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December 8, 2010

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

RE: UM-1484 CenturyLink/Qwest Merger

Dear Commission:

Enclosed for filing, please find an original and five copies of CenturyLink's Testimony of John Jones in Opposition to Adoption of Additional Staff Conditions.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

William E. Hendricks

Enclosures
cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1484

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the Indirect
Transfer of Control of QWEST
CORPORATION

TESTIMONY

**TESTIMONY IN OPPOSITION TO ADOPTION OF
ADDITIONAL STAFF CONDITIONS**

JOHN F. JONES

VICE PRESIDENT STATE GOVERNMENT AFFAIRS

ON BEHALF OF

CENTURYLINK, INC.

DECEMBER 8, 2010

1 **Q. Please state your name and business address.**

2 A. My name is John Jones and my business address is 100 CenturyLink Drive, Monroe,
3 Louisiana.

4

5 **Q. Who is your employer and what is your position?**

6 A. I am employed by CenturyLink, Inc. (“CenturyLink”) as Vice President, State
7 Government Affairs.

8

9 **Q. Are you the same John Jones that filed direct and rebuttal testimony in this**
10 **proceeding?**

11 A. Yes, I am.

12

13 **Q. What is the purpose of your rebuttal testimony?**

14 A. I am providing testimony in opposition to the two additional conditions proposed by the
15 Commission Staff that were not agreed to in the Stipulation reached between
16 CenturyLink and Qwest (“Applicants”), the Staff of the Public Utility Commission of
17 Oregon (“Staff”) and the Citizens’ Utility Board of Oregon (“CUB”). Specifically, Staff
18 proposed a broadband reporting condition and a “most favored state condition” that the
19 Applicants strongly oppose. My testimony explains the Applicants’ opposition to these
20 conditions and rationale for why the Commission should not adopt them.

21

22

1 **I. Broadband Reporting Condition**

2 **Q. Please describe Staff's proposed condition requiring broadband trouble and**
3 **subscription reporting requirements.**

4 A. This proposed Staff condition requires detailed annual reporting for five (5) years
5 regarding: a) DSL trouble report complaint data; and b) DSL subscriptions. CenturyLink
6 objects to this proposed broadband reporting condition because it goes beyond the
7 Commission's jurisdiction, is not competitively neutral, is not designed to address an
8 identified harm, and is not necessary for the Commission to effectively monitor
9 CenturyLink's commitment to increase broadband availability in Oregon.

10

11 **Q. What is CenturyLink's overriding concern with this proposed Staff condition?**

12 A. As a foundational matter, the Commission does not regulate broadband, and therefore,
13 lacks jurisdiction to require detailed reporting of trouble report data associated with
14 broadband, or data on the combined company's broadband subscription information.
15 Competition for broadband customers in Oregon is intense, and CenturyLink has every
16 incentive to deploy high-quality broadband service at competitive rates in order to
17 effectively compete in the market. The imposition on CenturyLink of costly and
18 burdensome reporting requirements that are not also imposed upon CenturyLink's
19 competitors places CenturyLink at a competitive disadvantage. In addition, the resources
20 consumed to implement these unnecessary reports will detract from investments.

21

22 **Q. Has the Commission Staff identified any concerns with the broadband service being**
23 **provided by CenturyLink or Qwest that justify this proposed condition?**

1 A. Not to my knowledge. The Staff’s justification for this condition in their testimony is
2 limited to a statement that similar broadband reporting requirements were imposed by the
3 Commission in Docket UM 1431 (Frontier’s acquisition of Verizon Northwest). The
4 Staff testimony is void of any mention of issues with the broadband service being
5 provided by CenturyLink or Qwest. Staff witness Dougherty attempts to justify this
6 broadband reporting condition as appropriate because “. . . the Commission is approving
7 the transaction based in part on the increased availability of broadband...”¹ But the Staff
8 testimony fails to demonstrate any relationship between reports on broadband troubles
9 and increased availability of broadband. Therefore, CenturyLink does not believe the
10 Staff has demonstrated a potential harm that justifies this condition. Moreover,
11 CenturyLink believes that the Stipulation in this case is more than sufficient to address
12 any potential harm and therefore adding yet another condition would exceed the scope of
13 the Commission’s no harm standard.

