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January 1, 2009

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 - Reply in Support of Complaint and Motion for Injunction and Response to ALJ's Questions; and Declaration of Oberdorfer

Dear Sir/Madam:

Enclosed for filing are Western Radio's "Reply in Support of Complaint and Motion for Injunction and Response to ALJ's Questions" and "Declaration of Oberdorfer" in the above-referenced matter. Also enclosed is a Certificate of Service.

I had advised the ALJ that I believed I could get these documents filed by December 31, 2008, but unfortunately other matters and travels with my family interfered with me doing so yesterday. I apologize; if a motion for extension is required please advise. I am still well within the deadlines set by the OARs.

The original signed version of the Declaration of Oberdorfer is on its way to me via mail from Bend, Oregon -- I expect to have it tomorrow or the next day and will forward a copy when it arrives.

Very truly yours,

Marianne Dugan

encl

cc: parties and counsel of record

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

3 ARB 864

4 In the Matter of)
5 WESTERN RADIO SERVICES)
6 COMPANY)
7 Request for Interconnection Agreement)
8 with CENTURYTEL OF EASTERN)
9 OREGON, INC.)

10 **WESTERN RADIO'S REPLY IN SUPPORT OF COMPLAINT**
11 **AND MOTION FOR INJUNCTION**
12 **and RESPONSE TO ALJ'S QUESTIONS**

13 Western Radio submits this reply in support of its Complaint and Motion for Injunction.

14 **I. THE FORM OF THE REQUEST IS APPROPRIATE**

15 CenturyTel argues that the form of Western's motion for injunction does not comply with
16 the Oregon Rules of Civil Procedure because it was unaccompanied by a declaration. Western
17 herewith submits the Declaration of Richard Oberdorfer in support of the motion for injunction.

18 CenturyTel also argued that Western's submission of a complaint within this arbitration
19 was improper. After reviewing all the applicable regulations, Western Radio's counsel
20 concluded that both a "complaint" (pursuant to OAR 860-013-0015) and a motion for injunction
21 (pursuant to OAR 860-013-0031) were appropriate; and that filing these under the existing ARB
22 number was appropriate rather than filing a new request for arbitration. If Western's counsel was
23 mistaken, she apologizes and requests leave to re-file in the appropriate manner as specified by
24 the ALJ.

Western's "complaint" clearly relates to the ongoing arbitration (thus, a new arbitration

1 would not be appropriate); but it but brings new facts to the PUC's attention and complains that
2 CenturyTel has violated various laws. The motion requests for specific relief related to that
3 complaint. Both types of filings appear to apply, and it does not appear a new arbitration request
4 (pursuant to OAR 860-016-0030) would be the appropriate route. "'Arbitration' means the
5 submission of a dispute for resolution by a neutral third party appointed by the Commission
6 pursuant to Section 252(b) of the [Telecommunications] Act." OAR 860-016-0000(2). "A
7 complaint is a written pleading filed with or by the Commission requesting or instituting a
8 formal investigation or hearing." OAR 860-013-0015. "Such pleading shall: (1) Contain the
9 full name and address of each party complainant and each party defendant; (2) Set forth the
10 specific acts complained of in sufficient detail to advise the parties and the Commission of the
11 facts constituting the grounds of complaint and the exact relief requested; (3) Cite the applicable
12 statutes or rules alleged to have been violated." *Id.* "A motion is a request to the Commission or
13 Administrative Law Judge (ALJ) for a ruling or other action which affects the rights of a party to
14 the proceeding." OAR 860-013-0031.

15 **II. THE PUC HAS JURISDICTION AND AUTHORITY TO GRANT RELIEF**

16 Western Radio and its sister company Autotel have participated in several federal
17 lawsuits against other carriers. Each time, the courts have held that all claims must first go to the
18 state public utilities commission. See, e.g., Western Radio Services Co. v. Qwest Corp., 530 F3d
19 1186 (9th Cir. 2008). In the recent Ninth Circuit decision, the court explained:

20 "We therefore agree with Qwest that the only sensible conclusion in this case,
21 given the nature of Western's asserted cause of action and the role allotted to state
22 commissions by Congress, is that the PUC must address Western's good faith claim
23 before that claim may be brought in district court. . . . [W]hile we might under other
24 circumstances be hesitant to require that a party bring its claim to a state agency before
raising a federal private right of action in district court, §§ 251 and 252 give the PUC a
uniquely prominent role."

1 CenturyTel similarly argues that the PUC lacks authority to grant Western the injunctive
2 relief requested. CenturyTel cites nothing that would bar the PUC from enjoining CenturyTel
3 from toll-restricting WR's trunk group. The rules provide for motions seeking specific relief, and
4 Western has stated the specific relief required to prevent continued violating of the laws the PUC
5 administers. OAR 860-016-0050(2)(f) allows for injunctive relief to enforce an Interconnection
6 Agreement. Other provisions give PUC authority to issue injunctions to assist consumers. OAR
7 860-034-0290(2)(c). There is no reason the PUC would not have similar injunctive authority in
8 this situation (and, as CenturyTel notes, the ORCP provides for injunctive relief, and the ORCP
9 generally applies to these proceedings, OAR 860-011-0000(3)). If the PUC did not have such
10 authority, the PUC could protect small companies which have successfully negotiated an IA with
11 an incumbent, but not those which have been rebuffed by the incumbent -- an outcome which
12 would make no sense and which would be inequitable.

