

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Staff investigation of the Oregon Universal  
Service Fund.

Docket No. UM 1481

**OCTA’S MOTION TO COMPEL  
CENTURYLINK AND MOTION TO  
EXTEND TIME FOR OPENING  
TESTIMONY**

**EXPEDITED CONSIDERATION  
REQUESTED**

**MOTION**

Pursuant to OAR 860-014-0070(3), the Oregon Cable Telecommunications Association (OCTA) respectfully moves to compel CenturyLink, Inc. (“CenturyLink”) to produce information concerning broadband services responsive to OCTA’s First Set of Data Requests Nos. OCTA-CTL-1, OCTA-CTL-3, and OCTA-CTL-4, and moves to change the date for initial testimony to December 10, 2012, and requests expedited consideration of this motion.

**CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE DISCOVERY DISPUTE**

OCTA made a good-faith effort to resolve these matters informally by conferring in a series of telephone calls and email correspondence with counsel for CenturyLink that began on November 7, 2012, but the parties were unable to resolve the dispute that is the subject of this motion. On November 13, CenturyLink communicated a final decision to exclude broadband services from the information provided in response to the data requests.

## BACKGROUND FACTS

At issue in this motion is OCTA's First Set of Data Requests, specifically requests OCTA-CTL-1, OCTA-CTL-3, and OCTA-CTL-4.<sup>1</sup> These requests sought annual reports filed with the Oregon Public Utility Commission (the Commission), line-counts (including broadband lines), and revenues (again, including broadband revenues). Generally, CenturyLink declined to provide responsive material relating to its broadband services.

Specifically, OCTA-CTL-1 provides as follows:

Provide the confidential version of each Annual Report Form O submitted by CenturyLink (including without limitation Qwest and other subsidiaries and affiliates) to the Oregon PUC, for each of the three years 2009, 2010, and 2011.

While CenturyLink provided some information, it noted:

CenturyLink has removed broadband information from Form L, section I of these reports as this information is not relevant and is beyond the scope of the issues set forth in the August 29, 2012 ALJ Ruling in this docket.

OCTA-CTL-3 provides as follows:

For 2011, provide CenturyLink's year-end line counts for the following services by wire center and ILEC study area (to the extent these data are not available at the wire center level, please provide the data at the lowest level of granularity available, such as rate center):

- A. Residential basic telephone service;
- B. Business basic telephone service;
- C. Residential broadband service provided by the company or its affiliates;
- D. Business broadband service provided by the company or its affiliates.

---

<sup>1</sup> Due to a typographical error, OCTA's First Set of Data Requests to CenturyLink included two distinct requests numbered OCTA-CTL-4. The request at issue, to which CenturyLink objected, is the first such request (the second such request is numbered OCTA-CTL-4-1 in CenturyLink's response).

While CenturyLink provided some information, it objected to both C and D in identical language, stating:

CenturyLink objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant information. In addition, it seeks information is not relevant and is beyond the scope of the issues set forth in the August 29, 2012 ALJ Ruling in this docket.

Finally, OCTA-CTL-4 provides as follows:

For 2011, provide CenturyLink's average revenue per line for the following line types and by wire center and ILEC study area (to the extent these data are not available at the wire center level, please provide the data at the lowest level of granularity available, such as rate center):

- A. Residential local voice service;
- B. Business local voice service;
- C. Residential broadband service provided by the company or its affiliates;
- D. Business broadband service provided by the company or its affiliates.

While CenturyLink provided some information, it objected to both C and D in identical language, stating:

CenturyLink objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant and information. In addition, it seeks information is not relevant and is beyond the scope of the issues set forth in the August 29, 2012 ALJ Ruling in this docket.

OCTA's opening testimony in this docket is currently due on November 26, 2012.