14

15 **Q. Will the Commission have other sources of information available to monitor the**
16 **merged company’s progress towards increasing broadband availability in its service**
17 **area?**

18 A. Yes. As part of CenturyLink’s very significant commitment to expend \$45 million in
19 broadband deployment in CenturyLink and Qwest areas over a five-year period
20 (Condition 13 of the Stipulation), CenturyLink has committed to providing the
21 Commission Staff with detailed reports of its broadband deployment plans and progress

¹ Staff/100, Dougherty 49, lines 1-31.

1 towards achieving those plans. Specifically, CenturyLink has committed to the following
2 reporting:

- 3 • An annual broadband deployment plan that details the planned investments for
4 the year, including the geographic areas targeted for investment and the
5 estimated number of customers that would benefit.
 - 6 • An annual report that identifies the previous calendar year's progress in
7 broadband deployment including:
 - 8 - A list of all wire centers and broadband speeds currently available in
9 each wire center by speed and number of lines capable showing wire
10 centers where broadband investment was made.
 - 11 - The additional number of households receiving broadband;
 - 12 - The prior year's cumulative amounts expended towards the \$45
13 million broadband commitment.
 - 14 • A semi-annual update to the broadband deployment plan outlining progress
15 made and identifying any impediments that may prevent the completion of the
16 planned projects.
- 17

18 If the Commission's focus is truly to monitor the CenturyLink's progress at achieving its
19 commitment for increased availability of broadband, CenturyLink believes the extensive
20 reporting requirements included in its broadband commitment as outlined above provide
21 substantial information for the Commission to accomplish this objective. As such,
22 additional information on broadband troubles or broadband subscriptions is unnecessary
23 for the Commission to evaluate CenturyLink's progress in increasing broadband
24 availability.

25
26 Finally, by virtue of CenturyLink's agreement in Condition 23 of the Stipulation to
27 provide copies of the CenturyLink Oregon Operating Companies' FCC Form-477, the
28 Commission will receive additional broadband information including certain

1 subscribership and availability information. Therefore, the Commission should not
2 impose the Staff's proposed broadband reporting condition.

3
4 **II. "Most Favored State Condition"**

5 **Q. Please comment on Staff's recommended condition that would establish a Most**
6 **Favored State Condition.**

7 A. This proposed Staff condition would allow the Commission to expand or modify any
8 conditions imposed in Oregon as a result of regulatory decisions in other states and at the
9 FCC. CenturyLink strongly objects to this condition and urges the Commission not to
10 adopt it.

11
12 **Q. Is the proposed Most Favored State Condition necessary to ensure the Transaction**
13 **is in the public interest and does no harm?**

14 A. No. As evidenced by the exhaustive list of fifty-three conditions in the Stipulation
15 between the Applicants, Staff and CUB, the Stipulation was the result of extensive good
16 faith negotiations carried out over a four-month period, encompassing at least seven
17 formal settlement conferences. The Applicants agreed to the conditions set forth in the
18 carefully-considered Stipulation based on a desire to eliminate any controversy among
19 the parties in Oregon that the appropriate standard has been satisfied – to ensure that the
20 Transaction is in the public interest and does no harm. Like any such agreement, the
21 resulting compromises reflect a process of give and take. If different considerations are
22 presented in different states or at the FCC, where priorities are or may be different,
23 different compromises will result. A condition or commitment in one jurisdiction may

1 not be a necessary or even appropriate condition for adoption in Oregon. As a result,
2 there will almost always be uncertainty as to whether and how a condition of approval in
3 one state or at the FCC would be applicable to Oregon. Trade-offs made by the
4 Commission and the Applicants that result in satisfying the public interest should not be
5 subsequently unraveled by importing a condition from a different state or from the FCC.
6 In fact, imposition of a most favored state condition effectively serves as a disincentive to
7 negotiating a settlement because the company can never be certain of what additional
8 conditions might be adopted from other jurisdictions. The Commission's decision
9 regarding this Transaction should be premised on the public interest issues of Oregon, not
10 on the issues or provisions from another state or the FCC.