13 **III. CENTURYTEL REFUSED TO REASONABLY NEGOTIATE**

14 CenturyTel argues that Western's pleading does not demonstrate that CenturyTel refused
15 to participate further in negotiations. That is incorrect. Western's allegations show that
16 CenturyTel gave Western Radio a take it or leave it proposal and refused to negotiate, instead
17 shutting off Western's customers' access. CenturyTel abruptly began "toll-restricting" the trunk
18 group associated with Western Radio; this prevents Western's customers from accessing
19 anything but CenturyTel's network, thereby preventing Western's customers from calling the
20 customers of any other telecommunications carriers.

21 CenturyTel does not dispute -- but does not explain -- why it was writing off the toll
22 charges (which Western asserts have been erroneously billed) until Western filed its petition
23 with the PUC.

1 In her declaration at ¶ 2, Phillips admits that, despite not having an Interconnection
2 Agreement, CenturyTel and Western have been "interconnected" for several years, and have
3 "regularly and routinely exchanged traffic over interconnection facilities." It is disingenuous for
4 CenturyTel to argue in its memo that Western is simply a customer of CenturyTel, like any other
5 business with a telephone account. This is not a one-way relationship of carrier to customer --
6 the parties exchange their traffic and have agreed to "bill and keep." The parties have already
7 agreed the traffic is in balance so there is no harm to either party to wait the additional four
8 months for a final decision on the petition.

9 As Western Radio's owner, Richard Oberdorfer, explains in his declaration, the Jackie
10 Phillips declaration of December 22, 2008, is not factually accurate. Oberdorfer Decl. ¶ 2. Ms.
11 Phillips asserts that Western is pre-subscribed to Qwest Communications for interexchange calls.
12 Id. Western has selected the Interexchange calls which originate on the Western network to be
13 carried by MCI, not Qwest Communications. MCI bills Western directly for this service. MCI
14 has not alleged Western is not paying for interexchange calls originating on Western's network.
15 Id.

16 IntraLATA calls which originate on Western's network and are sent to subscribers off or
17 not interconnected directly to the CenturyTel network are routed to the tandem switch in
18 Redmond, Oregon, which is part of the network of Qwest Corporation. Oberdorfer Decl. ¶ 3.
19 Western's agreement with Qwest Corporation provides that both parties will bill each other
20 directly for transport and termination of calls originating on the other party's network. Id. In
21 ARB 537, the PUC accepted Qwest's and Western's settlement of the issue of rates and the
22 parties agreed to bill and keep for transport and termination of intraMTA traffic. If Qwest felt it
23 was not being paid by Western for such transport, the appropriate action would be for Qwest to
24

1 file a complaint with the PUC. Qwest Corporation has not made such a claim.

2 The Ralph P. Teasley declaration is also not factually accurate. Oberdorfer Decl. ¶ 4.
3 There is no law or regulation that requires an interexchange carrier to handle the intra-LATA
4 calls which originate on Western's network. CenturyTel's switch routes those calls to the
5 network of Qwest Corporation for transport and termination. Id. Western does not require its
6 customers to dial any calls by placing a 1+ ahead of the 7 or 10 dialed numbers. It is the
7 programming of CenturyTel's equipment that requires some of these calls to be dialed on a 1+
8 basis. Id. CenturyTel has control of the programming of its own switching and billing
9 equipment.

10 Mr. Teasley also claims Western has selected "Qwest Communications ILEC" to
11 transport and terminate Western's intraLATA calls. Oberdorfer Decl. ¶ 5. Western has selected
12 Qwest Corporation to transport and terminate intraLATA calls. Id. Qwest Communications is
13 an interexchange carrier and not an incumbent local exchange carrier (ILEC). The alternative
14 suggested by Mr. Teasley is for Western to route its non-CenturyTel traffic directly to Qwest
15 Corporation's tandem switch in Redmond. Oberdorfer Decl. ¶ 6. This type of interconnection
16 arrangement is called Type 2 interconnection. Routing all the traffic directly between the
17 Western and CenturyTel switches as is done today is called Type 1 interconnection.

18 **IV. CENTURYTEL'S ILLEGAL ACTS ARE HARMING WESTERN AND ITS**
19 **CUSTOMERS AND INJUNCTIVE RELIEF IS APPROPRIATE**

20 Since CenturyTel took action to block some of the calls originating on Western's
21 network, Western's office has received many calls and emails from Western's customers
22 complaining they cannot make calls out of Burns and Harney County. Oberdorfer Decl. ¶ 7. In
23 addition to the time taken to try to placate the dissatisfied customers, Western is obligated to
24 give its customers credit for the disruption caused by CenturyTel to our customer's telephone

1 service. Id. Some customers have threatened to terminate service with Western and bring
2 lawsuits against Western and CenturyTel. Id.