## **ARGUMENT**

### **A. The Scope of Permissible Discovery Is Broad**

The scope of discovery in this proceeding is the broad one established by the Oregon Rules of Civil Procedure (ORCP). OAR 860-001-0540 provides that “[a] party may submit data

requests to any other party, subject to the discovery rules in the ORCP.”<sup>2</sup> The ORCP, specifically allows discovery of “any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party....”<sup>3</sup> “Relevant evidence” is in turn defined to mean “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”<sup>4</sup> The ORCP expressly provides that “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”<sup>5</sup> For decades, Oregon law has shifted towards requiring disclosure even where relevancy is contested. *See Oregon Orchards v. Ins. Co. of N.A.*, 239 Or 192, 198, 397 P2d 74 (1964) (noting the trend to require production of documents in order to determine relevancy, rather than denying as irrelevant before disclosing the documents). The Commission’s rules emphasize that the standard protective order “allows the broadest possible discovery consistent with the need to protect confidential information.”<sup>6</sup>

### **B. Broadband Information Is Well-Within the Broad Scope Of Permissible Discovery**

The subject of OCTA’s Data Requests—including the information on CenturyLink’s broadband services—easily meets the liberal standard for discovery. All the Data Requests are reasonably calculated to lead to the discovery of admissible evidence. A central issue in this docket is “[w]hat changes should be made to the existing OUSF related to the calculation, the

---

<sup>2</sup> *See also* OAR 860-001-0000 (providing that the “The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.”).

<sup>3</sup> ORCP 36 B(1).

<sup>4</sup> ORS 40.150.

<sup>5</sup> ORCP 36 B(1).

<sup>6</sup> OAR 860-001-0080.

collection, and the distribution of funds.”<sup>7</sup> Calculation of OUSF support must take into consideration whether a carrier actually *needs* support. Carrier revenues that can be used to offset the cost of providing service are relevant to that analysis.

Moreover, the relevance of broadband revenues to the future of the OUSF calculations and distributions is clear from the history of this docket. Staff’s comments in response to the issues list in the earlier phase of UM 1481 explained that “DSL revenues or revenues derived from providing internet services,” should be used to reduce support if OUSF support remains directed at carriers.<sup>8</sup> Staff also commented that “as a principle, a company’s total communications earnings should be consider when determining if a company needs support for serving a particular geographic area.”<sup>9</sup> The relevance of broadband revenues, such as DSL revenues, to the OUSF was also made clear by the Commission in its first triennial review of rural Local Exchange Carriers’ OUSF funding in 2006, where it approved a Memorandum of Understanding, which set forth options for calculating future OUSF funding including “[i]mput[ing] DSL revenues as an additional OUSF offset”; and, “[a]djust[ing] the line counts to include DSL capable lines in the denominator to calculate cost per line.”<sup>10</sup>

CenturyLink’s objections appear to be based on the false assumption that if the OUSF will not be repurposed to directly support broadband, then broadband metrics and revenues are irrelevant to CenturyLink’s need for further support. That is simply not the case. If CenturyLink’s broadband revenue is significant, then the Commission must be free to consider whether OUSF funding calculations and distributions should reflect that.

---

<sup>7</sup> *Issues List Ruling*, at 2.

<sup>8</sup> *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff investigation of the Oregon Universal Service Fund*, Staff’s Comments, UM 1481, at Issue 29 (October 25, 2010).

<sup>9</sup> *Id.*, at Issue 38.

<sup>10</sup> *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff investigation of the Oregon Universal Service Fund*, Order 06-297, UM 1017, Appendix A, at 7 (June 14, 2006).

OCTA, in order to meaningfully comment on how the OUSF should be calculated and distributed, must have access to the data CenturyLink is refusing to provide. Specifically, information on broadband services requested by Data Requests OCTA-CTL-1, OCTA-CTL-3 and OCTA-CTL-4 is needed for OCTA to evaluate options for calculating and distributing future OUSF funds, and potentially present testimony to the Commission, including projections as to how the size of the OUSF might be impacted by such changes to the calculation of support.

In sum, there is no basis for CenturyLink to continue to withhold the requested information.

**C. Expedited Consideration and Extended Time for Opening Testimony Are Merited**

Finally, in order to allow consideration of this motion, and to allow OCTA to review, analyze and incorporate material CenturyLink is ultimately compelled to produce, currently due on November 26 (just after the Thanksgiving holiday), OCTA requests expedited consideration for this motion, and further requests that the time for opening testimony be extended two-weeks, to December 10, 2012.

