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Public Utility Commission of Oregon
Administrative Hearing Division

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 864

| | | |
|---------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| WESTERN RADIO SERVICES |) | WESTERN RADIO'S REPLY |
| COMPANY |) | TO CENTURYTEL'S BRIEF |
| |) | REGARDING ALJ'S TWO |
| Request for Interconnection Agreement |) | QUESTIONS |
| with CENTURYTEL OF EASTERN |) |) |
| OREGON, INC. |) | |

Western Radio hereby presents its reply to CenturyTel's brief regarding the two questions presented by the ALJ.

I. THE PUC HAS AUTHORITY TO ENFORCE THE TERMS OF AN INTERCONNECTION "ARRANGEMENT" BEFORE THERE IS AN APPROVED ICA; AND THERE ARE REMEDIES AVAILABLE

Contrary to CenturyTel's restricted view of the PUC's authority, the PUC's authority in the area of public utilities is plenary. The relevant statute provides:

"The Public Utility Commission shall inquire into any neglect or violation of any law of this state or any law or ordinance of any municipality thereof relating to public utilities and telecommunications utilities by any public utility or telecommunications utility doing business therein, its officers, agents or employees and shall enforce all laws of this state relating to public utilities and telecommunications utilities and may enforce all such laws and ordinances of a municipality. The commission shall report all violations of any such laws or ordinances to the Attorney General." ORS 756.160(1).

Similarly, ORS 756.180 provides:

"Whenever it appears to the Public Utility Commission that any public utility or

telecommunications utility or any other person subject to the jurisdiction of the commission is engaged or about to engage in any acts or practices which constitute a violation of any statute administered by the commission, or any rule, regulation, requirement, order, term or condition issued thereunder, the commission may apply to any circuit court of the state where such public utility or telecommunications utility or other person subject to the jurisdiction of the commission operates for the enforcement of such statute, rule, regulation, requirement, order, term or condition."

CenturyTel does not argue that the PUC does not have authority to administer the telecommunications laws cited in Western's complaint and opening brief. Any such view was refuted by the Ninth Circuit in Western Radio Services Co. v. Qwest Corp., 530 F.3d 1186, 1200-1201 (9th Cir. 2008), which held that "the federal statutory scheme specifically grants authority to a state agency to interpret and enforce the provisions of [47 U.S.C.] §§ 251 and 252 (as well as the regulations the F.C.C. promulgates to implement them), including the duty to interpret and enforce the obligation to negotiate in good faith. See § 252(b)(1), (e)(1)-(3)." In its complaint and briefing, Western cited several provisions of section 251 and 252, as well as regulations promulgated pursuant to those statutes.

As explained in earlier briefing, Western already attempted to engage CenturyTel in negotiations. Western could not pin CenturyTel down to a position on the most fundamental terms of an interconnection agreement. Western already has submitted a bona fide request and petitioned the OPUC for arbitration. Rather than raise an open issue in its response related to "toll billing" to the OPUC for decision CenturyTel simply imposed its unlawful terms on Western. CenturyTel did not negotiate at all. It just presented its generic agreement on a take it or leave basis.

CenturyTel's view that the toll restriction would not be addressed in an interconnection agreement makes no sense. An ICA is the mechanism to address reciprocal compensation and

other issues regarding how each party is compensated for calls. As explained earlier, because Western would not accept CenturyTel's contract of adhesion, CenturyTel abruptly stopped its prior bill and keep practice and suspended Western's customers' access to anything but CenturyTel's network, thereby preventing Western's customers from calling the customers of any other telecommunications carriers.

One question that seems to still be unclear from reviewing CenturyTel's briefing is what constitutes an "interconnection *arrangement*." Obviously this is something different from an interconnection *agreement*. CenturyTel asserts that the PUC has no authority over "arrangements." "Interconnection arrangement" is not defined in the relevant statutes, as far as Western's counsel can determine. It is mentioned in one of the regulations:

"Interim transport and termination pricing.

"Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act." 47 C.F.R. 51.715(a).

It is also mentioned in another regulation: "A 'meet point interconnection arrangement' is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point." 47 C.F.R. 51.5.

Neither of these mentions sheds light on whether the state commission would have authority to address disputes between parties with an interconnection arrangement. However, it is clear from the context of these regulations and the scope of sections 251 and 252 of the Act that these provisions must spring from the authority of those statutes. As the Ninth Circuit made very clear in Western Radio, the state commissions have authority over all 251 and 252

disagreements -- something which was not clear before. Therefore, it is incumbent on the PUC to address Western's complaint.

CenturyTel also argues that Western is not raising a complaint about the interconnection arrangement. That makes no sense. The toll restriction is a new component of the parties' "arrangement" which CenturyTel has imposed on Western. Thus, Western has directly answered the ALJ's question by explaining the authority of the PUC to address Western's complaint.

II. THERE IS NO PROVISION IN THE TELECOMMUNICATIONS ACT ALLOWING THE RURAL TELEPHONE EXEMPTION UNDER 47 U.S.C. 251(f) TO BE VOLUNTARILY WAIVED ON A CASE-BY-CASE BASIS; IT MUST BE TERMINATED

CenturyTel argues that rather than a "case by case" waiver of the rural exemption it seeks only a "partial waiver." But this is a distinction without a difference. The result of the partial waiver CenturyTel suggests is in effect a case by case waiver. Just because one requesting carrier does not require access to UNEs or collocation does not mean the next one will not.

CenturyTel assures the PUC that it a rural ILEC can waive the provisions of 47 U.S.C. § 251(c)(1) and (2) to negotiate an interconnection agreement, but can then assert that the rural exemption still exists as to the duty to provide unbundled network elements under 47 U.S.C. § 251(c)(3). CenturyTel cites no statute, rule, or case which would provide for such partial waiver.

At any rate, at the very least the PUC should take Century Tel at its word and terminate its rural exemption with regards to the provisions of 47 U.S.C. § 251(c)(1) and (2) to negotiate an interconnection agreement. While Western does not agree that a partial exemption exists in the law, at the very least this move would preclude CenturyTel from changing its mind later with other carriers on that one point.

Dated July 20, 2009.

/s/ Marianne Dugan
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 864

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | CERTIFICATE OF SERVICE |
| WESTERN RADIO SERVICES |) | |
| COMPANY |) | |
| |) | |
| Request for Interconnection Agreement |) | |
| with CENTURYTEL OF EASTERN |) | |
| OREGON, INC. |) | |

I certify that on July 20, 2009, I sent Western Radio's Reply Brief Regarding ALJ's Two Questions by electronic mail and U.S. mail to the following:

Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551
puc.filingcenter@state.or.us

I further certify that on July 20, 2009, I also served copies of the above-referenced document upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid, and by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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VIA ELECTRONIC MAIL AND U.S. MAIL

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Public Utility Commission of Oregon
Administrative Hearing Division

Re: ARB 864 - Western Radio's Reply on ALJ's Two Certified Questions

Dear Sir/Madam:

Enclosed for filing is Western Radio's Reply regarding the ALJ's two certified questions. Also enclosed is a Certificate of Service.

Very truly yours,


Marianne Dugan

encl

cc: parties and counsel of record

P.U.C.

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