BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1431

In the Matter of the Joint Application of Verizon Communications Inc. and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.	)))))))	**RESPONSE TO MOTION FOR ORDER DECLINING JURISDICTION**

I. INTRODUCTION

XO Communications, tw telecom, Integra Telecom, and PAETEC Business Services (collectively, the "Joint CLECs") respectfully submit this Response to the Motion for an Order Declining Jurisdiction filed by Verizon Communications Inc. and Frontier Communications Corporation (collectively "Joint Applicants"). This Commission should deny Joint Applicants' Motion because it contradicts Oregon's statutory scheme, as explained in this Commission's recent decision in *In the Matter of Embarq Corporation and CenturyTel Inc.,* Order No. 09-196, Docket UM 1416 (May 11, 2009) ("*CenturyTel Order*").

II. ANALYSIS

On May 11, 2009, this Commission relied on ORS 759.375 and ORS 759.380 to assert its jurisdiction in a matter essentially identical to this one in all respects material to Joint Applicants' Motion. *See CenturyTel Order,* pp. 2-6. Approximately six weeks after that decision, Joint Applicants nonetheless filed the instant motion, asking the Commission to "revisit" its very recent rationale. Joint Applicants' Motion at p. 1. Joint Applicants have not

attempted to—and cannot—distinguish the critical facts from those in the *CenturyTel Order*. Rather, Joint Applicants' sole contention is that this Commission improperly interpreted ORS 759.375 and ORS 759.380 just weeks ago. That decision, and the statutes cited, defeat Joint Applicants' view.

ORS 759.375 requires that a telecommunications utility doing business in Oregon must obtain Commission approval before it may "[b]y any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever…." ORS 759.375(1)(c). Separately, ORS 759.380 requires Commission authorization for a telecommunications utility to "directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes…of any other…telecommunications utility…." ORS 759.380(1). This expansive language applies to a merger between two non-Oregon parent companies that changes the ultimate parent company for the affected Oregon incumbent local exchange carriers (ILECs), even where the Oregon ILECs otherwise remain unchanged. *See CenturyTel Order,* pp. 5-6 (calling the statutory language "very broad").

It is difficult to imagine broader language than "by any means whatsoever, directly or indirectly." Still, Joint Applicants insist that ORS 759.375 is inapplicable because the transaction would not merge Verizon Northwest and Frontier Oregon. Joint Applicants' Motion, p. 3. Yet the same basic scenario existed in *CenturyTel*: three ILECs owned by two different companies ultimately became three ILECs owned by a single parent.[1] *CenturyTel Order,* p. 5.

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[1] In *CenturyTel,* Embarq Corporation and CenturyTel, Inc. each owned one or more subsidiaries providing local exchange services in Oregon. *CenturyTel Order,* p. 2. The proposed merger between parent companies would create a new ultimate parent company for those ILECs, although Embarq's Oregon subsidiary, UTNW, would remain its subsidiary after the transaction. *Id.* at p. 3. From the end-user customers' perspective, the same ILECs would provide the same service, at the same rates, terms, and conditions as immediately prior to the transaction. *Id.* In short, as here, the Oregon ILECs remained the same, despite merger activity between non-Oregon parent corporations.

Those Oregon ILECs "indirectly" merged via a stock swap by the parent holding companies. *Id.* The same is true here.

Likewise, ORS 759.380 uses the broad phrase "*directly or indirectly.*" *See CenturyTel Order* pp. 5-6) (emphasis in Order). The Commission reasoned that CenturyTel's local ILECs "indirectly" acquired Embarq's ILEC "through the acquisition activities of its parent holding company," requiring Commission approval. *Id.* at p. 6. Again, the same reasoning applies here.

Undeterred by this Commission's clear and recent decision, Joint Applicants argue that this scenario is "not enough." Joint Applicants' Motion, p. 4. Their sole support appears to hinge on the definition of an "affiliated interest" in a separate statute. Because the "affiliated interest" definition includes companies sharing a common parent, Joint Applicants argue, ORS 759.375 and 759.380 cannot apply to transactions involving parent companies because they lack a similar definition. Joint Applicants' Motion, p. 4. The argument is illogical. An "affiliated interest" describes categories of corporations or persons having a specified relationship with a telecommunications utility, thus subjecting them to regulations and restrictions on certain transactions. ORS 759.390. The statutes at issue here contain no such uncommon term requiring definition. *See Gaston v. Parsons,* 318 Or 247, 253, 864 P2d 1319 (1994) (stating that "words in a statute that have a well-defined legal meaning are to be given that meaning in construing the statute"). Nor does the bare fact that one definition could include companies sharing a parent corporation have any bearing on whether a separate statute does or does not implicate transactions between parent corporations. In fact, Joint Applicants' strained interpretation of these statutes would render meaningless the terms "by any means whatsoever" and "directly or indirectly". If the legislature had intended the narrow meaning that Joint Applicants suggest, it would not have used these modifiers. It is an axiom of statutory interpretation that all terms in a statute are to be given meaning. *State v. Stamper,* 197 Or App 413, 418, 106 P3d 172 (2005) (stating that courts must assume that the legislature did not intend any language to be meaningless surplusage). A reading of a statute that requires entire phrases be ignored cannot

withstand scrutiny. *Urbick v. Suburban Med. Clinic, Inc.,* 141 Or App 452, 456, 918 P2d 453 (1996).

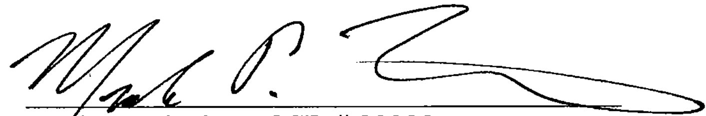
In short, Joint Applicants are incorrect that the legislature omitted transactions between parent companies in ORS 759.375 and 759.380. Rather, the legislature expressly provided for these transactions by stating that a telecommunications utility in Oregon must obtain approval before "directly *or indirectly*" completing a merger, consolidation, or purchase or acquisition of its specified property. ORS 759.375; 759.380 (emphasis added). This broad language covers the transaction between Joint Applicants.

III. CONCLUSION

A parent company-level merger leaving Oregon ILECs intact triggers this Commission's jurisdiction. The statutory scheme makes this plain, as the determined in the *CenturyTel Order* on May 11, 2009. Joint Applicants point to no change in the law since that May 11 decision, nor do they attempt to distinguish the facts in this matter from those forming the basis of that Order. This Commission should deny the Motion for an Order to Decline Jurisdiction.

DATED this 8th day of July, 2009.

DAVIS WRIGHT TREMAINE LLP



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CERTIFICATE OF SERVICE

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I hereby certify on the 8th day of July, 2009, the **RESPONSE TO MOTION FOR ORDER DECLINING JURISDICTION** was sent via UPS overnight mail to the Oregon Public Utility Commission. A copy was sent electronically to the service list below:

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