

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 ARB 864

4
5 In the Matter of

6 WESTERN RADIO SERVICES CO.

7 Request For Interconnection Agreement with
8 CenturyTel of Eastern Oregon, Inc.

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STAFF REPLY COMMENTS

9 Pursuant to the Administrative Law Judge's (ALJ) Prehearing Conference Memorandum
10 (issued October 13, 2008), staff of the Public Utility Commission of Oregon replies to the briefs
11 filed by Western Radio Services Company (Western) and CenturyTel of Eastern Oregon, Inc.
12 (CenturyTel). Staff views the issue as presented by the parties as essentially raising a question of
13 process: What is the most efficient way to proceed in this matter? For the following reasons,
14 staff agrees with the approach suggested by CenturyTel.

15 Western essentially asks the Commission to proceed first with its request to have
16 CenturyTel's "rural exemption" terminated. *See* 47 U.S.C. § 251(f)(1)(B). Western desires to
17 have CenturyTel's exemption terminated in case the following scenario occurs: (1) its voluntary
18 interconnection negotiations with CenturyTel fail, (2) Western brings a request for arbitration to
19 the Commission which includes a claim that CenturyTel failed to negotiate in good faith, (3) the
20 Commission rules against Western in the arbitration proceeding, (4) Western files a complaint
21 for review in federal district court challenging the Commission's order, and (5) one of the issues
22 challenged in court on review is a finding by the Commission that Qwest negotiated with
23 Western in good faith.

24 In response, CenturyTel relates that that it has agreed to negotiate many interconnections
25 agreements since the Telecommunications Act (Act) was implemented, including agreeing to
26 mandatory arbitration under the Act before the Commission when necessary. As such,

1 CenturyTel recommends a process where the two companies first engage in voluntary
2 negotiations. If the negotiations resolve all issues, then the scenario set forth by Western will not
3 unfold. However, if the negotiations are unsuccessful, CenturyTel states that a formal arbitration
4 proceeding on disputed interconnection issues could also be combined with a proceeding to
5 consider termination of its rural exemption if necessary. CenturyTel states it will not assert at an
6 arbitration/termination proceeding that its existing rural exemption excused it from negotiating in
7 good faith during the initial voluntary negotiations. CenturyTel further asserts that this process
8 would be the more efficient than Western’s requested process as it may avoid the need for
9 conducting the termination proceeding.

10 In response, staff believes CenturyTel’s suggested approach makes good sense. Clearly,
11 two carriers may agree to voluntarily negotiate an interconnection agreement and file it with the
12 Commission. CenturyTel asserts it has in fact done so many times. If the voluntary negotiations
13 conclude with no disputed issues, there is no need to go forward and consider all the various
14 factual and legal matters inherent with a proceeding to terminate CenturyTel’s rural exemption.
15 However, if the negotiations end with disputed issues, including possibly a claim for lack of
16 good faith negotiations, it would then be appropriate to go forward and consolidate the
17 termination proceeding with the underlying arbitration. It is important to note that under this
18 approach Western would not be left with open questions concerning the legal meaning of a
19 “voluntary waiver” of the rural exemption. Rather, Western would be entitled to proceed with a
20 full-blown hearing on its request to have the exemption terminated. This process, combined with
21 CenturyTel’s written agreement to not assert the exemption as a possible defense to a lack of
22 good faith claim for the

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1 voluntary negotiation stage of the process, should fully protect Western's legal interests and
2 allow for a more efficient method of proceeding in this matter.

3 DATED this 18th day of November 2008.

4 Respectfully submitted,

5 HARDY MYERS
6 Attorney General

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11 Of Attorneys for the Public Utility Commission
12 of Oregon
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1 **CERTIFICATE OF SERVICE**

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3 I certify that on November 18, 2008, I served the foregoing Staff Reply Comments upon
4 all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a
5 copy by postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting
6 paper service.

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