11
12 **Q. The proposed Most Favored State Condition would allow imposition of conditions**
13 **adopted by the FCC as well as conditions adopted by other states. Were FCC**
14 **conditions reflected in the most favored state condition ordered by the Commission**
15 **in the CenturyTel/Embarq (Docket UM 1416) and Frontier/Verizon (Docket UM**
16 **1431) transactions?**

17 A. No, they were not. The most favored state conditions in those prior transactions did not
18 include FCC conditions as eligible for imposition in Oregon. CenturyLink believes that
19 adoption of FCC conditions, which are focused on issues subject to the FCC's
20 jurisdiction and reflect consideration of facts, circumstances and issues that are applicable
21 to the merged company's entire operations, would go well beyond the jurisdiction of the
22 Oregon Commission. Further, at a minimum and in the interest of fairness, the

1 Commission should not expand this most favored state condition to encompass FCC
2 conditions when it has not done so for previous transactions.

3
4 **Q. Is the Most Favored State Condition equitable in its application?**

5 A. No. The proposed condition is one-sided in its application in that it *includes* additional
6 conditions that may be made in another jurisdiction, but does not *eliminate* conditions
7 that the Applicants have agreed to in Oregon as part of the negotiation process. For
8 example, if a different jurisdiction imposes *fewer or less onerous* obligations on some
9 issues than are agreed to in Oregon, the company would gain no benefit. However, if a
10 different jurisdiction imposes more onerous conditions on some issues, the company
11 would be penalized. Such a result undermines the very premise of negotiations.
12 Accordingly, adoption of such a provision can only result in the unfair and one-sided
13 alteration of the negotiated settlement by the parties to the Stipulation to the detriment of
14 the Applicants.

15
16 **Q. Do you have any other comments with respect to imposition of a most favored state
17 commitment in this proceeding?**

18 A. Yes. In support of the most favored state commitment in other transactions, the Staff and
19 CUB have argued that this condition was necessary because Oregon was ahead of many
20 states in their consideration of the transactions and without the ability to impose
21 conditions from other states, Oregon would be unable to benefit from the reviews
22 completed by other states. In this Transaction however, most states have either

1 approved² the Transaction or are nearing completion of their reviews³. Extensive
2 discovery and testimony have been filed in Oregon and other states where the
3 Transaction is subject to Commission review and approval. In addition, settlement
4 agreements reflecting numerous conditions, many of which are very similar to the
5 conditions included in the Stipulation between the Applicants, Staff and CUB in this
6 case, have been reached in a number of states⁴ and are publicly available to the
7 Commission. Therefore, Staff and CUB know about the conditions imposed, or likely to
8 be imposed, in other states, and this information was available for Staff and CUB's
9 consideration when the Stipulation was agreed to.

10

11 **Q. Does this conclude your testimony?**

12 A. Yes.

² Commission approval of the Transaction has been granted in the following states where the Applicants have incumbent local exchange carrier (ILEC) operations: California, Georgia, Iowa, Louisiana, Mississippi, Ohio, Pennsylvania and Virginia.

³ Final Commission action on the Transaction is still pending in the following states where the Applicants have ILEC operations: Arizona, Colorado, Minnesota, Montana, Nebraska, New Jersey, Utah and Washington.

⁴ Settlement agreements with at least some of the parties, including Commission Staffs and/or consumer advocates, have been reached and filed in the following states that have not yet issued a final order: Arizona, Colorado, Minnesota, Montana, New Jersey and Utah.

CERTIFICATE OF SERVICE
UM-1484

I certify that on December 8, 2010, a true and correct copy of **CenturyLink's Testimony of John Jones in Opposition to Adoption of Additional Staff Conditions** was served on the following parties via electronic mail and US Mail where applicable:

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