Law Office of Richard A. Finnigan

Richard A. Finnigan (360) 956-7001 rickfinn@localaccess.com 2112 Black Lake Blvd. SW Olympia, Washington 98512 Fax (360) 753-6862

Kathy McCrary, Paralegal (360) 753-7012 kathym@localaccess.com

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.

RICHARD A. FINNIGAN

Sincerely.

RAF/km Enclosures

cc: ALJ Kirkpatrick (via e-mail)

Service List (via e-mail and U.S. mail)

Clients (via e-mail)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 864

8

10

11

1

2

3

4

5

6

7

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

13

14

15

16

17

18

12

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

19 20

21

22

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.

and it fails to state a claim upon which relief can be granted by this Commission.

23

24

25

26

RESPONSE OF CENTURYTEL OF EASTERN OREGON, INC. TO WESTERN RADIO SERVICES COMPANY'S MOTION FOR INJUNCTION - 1

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

Western Radio calls its pleading both a "Complaint" and "Motion." If it is a complaint, then it is improper for Western Radio to file a "complaint" in the arbitration docket that is already underway.

The proper filing of a complaint would be to file it as a separate docket.

However, whether Western Radio's pleading is a "Complaint" or not does not matter, since the claim stated by Western Radio does not fall within the Commission's jurisdiction. Western Radio bases every one of its claims on federal law. This Commission does not have the authority to enforce federal law, except to the extent it has been delegated very limited authority to do so by Congress. In this context, the Commission has been granted authority under 47 U.S.C. § 252 to arbitrate interconnection agreements. The Commission does not have authority to enforce Federal Communications Commission rules cited by Western Radio, such as 47 C.F.R. § 20 or 47 C.F.R. § 51.305. Nor does the Commission have authority to rule on or opine whether CenturyTel has or has not violated an obligation under 47 U.S.C. § 251(a) by failing to interconnect or by installing network features, functions or capabilities that do not comply with guidelines or standards established pursuant to Section 255 or 256 of the Communications Act of 1934, as amended. It should be noted that Section 255 has to do with access by persons with disabilities and expressly states that the Federal Communications Commission "shall have exclusive jurisdiction with respect to any complaint under this section." Section 256 has to deal with

¹ Technically, if an interconnection agreement was in place, a party to the agreement could apply to the Commission for enforcement of the agreed upon terms that reflect Section 51.305 requirements. Here there is no agreement and enforcement of Section 51.305 in the abstract is not within Commission authority.

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

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

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

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

II. WESTERN RADIO'S PLEADING IS FACTUALLY DEFICIENT

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

Western Radio's pleading is deficient in form in that it does not contain any support for any of the allegations made in the pleading. As required by ORCP 79(b)(1)(a), for a restraining order to issue (which is really what Western Radio is asking), it must clearly appear "from specific facts shown by an

RESPONSE OF CENTURYTEL OF EASTERN OREGON, INC. TO WESTERN RADIO SERVICES COMPANY'S MOTION FOR INJUNCTION - 3

affidavit, a declaration or a verified complaint" that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition. Obviously any injunction must also be supported by specific facts that are proven by affidavit or declaration, if not by live testimony. Western Radio's pleading is not supported by an affidavit or declaration. Western Radio's pleading is not verified. There is no factual basis produced by Western Radio. Western Radio's pleading is deficient as to form.

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

As an alternative to routing toll calls to a PIC'd interexchange carrier through CenturyTel's switch under a Type 1 interconnection, a wireless carrier can make its own arrangements with interexchange carriers for the termination of calls. This is why many wireless carriers locate their point of presence or POP at a toll/access tandem.

² All of the factual statements set forth in this section of the Response are supported by the Declarations of Ralph P. Teasley

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

and Jackie Phillips attached as Exhibits 1 and 2, respectively.

