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December 23, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

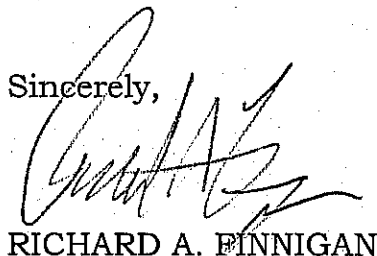
Filing Center
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: ARB 864 – Response of Centurytel of Eastern Oregon, Inc. to
Western Radio Services Company's Motion For Injunction

Dear Sir/Madam:

Enclosed are the original and five copies of the Response of Centurytel of Eastern Oregon, Inc. to Western Radio Services Company's Motion For Injunction and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: ALJ Kirkpatrick (via e-mail)
Service List (via e-mail and U.S. mail)
Clients (via e-mail)

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 864

In the Matter of the Petition by Western
Radio Services Co. Inc. for Arbitration of an
Interconnection Agreement with CenturyTel
of Eastern Oregon, Inc. Pursuant to Section
252(b) of the Telecommunications Act

RESPONSE OF CENTURYTEL OF EASTERN
OREGON, INC. TO WESTERN RADIO
SERVICES COMPANY'S MOTION FOR
INJUNCTION

Western Radio Services Company ("Western Radio") has filed what it has styled as a
"Complaint Regarding CenturyTel and Motion for Injunction." CenturyTel of Eastern Oregon, Inc.
("CenturyTel") hereby files its Response to Western Radio's pleading. In the course of this Response,
CenturyTel will point out that the pleading filed by Western Radio is not based on an accurate depiction
of the facts. Nor is Western Radio's pleading one which is properly filed with venue at the Commission
and it fails to state a claim upon which relief can be granted by this Commission.

Because the legal issues are despositive of Western Radio's pleading, CenturyTel will address
those matters first. However, the substance of Western Radio's claim is also deficient and will be
discussed in this Response.

1 I. WESTERN RADIO'S PLEADING IS IMPROPER AND FAILS TO STATE A CLAIM
2 UPON WHICH THIS COMMISSION CAN GRANT RELIEF

3 Western Radio calls its pleading both a "Complaint" and "Motion." If it is a complaint, then it
4 is improper for Western Radio to file a "complaint" in the arbitration docket that is already underway.
5 The proper filing of a complaint would be to file it as a separate docket.

6 However, whether Western Radio's pleading is a "Complaint" or not does not matter, since the
7 claim stated by Western Radio does not fall within the Commission's jurisdiction. Western Radio bases
8 every one of its claims on federal law. This Commission does not have the authority to enforce federal
9 law, except to the extent it has been delegated very limited authority to do so by Congress. In this
10 context, the Commission has been granted authority under 47 U.S.C. § 252 to arbitrate interconnection
11 agreements. The Commission does not have authority to enforce Federal Communications Commission
12 rules cited by Western Radio, such as 47 C.F.R. § 20 or 47 C.F.R. § 51.305.¹ Nor does the Commission
13 have authority to rule on or opine whether CenturyTel has or has not violated an obligation under 47
14 U.S.C. § 251(a) by failing to interconnect or by installing network features, functions or capabilities that
15 do not comply with guidelines or standards established pursuant to Section 255 or 256 of the
16 Communications Act of 1934, as amended. It should be noted that Section 255 has to do with access by
17 persons with disabilities and expressly states that the Federal Communications Commission "shall have
18 exclusive jurisdiction with respect to any complaint under this section." Section 256 has to deal with
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23 ¹ Technically, if an interconnection agreement was in place, a party to the agreement could apply to the Commission for
24 enforcement of the agreed upon terms that reflect Section 51.305 requirements. Here there is no agreement and enforcement
25 of Section 51.305 in the abstract is not within Commission authority.

1 interconnectivity and expressly vests responsibility under that Section with the Federal Communications
2 Commission.

3 Western Radio has also alleged a violation of 47 U.S.C. § 252(b)(5). However, nothing in the
4 bare allegations contained in Western Radio's pleading demonstrates in any way that CenturyTel
5 refused to "participate further in the negotiations"; refused to "cooperate with the state commission in
6 carrying out its function as an arbitrator" or failed to "continue to negotiate in good faith in the presence
7 or with the assistance of the state commission," which are the essential elements of Section 252(b)(5).
8 Western Radio fails to produce a single fact to support this allegation by Western Radio.
9

10 The final claim by Western Radio is that CenturyTel violated 47 U.S.C. § 251(c)(1) by failing to
11 negotiate in good faith in accordance with Section 252 of the particular terms and conditions of
12 agreements. Again, the bare bone allegations made by Western Radio do not support a finding of any
13 such activity by CenturyTel.
14

15 Further, the relief requested by Western Radio, an injunction, is not relief that the Commission
16 can grant. Western Radio does not cite to any authority for the Commission to issue an injunction. In
17 fact, this Commission lacks the authority to grant the relief requested by Western Radio.

