCC to attempt to inappropriately leverage this merger proceeding for its own pecuniary and litigation interests, and not for what this merger proceeding is intended for."<sup>4</sup>

NPCC filed a Reply to Qwest's Objections on July 22, 2010. With respect to the time of filing of the Petition, NPCC asserts its diligence in pursuing information about the merger application in this proceeding and argues that no party will be prejudiced by the slight delay in its filing.<sup>5</sup>

NPCC's Reply responds to Qwest's second argument by raising new reasons for claiming it has sufficient interest in the proceeding. It states that its constituent members provide payphones,

one of the greatest services to the poorest of the residents of Oregon. People who use payphones use them because they have no other option. The impact of any changes in the availability of the PAL services to the PSPs would have a potentially devastating effect on the persons, the public at large, who most need a payphone. There is no group in Oregon that is actually looking out for those users however marginal Qwest may find them.

NPCC asserts that it "intends to assure the availability of PAL service and PSP operation of the payphones" and that it is "best qualified" to safeguard those interests.<sup>6</sup>

In response to Qwest's third argument, NPCC contends that the Commission will be able to prevent any broadening of the issues or delay of the proceedings if it finds NPCC's participation burdensome.<sup>7</sup>

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<sup>2</sup> Qwest Objections at 1-2.

<sup>3</sup> See OAR 860-011-0001(2)

<sup>4</sup> *Id.* at 2- 4.

<sup>5</sup> NPCC Reply at 1-2.

<sup>6</sup> *Id.* at 2.

With respect to Qwest's fourth point, that NPCC has other forums available to address its concerns, and Qwest's final point, regarding NPCC's past questionable behavior, NPCC discusses the past litigation and its view that "Qwest has been the transgressor \* \* \*." NPCC was correct both legally and morally, "Qwest is continuing to attempt to avoid refunding unlawfully charged billings \* \* \*." that its motives to exclude NPCC are "not pure of heart" and that NPCC "seeks to know how the PAL service is going to be affected. How the public is going to continue to have access to the payphone."<sup>8</sup>

## DISCUSSION

ORS 756.525(2) permits any person, at any time before the final taking of evidence, to request permission to appear as a party in a Commission proceeding. OAR 860-012-0001 further provides that:

(2) If the Commission or [ALJ] finds the petitioner has sufficient interest in the proceeding and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or 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.

In applying this provision, it is well understood that it is in the overall interest of the public to have fairness and orderliness of the pleading process, and a reasonable expectation that persons seeking to become parties to the proceedings act with candor.

In order to ensure to the greatest extent possible that proceedings are fair and orderly, parties who reply to the representations of opposing parties are bound to limit themselves to the scope and subject matter and arguments raised in prior pleadings. NPCC has not abided by that basic rule and, instead, used its opportunity to reply by providing a completely new basis to justify intervening in the case. In its Petition, NPCC stated that in this proceeding, "the Intevenor intends to raise the outstanding proceedings before the Commission which are still unresolved after eleven years \* \* \*." That was the *only* subject matter NPCC stated its intention to pursue. Only after Qwest had noted the infirmities in the NPCC petition did NPCC raise new intentions to pursue, in general, the protection of the interests of disadvantaged Oregonians and the overall future of payphone service. The protection of members of the consuming public most lacking in resources is, however, a legitimate concern, even though NPCC raised the issue late and improperly. Thus NPCC should be able to participate in this proceeding *only* for that limited purpose.

This proceeding is about the merger of the parent company of Qwest Corporation with a subsidiary of CenturyLink, Inc. As in other recent telecommunications company merger transactions before this Commission, it applies a "no harm" standard to the transaction. It is forward-looking and seeks to answer the question "will the merger harm

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<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3-4.

the public interest in Oregon?” The Commission’s review does not address the appropriateness of any past or present Qwest policies and procedures, but rather what *adverse changes* the proposed merger might bring. In the context of its areas of expertise, this is the *only* subject NPCC may properly explore and conditions must be fashioned accordingly.

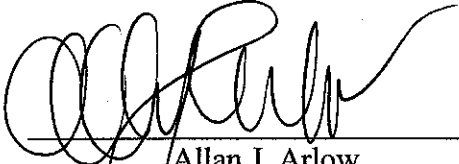
I grant NPCC’s petition for intervention under OAR 860-012-0001, but throughout the course of this proceeding will entertain a motion by CenturyLink or Qwest to terminate NPCC’s participation upon a showing that NPCC has attempted to circumvent the restrictions set forth below or use the regulatory process to influence the applicants in areas beyond the scope of the proceeding. NPCC will have five days from the date of any such motion to respond.<sup>9</sup> A finding by the Commission that NPCC has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.

### RULING

The Petition to Intervene filed by Northwest Public Communications Council is GRANTED, subject to the following restrictions. These restrictions apply to NPCC and any entities NPCC claims to represent and shall be broadly construed:

1. The scope of NPCC’s participation in the proceeding is limited to the issue of the protection of Oregon consumers without adequate access to cell phone or landline service and the availability of pay telephones in Oregon post-merger of CenturyTel, Inc., and Qwest Communications International, Inc.
2. NPCC, its outside counsel, and any outside experts are denied access to any information from all other parties and their subsidiaries designated as “highly confidential.”
3. NPCC shall not serve any data requests upon or cross examine any witnesses of Qwest Communications International, Inc., or its subsidiaries.
4. NPCC may not seek information from any other parties regarding pending or past litigation, billing, accounting or other matters between Qwest Communications International, Inc., or its subsidiaries and NPCC, or any entities NPCC claims to represent.

Dated this 10<sup>th</sup> day of August, 2010, at Salem, Oregon.



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Allan J. Arlow  
Administrative Law Judge

<sup>9</sup> This is five business days with a due date of the electronic filing being received by the Commission’s filing center by 5:00 p.m. on the due date.