INJUNCTION - 4

22 23

24

25 26

RESPONSE OF CENTURYTEL OF EASTERN OREGON, INC. TO WESTERN RADIO SERVICES COMPANY'S MOTION FOR **INJUNCTION - 5**

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

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

CONCLUSION

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

Respectfully submitted this 23rd day of December, 2008

RICHARD A. FINNIGAN, OSB No. 965357

Attorney for Century Tel of Eastern Oregon, Inc.

EXHIBIT 1

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

ARB 864

9

7

8

10

13

14

15

16

17

18

19

20

21

22

23

24

25

26

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

DECLARATION OF RALPH P. TEASLEY

11 12

- I, Ralph P. Teasley, hereby declare under penalty of perjury under the laws of the State of Oregon that the following statements are true and correct:
- I am Manager-Network Support Center for CenturyTel, Inc. In that capacity, I provide 1. network support services for all CenturyTel subsidiaries.
- I am very familiar with Type 1 interconnection for wireless carriers. Type 1 2. interconnection allows a mobile (CMRS) carrier and a wireline carrier to be interconnected at a wireline carrier's end office. In many ways, a Type 1 interconnection for a wireless carrier looks like a PBX trunk for a business customer. A Type 1 interconnection must have a Presubscribed Interexchange Carrier or PIC to handle Intra-LATA calls and a PIC to handle Inter-LATA calls in order for calls made by the customers of the CMRS carrier to be carried outside of the local calling area of the end office to

DECLARATION OF RALPH P. TEASLEY - 1

which the Type 1 interconnection has direct connection. Calls must be dialed on a 1+ basis. For such calls, normal intraLATA or interLATA toll charges apply.

- 3. It is the obligation of the CMRS carrier to make arrangements with interexchange carriers for the transport of traffic originated by the customers of the mobile carrier. As an alternative to routing their customers' calls on 1+ basis, many CMRS carriers enter into agreements with one or more interexchange carriers and locate their point of presence or POP at the intraLATA toll/access tandem.
- 4. In this particular case, Western Radio is associated with a PIC for Intra-LATA calls, which is far as CenturyTel can determine was a choice made by Western Radio, and that PIC is Qwest Communications ILEC.

Dated this 22nd day of December, 2008.

Ralph P. Teasley

RALPH P. TEASLEY

DECLARATION OF RALPH P. TEASLEY - 2

EXHIBIT 2

12

13 14

15 16

17

18

19 20

21 22

23

24 25

26

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

DECLARATION OF JACKIE PHILLIPS

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

- I am employed as Regional Director Carrier Relations with CenturyTel Service Group,
 LLC. In that capacity I negotiate interconnection agreements on behalf of CenturyTel of Eastern
 Oregon, Inc. I was responsible for the negotiations with Western Radio Services Co., Inc.
- 2. CenturyTel of Eastern Oregon and Western Radio have been interconnected for several years. CenturyTel of Eastern Oregon and Western Radio regularly and routinely exchange traffic over interconnection facilities. This occurs even though there is no existing interconnection agreement between CenturyTel of Eastern Oregon and Western Radio.
- 3. I have asked Mr. Oberdorfer who represents Western Radio to identify any interconnection orders that Western Radio has submitted to CenturyTel of Eastern Oregon that have not been processed. I have not had a response to that request. I have not been able to find any unprocessed interconnection orders from Western Radio at CenturyTel.

DECLARATION OF JACKIE PHILLIPS - 1

- 4. I have exchanged several e-mails over the months after June 16, 2008, with Mr. Oberdorfer concerning interconnection between Western Radio and CenturyTel of Eastern Oregon. I have been attempting to determine the nature of the interconnection agreement that Western Radio is seeking and the technical aspects of the interconnection. I have not been able to obtain very many details to date. For the first time in the Petition for Arbitration, Western Radio identified that it is willing to enter into a Type 1 form of agreement with CenturyTel of Eastern Oregon.
- I sent a form of Interconnection Agreement to Western Radio on October 24, 2008. I
 received a different form of Interconnection Agreement from Western Radio on November 18, 2008.
- 6. I am familiar with the billing of toll charges to Western Radio. Western Radio has been incurring toll charges through the use of CenturyTel's facilities. Western Radio is presubscribed to Qwest Communications. Western Radio has not paid the toll bills for the toll traffic carried by Qwest Communications. CenturyTel has not agreed to transport toll calls from Western Radio's customers on a "bill and keep" basis.
- 7. Attached is a copy of the latest disconnection notice sent to Western Radio concerning the failure to pay those toll charges.

