

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.)
_____)

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

December 8, 2010



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OF OREGON
UM 1484

In the Matter of CENTURLINK, INC.)	TESTIMONY IN SUPPORT OF
Application for Approval of Merger)	IMPOSITION OF MOST-FAVORED
between CenturyTel, Inc. and Qwest)	STATE CONDITION AND
Communications International, Inc.)	BROADBAND TROUBLE REPORT
)	COMPLAINT REPORTING
)	CONDITION OF THE CITIZENS'
)	UTILITY BOARD OF OREGON

1 My name is Gordon Feighner, and my qualifications were listed in CUB Exhibit
2 101.

3 **I. Introduction**

4 CUB is a signatory to the “Stipulation” in this docket that was filed on December
5 2, 2010. That Stipulation left two items unresolved – whether the Oregon PUC should
6 impose a Most Favored State condition, and the degree to which the “Merged Company”
7 will issue reports on trouble complaints for broadband service. CUB supports the
8 imposition of such conditions and agrees with the PUC Staff’s description of such a
9 mechanism in its Reply Testimony.¹²

¹ UM 1484 / Staff / 100 / Dougherty / 44.

² UM 1484 / Staff / 100 / Dougherty / 49.

1 **II. Most Favored State Condition**

2 **A. There is an incentive for states to “go last”.**

3 Applications for a change of ownership or control of a utility are some of the most
4 complicated and difficult proceedings that stakeholders of the PUC address. These
5 proceedings require identification and evaluation of the risks associated with the transfer,
6 which often leads the Commission to impose conditions that mitigate those risks. While
7 all merger and acquisition dockets are complicated and difficult, multi-state transactions
8 have additional complications. In a multi-state transaction, each state regulatory
9 proceeding has an incentive to “go last”. As a stakeholder, CUB can be advantaged by
10 knowing what risks consumer advocates in other states have identified and what
11 conditions the applicants were willing to grant to mitigate those risks. By conducting
12 regulatory proceedings early in the merger process, a state may fail to identify risks that
13 come to light through longer, more extensive discovery processes in other states. A state
14 that has its proceeding early in the regulatory process might then inadvertently omit a
15 condition that would mitigate a risk common to all the states in which merger/transaction
16 applications have been filed. It is unfair that a state should be penalized by agreeing to a
17 shorter regulatory process (which benefits the applicants), when those same applicants
18 agree to conditions to mitigate that risk in other states after the docket in the early-going
19 state has closed.

20 The different state regulatory structures and docket timelines described above
21 create an incentive for each state to attempt to be the last to host the merger/transaction
22 proceeding, so that each has the ability to build upon the records existing in each state.
23 However, one state ultimately has to proceed first, and that unlucky state will have to

1 conduct the first investigation in uncharted territory without the benefit of the discovery
2 and testimony that has been filed in other states (which, in turn, were fortunate enough to
3 be able to build upon the investigation and testimony done in the first state).

4 With regard to this transaction, Oregon is ahead of the procedural schedule of
5 several other states, including some of the states in which the Applicants' more
6 substantial transactions will occur. Those states can now build off of the research that
7 Staff, CUB and the CLECS have done in Oregon. However, Oregon still runs the risk of
8 failing to identify all of the risks posed by this transaction. There is also the possibility
9 that a mitigation condition that stakeholders in Oregon wanted, but the Applicants
10 currently find unacceptable, will become, through mass pressure from other states,
11 acceptable to the Applicants and will then be included in later stipulations in other states.

12 The easiest way to solve this issue – without playing chicken with other states to
13 see who can really go last – is to add a Most-Favored State condition to the conditions
14 appended to the Oregon Stipulations. While a Most Favored-State condition still won't
15 enable Oregon to build on what other states will do over the remainder of the merger
16 proceedings, it will allow Oregon to consider all the conditions that are agreed upon in
17 other states and to then determine whether any such conditions should reasonably be
18 added to the Oregon Stipulations.

19 **B. CUB supports the proposal in Staff's Opening Testimony.**

20 The idea of a Most Favored State condition is not new. Most Favored State
21 conditions were included in several recent multi-state transactions involving
22 telecommunication utilities, electric utilities and natural gas utilities: the

1 Embarq/CenturyTel transaction, the PacifiCorp/MEHC transaction; and the
2 Cascade/MDU transaction.³

3 In its Opening Testimony, Staff proposed a Condition 57, which would implement a
4 Most Favored State condition for Oregon.⁴ Under the Staff proposal, the Oregon PUC
5 could review orders and stipulations from other states and could then adopt conditions
6 from those states, subject to two circumstances:

7 The Commission or Staff had not previously identified the harm to Oregon
8 ratepayers; or

9 The commitments or conditions in a final order of another state are more
10 effective at preventing a harm previously identified by the Commission or
11 Staff.

12 CUB strongly urges the Commission to adopt Staff's proposed condition that establishes
13 a process for the Most Favored State review.

14 **III. Broadband Trouble Reporting**

15 CUB supports Condition 14 from Staff's Reply Testimony that would impose
16 requirements for the Merged Company to submit reports to the PUC detailing service
17 quality and complaint issues pertaining to broadband DSL service for the next four years.
18 While the Applicants have stated that the Commission lacks jurisdiction to impose this
19 requirement⁵, CUB maintains that it is within the Commission's domain to ensure that
20 unregulated services provided by the Merged Companies are maintained in a manner that
21 is in the public interest and causes no harm. A Commission requirement for the Merged
22 Company to issue reports on the quality of service of a key communication service (albeit
23 an unregulated one) is not unduly burdensome, and should provide an incentive for the

³ OPUC Order 09-169, OPUC Order 06-082; and OPUC Order 07-221.

⁴ UM 1484 / Staff / 100 / Dougherty / 57-58.

⁵ UM 1484 / CTEL / 500 / Smith / 28.

1 Merged Company to continue to provide a quality product to Oregon customers. CUB
2 encourages the Commission to adopt Staff's proposed condition requiring the Merged
3 Company to issue reports on broadband trouble complaints.

4

5 Respectfully Submitted,
6 December 8, 2010

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A handwritten signature in black ink, appearing to read 'G R F', with a long horizontal flourish extending to the right.

8

9

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon

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UM 1484 – CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of December, 2010, I served the foregoing **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** 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 1 original and 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
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