3 In the past few days, CenturyTel's attorney contacted Western's attorney with a proposal
4 for resolving this matter in lieu of an injunction, but the proposal was not acceptable to Western.
5 Therefore, it is necessary for the ALJ to address this situation. The ALJ queried whether the
6 parties can agree to interim rates pending resolution, but since the parties agreed to bill and keep,
7 Western does not believe it should have to pay any rates to CenturyTel in order to get its service
8 restored. If the PUC does impose rates (interim or otherwise) for service which was not billed
9 previously, Western will be entitled to obtain CenturyTel's billing address in order to begin
10 billing CenturyTel accordingly, instead of continuing the bill and keep arrangement.

11 **V. WESTERN'S VIEW IS THAT THE ARBITRATION BRIEFING IS CONCLUDED**

12 As for the arbitration as a whole, the ALJ has indicated that she believes Western's
13 petition for arbitration is inadequate and should be re-submitted; and that she believes further
14 briefing on the arbitration and a decision will take up to a year. Western respectfully disagrees.
15 For the arbitration petition, Western was not able to identify any issues on which the parties had
16 come to agreement because (as Western pointed out in the petition), CenturyTel never gave a
17 straight answer regarding its position. Section 252 of the Act does not provide for requiring a
18 requesting carrier to submit a new petition. The 160-day period after submission of a petition
19 has passed, as has the 25-day period for CenturyTel's response (which has been filed). The law
20 does not allow for either party to raise additional open issues. Any further delay in resolving this
21 arbitration risks further damage to Western caused by CenturyTel's failure to negotiate in good
22 faith.

23 **VI. A PUC DECISION REGARDING THE RURAL EXEMPTION IS APPROPRIATE**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 864

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

DECLARATION OF RICHARD L. OBERDORFER

I, Richard L. Oberdorfer, declare as follows:

1. I am the owner of the petitioner Western Radio Services Co. (Western), and I make this declaration in support of Western's Complaint and Motion for Injunction. I make the statements in this declaration based on my personal knowledge. I am competent to testify to the matters stated herein.

2. The Jackie Philips declaration of December 22, 2008, is not factually accurate. She claims Western is pre-subscribed to Qwest Communications for interexchange calls. Western has selected the Interexchange calls which originate on the Western network to be carried by MCI, not Qwest Communications. MCI bills Western directly for this service. MCI has not alleged Western is not paying for interexchange calls originating on Western's network.

3. IntraLATA calls which originate on Western's network and are sent to subscribers off or not interconnected directly to the CenturyTel network are routed to the tandem switch in Redmond, which is part of the network of Qwest Corporation. Western's agreement with Qwest Corporation provides that both parties will bill each other directly for transport and termination

of calls originating on the other party's network. Qwest Corporation has not claimed it is not being compensated by Western for the transport and termination of calls originating on Western's network.

4. The Ralph P. Teasley declaration is not factually accurate. There is no law or regulation that requires an interexchange carrier to handle the intra-LATA calls which originate on Western's network. CenturyTel's switch routes those calls to the network of Qwest Corporation for transport and termination. Western does not require its customers to dial any calls by placing a 1+ ahead of the 7 or 10 dialed numbers. It is the programming of CenturyTel's equipment that requires some of these calls to be dialed on a 1+ basis. CenturyTel has control of the programming of its own switching and billing equipment.

5. Mr. Teasley also claims Western has selected "Qwest Communications ILEC" to transport and terminate Western's intraLATA calls. Western has selected Qwest Corporation to transport and terminate intraLATA calls. Qwest Communications is an interexchange carrier and not an incumbent local exchange carrier (ILEC).

6. The alternative suggested by Mr. Teasley is for Western to route its non-CenturyTel traffic directly to Qwest Corporation's tandem switch in Redmond. This type of interconnection arrangement is called Type 2 interconnection. Routing all the traffic directly between the Western and CenturyTel switches as is done today is called Type 1 interconnection.

7. Since CenturyTel took action to block some of the calls originating on Western's network, our office has received many calls and emails from Western's customers complaining they can not make calls out of Burns and Harney County. In addition to the time taken to try to placate the dissatisfied customers, Western is obligated to give its customers credit for the disruption caused by CenturyTel to our customer's telephone service. Some customers have

threatened to terminate service with Western and bring lawsuits against Western and CenturyTel.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

Executed on December 31, 2008.

/s/ Richard L. Oberdorfer
Richard L. Oberdorfer

**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 January 1, 2009, I sent "WESTERN RADIO'S REPLY IN SUPPORT OF COMPLAINT AND MOTION FOR INJUNCTION and RESPONSE TO ALJ'S QUESTIONS" and "DECLARATION OF RICHARD OBERDORFER," 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.of.us

I further certify that on January 1, 2009, I also served the above-referenced documents 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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Dated January 1, 2009.

/s/ Marianne Dugan
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