Dated this 22 day of December, 2008.

Jackie Chillips

JACKIE PHILLIPS

DECLARATION OF JACKIE PHILLIPS - 2

Account Number: Telephone Number: invoice Past Due Date:

300342108 541-573-2311 11/20/08

DISCONNECT NOTICE

Final Date For Payment: 12/11/08

Total Amount Due: \$

75.18

Our records indicate that your account is past due in the total amount shown above. The total amount due may include charges for basic local telephone services as well as long-distance and other non-essential services. The total amount due reflects all of the charges incurred and owed on your account. If the total amount due has been paid, please disregard this notice.

	Amount Due	‡	Alliount Falu
Basic Local Telephone Service (Essential) Charges Non-Essential Charges Total Amount Past Due	\$ \$	4.11 71.07 75.18	\$ \$ \$

To avoid disconnection of your local telephone service, we must receive payment of *** \$ 4.11 by close of business on 12/11/08 *** or service will be disconnected on or after 12/11/08 without any further notice. If you do not pay the total amount due by close of business on 12/11/08, and only pay for your local telephone service, your local telephone service will not be disconnected. However, please be advised that your long-distance and other services may be subject to to!! blocking or disconnection on or after 12/11/08.

Payments made to an unauthorized payment agent may result in the untimely or improper crediting of the subscriber's account. If disconnected, a reconnection charge of \$ 10.00 per line will apply, and a deposit or additional deposit may be required. Reconnect charges for multi-line accounts will vary dependent upon the number of lines involved. Reconnect charge is subject to change without notification. If you need assistance with payment of your bill for one of the following reasons, please contact us at 1-888-646-0004, TTY 7-1-1.

1. If you or a member of the household has a medical condition where the disconnection of telephone service would significantly endanger the physical health of that party.

In order to prevent the disconnection of your local exchange residential telephone service you may submit an emergency medical certificate and enter into a time-payment agreement to prevent disconnection of your local exchange service. The emergency medical certificate must be from a qualified medical professional stating stating that disconnection would significantly endanger the physical health of the customer or a member of the customer's household. "Qualified Medical Professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition described without direct supervision by a physician. Please contact CenturyTel to determine your eligibility for emergency medical certification.

2. If you wish to negotiate a deferred payment plan.

If after contacting us you are not satisfied with the reasons given for disconnection of service, you may contact the Oregon Public Utility Commission at 1-800-522-2404, TTY dial - 711 then ask for 1-800-522-2404.

You may qualify to pay your bill in installments and avoid disconnection, but you must contact us at 1-888-646-0004, TTY 7-1-1 by the close of business on the last day to pay the amount printed on this notice and ask for a deferred payment plan.

Please fold, tear here and return this portion with your payment

PLEASE REMIT PAYMENT TO:

CenturyTel P.O. Box 4300 Carol Stream, IL 60197-4300

Idalia II in III in II in III in III

DISCONNECT NOTICE

Billing Date	11/20/08		
Account No.	300342108		
Payment Due By	12/11/08		
Total Amount Due	\$ 75.18		

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:

ASSISTANT ATTORNEY GENERAL REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM, OR 97301-4096 michael.weirich@doj.state.or.us

MICHAEL T. WEIRICH

MARIANNE DUGAN 259 E 5TH AVE – 200-D 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.

24

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

26

CERTIFICATE OF SERVICE - 1