18 II. WESTERN RADIO'S PLEADING IS FACTUALLY DEFICIENT

19 Assuming, for the sake of argument, that Western Radio can demonstrate that the Commission
20 has the authority to issue an injunction, Western Radio's pleading is deficient in form and in substance.

21 Western Radio's pleading is deficient in form in that it does not contain any support for any of
22 the allegations made in the pleading. As required by ORCP 79(b)(1)(a), for a restraining order to issue
23 (which is really what Western Radio is asking), it must clearly appear "from specific facts shown by an
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1 affidavit, a declaration or a verified complaint" that immediate and irreparable injury, loss or damage
2 will result before the adverse party can be heard in opposition. Obviously any injunction must also be
3 supported by specific facts that are proven by affidavit or declaration, if not by live testimony. Western
4 Radio's pleading is not supported by an affidavit or declaration. Western Radio's pleading is not
5 verified. There is no factual basis produced by Western Radio. Western Radio's pleading is deficient as
6 to form.
7

8 As to substance, Western Radio's pleading is also deficient. Western Radio has a Type 1 form
9 of wireless interconnection with CenturyTel.² A Type 1 form of interconnection allows Western Radio
10 to connect with the CenturyTel end office. In terms of network configuration, a Type 1 interconnection
11 is a carrier interconnection that mirrors end user line side service. It operates much like a PBX trunk for
12 a business customer would operate. A Type 1 interconnection must have a preferred interexchange
13 carrier or PIC to originate interexchange calls. Calls that are to leave the local calling area of the end
14 office to which the Type 1 interconnection has direct connection can only be made on a 1+ dialing basis.
15 Those calls are subject to toll charges. Western Radio does have a PIC, Qwest Communications.
16

17 As an alternative to routing toll calls to a PIC'd interexchange carrier through CenturyTel's
18 switch under a Type 1 interconnection, a wireless carrier can make its own arrangements with
19 interexchange carriers for the termination of calls. This is why many wireless carriers locate their point
20 of presence or POP at a toll/access tandem.
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24 ² All of the factual statements set forth in this section of the Response are supported by the Declarations of Ralph P. Teasley
25 and Jackie Phillips attached as Exhibits 1 and 2, respectively.

1 As stated by Western Radio, there is no interconnection agreement between Western Radio and
2 CenturyTel. CenturyTel has not at any time agreed that Western Radio may route toll traffic to
3 CenturyTel to forward for termination on a bill and keep basis. Western Radio has been told that it is
4 responsible for its own toll charges. In fact, Western Radio was given a notice of disconnection
5 concerning its failure to pay for those charges. The latest notice of disconnection is attached to Ms.
6 Phillips' Declaration.
7

8 CenturyTel would have been justified to completely disconnect the facilities that it is providing
9 to Western Radio due to Western Radio's failure to pay for the toll calls incurred in the use of those
10 facilities. Based on Western Radio's insistence that it should not have to pay toll charges for its end
11 users' interexchange calls, CenturyTel placed a toll restriction on the facilities. Western Radio is
12 apparently now demanding that its lines not be toll restricted and that its customers be provided with
13 unlimited toll at no charge to either Western Radio or its customers. What has really happened is that
14 Western Radio has abused the use of the facilities that CenturyTel provides for many months if not
15 years. Despite repeated warnings, Western Radio refused to pay its lawful obligations.
16

17 CONCLUSION

18 Western Radio's pleading should be dismissed for the multitude of reasons set forth above.

19 Respectfully submitted this 23rd day of December, 2008,

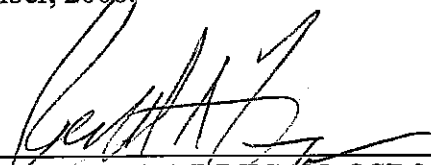
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22 RICHARD A. FINNIGAN, OSB No. 965357
23 Attorney for CenturyTel of Eastern Oregon, Inc.
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EXHIBIT 1

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4
5 BEFORE THE PUBLIC UTILITY COMMISSION
6 OF OREGON

7 ARB 864
8

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10 In the Matter of the Petition by Western
11 Radio Services Co. Inc. for Arbitration of an
12 Interconnection Agreement with CenturyTel
of Eastern Oregon, Inc. Pursuant to Section
252(b) of the Telecommunications Act

DECLARATION OF RALPH P. TEASLEY

13 I, Ralph P. Teasley, hereby declare under penalty of perjury under the laws of the State of
14 Oregon that the following statements are true and correct:

15 1. I am Manager-Network Support Center for CenturyTel, Inc. In that capacity, I provide
16 network support services for all CenturyTel subsidiaries.

17 2. I am very familiar with Type 1 interconnection for wireless carriers. Type 1
18 interconnection allows a mobile (CMRS) carrier and a wireline carrier to be interconnected at a wireline
19 carrier's end office. In many ways, a Type 1 interconnection for a wireless carrier looks like a PBX
20 trunk for a business customer. A Type 1 interconnection must have a Presubscribed Interexchange
21 Carrier or PIC to handle Intra-LATA calls and a PIC to handle Inter-LATA calls in order for calls made
22 by the customers of the CMRS carrier to be carried outside of the local calling area of the end office to
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26 DECLARATION OF RALPH P. TEASLEY - 1

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Olympia, WA 98512
(360) 956-7001

EXHIBIT 2

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3 BEFORE THE PUBLIC UTILITY COMMISSION
4 OF OREGON

5 ARB 864

6
7 In the Matter of the Petition by Western
8 Radio Services Co. Inc. for Arbitration of an
9 Interconnection Agreement with CenturyTel
10 of Eastern Oregon, Inc. Pursuant to Section
11 252(b) of the Telecommunications Act

DECLARATION OF JACKIE PHILLIPS

12 I, Jackie Phillips, hereby declare under penalty of perjury under the laws of the State of Oregon
13 that the following statements are true and correct:

14 1. I am employed as Regional Director – Carrier Relations with CenturyTel Service Group,
15 LLC. In that capacity I negotiate interconnection agreements on behalf of CenturyTel of Eastern
16 Oregon, Inc. I was responsible for the negotiations with Western Radio Services Co., Inc.

17 2. CenturyTel of Eastern Oregon and Western Radio have been interconnected for several
18 years. CenturyTel of Eastern Oregon and Western Radio regularly and routinely exchange traffic over
19 interconnection facilities. This occurs even though there is no existing interconnection agreement
20 between CenturyTel of Eastern Oregon and Western Radio.

21 3. I have asked Mr. Oberdorfer who represents Western Radio to identify any
22 interconnection orders that Western Radio has submitted to CenturyTel of Eastern Oregon that have not
23 been processed. I have not had a response to that request. I have not been able to find any unprocessed
24 interconnection orders from Western Radio at CenturyTel.

25
26 DECLARATION OF JACKIE PHILLIPS - 1

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1 4. I have exchanged several e-mails over the months after June 16, 2008, with Mr.
2 Oberdorfer concerning interconnection between Western Radio and CenturyTel of Eastern Oregon. I
3 have been attempting to determine the nature of the interconnection agreement that Western Radio is
4 seeking and the technical aspects of the interconnection. I have not been able to obtain very many
5 details to date. For the first time in the Petition for Arbitration, Western Radio identified that it is
6 willing to enter into a Type 1 form of agreement with CenturyTel of Eastern Oregon.
7

8 5. I sent a form of Interconnection Agreement to Western Radio on October 24, 2008. I
9 received a different form of Interconnection Agreement from Western Radio on November 18, 2008.

10 6. I am familiar with the billing of toll charges to Western Radio. Western Radio has been
11 incurring toll charges through the use of CenturyTel's facilities. Western Radio is presubscribed to
12 Qwest Communications. Western Radio has not paid the toll bills for the toll traffic carried by Qwest
13 Communications. CenturyTel has not agreed to transport toll calls from Western Radio's customers on
14 a "bill and keep" basis.
15

16 7. Attached is a copy of the latest disconnection notice sent to Western Radio concerning
17 the failure to pay those toll charges.

18 Dated this 22nd day of December, 2008.

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20 
21 _____
22 JACKIE PHILLIPS
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26 DECLARATION OF JACKIE PHILLIPS - 2

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CERTIFICATE OF SERVICE
ARB 864

I certify that I have this day sent the attached Response of Centurytel of Eastern Oregon, Inc. to Western Radio Services Company's Motion For Injunction 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

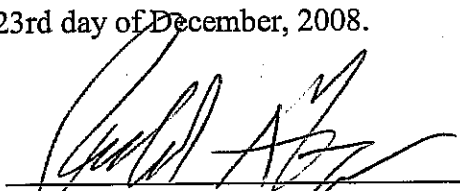
I further certify that I have this day sent the attached Response of Centurytel of Eastern Oregon, Inc. to Western Radio Services Company's Motion For Injunction upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid, and by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

MICHAEL T. WEIRICH
ASSISTANT ATTORNEY GENERAL
REGULATED UTILITY & BUSINESS
SECTION
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SALEM, OR 97301-4096
michael.weirich@doj.state.or.us

MARIANNE DUGAN
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EUGENE, OR 97401
mdugan@mdugan.com

RICHARD L. OBERDORFER
WESTERN RADIO SERVICES CO INC
114 NE PENN AVE
BEND, OR 97701
oberdorfer@earthlink.net

Dated at Olympia, Washington, this 23rd day of December, 2008.


Richard A. Finnigan, OSB #965357
Attorney for CenturyTel of Eastern Oregon, Inc.