///

///

///

///

## CONCLUSION

For the foregoing reasons, OCTA respectfully requests that its motion to compel discovery be granted on an expedited basis, and that the time for opening testimony should be extended to December 10, 2012.

DATED this 14th day of November, 2012.

DAVIS WRIGHT TREMAINE LLP

By: \_\_\_\_\_  
MARK TRINCHERO, OSB #883221  
Email: [marktrinchero@dwt.com](mailto:marktrinchero@dwt.com)  
ALAN GALLOWAY, OSB #083290  
Email: [alangalloway@dwt.com](mailto:alangalloway@dwt.com)  
Telephone: (503) 241-2300  
Facsimile: (503) 778-5299  
Of Attorneys for OCTA

**CERTIFICATE OF SERVICE  
UM 1481**

I hereby certify that on November 14, 2012, the foregoing **OCTA MOTION TO COMPEL CENTURYLINK AND MOTION TO EXTEND TIME FOR OPENING TESTIMONY –EXPEDITED CONSIDERATION REQUESTED** was sent by UPS Overnight Mail to the Oregon Public Utilities Commission, 550 Capitol Street NE, #215, Salem OR 97310 and email to puc.filingcenter@state.or.us, and was served on the following persons by email:

<p>Citizens' Utility Board of Oregon OPUC Dockets 610 SW Broadway, Ste 400 Portland, OR 97205 Dockets@oregoncub.org</p>	<p>Charles L. Best 1631 NE Broadway #538 Portland, OR 97232-1425 Chuck@charleslbest.com</p>
<p>Ater Wynne LLP Arthur A Butler 601 Union Street, Ste 1501 Seattle, WA 98101-3981 Aab@aterwynne.com</p>	<p>Qwest Corporation Carla Butler 310 SE Park Ave 11th Flr Portland, OR 97205-3715 Carla.butler@centurylink.com</p>
<p>AT&amp;T Communications of the Pacific Northwest Inc David Collier 645 E Plumb Lane / PO Box 11010 Reno, NV 89502 David.collier@att.com</p>	<p>Comcast Business Communications LLC Doug Cooley 1710 Salem industrial Drive NE Salem, OR 97303 Doug_cooley@cable.comcast.com</p>
<p>Integra Telecom of Oregon Inc Douglas K Denney 1201 NE Lloyd Blvd, Ste 500 Portland, OR 97232 Dkdenney@integratelecom.com</p>	<p>OCTA Michael Dewey 1249 Commercial St SE Salem, OR 97302 Mdewey@oregoncable.com</p>
<p>Verizon Communications NW, Inc. Milt H. Doumit 410 – 11th Ave. SE, Ste 103 Olympia WA 98501 milt.h.doumit@verizon.com</p>	<p>Citizens' Utility Board of Oregon Gordon Feighner 610 SW Broadway, Ste 400 Portland, OR 97205 Gordon@oregoncub.org</p>
<p>Law Office of Richard A Finnigan Richard A Finnigan 2112 Black Lake Blvd SW Olympia, WA 98512 Rickfinn@localaccess.com</p>	<p>WSTC Adam Haas 10425 SW Hawthorne Ln Portland, OR 97225 Adam.haas@warmspringstelecom.com</p>



CenturyLink, Inc. William E Hendricks 902 Wasco St a0412 Hood River, OR 97031 Tre.hendricks@centurylink.com	PUC Staff--Department of Justice Jason W Jones Business Activities Section 1162 Court St NE Salem, OR 97301-4096 Jason.w.jones@state.or.us
GVNW Consulting Inc Carsten Koldsbaek PO Box 2330 Tualatin, OR 97062 Ckoldsbaek@gvnw.com	Mcdowell Rackner & Gibson PC Adam Lowney 419 SW 11th Ave, Ste 400 Portland, OR 97205 Adam@mcd-law.com
AT&T Cynthia Manheim PO Box 97061 Redmond, WA 98052 Cindy.manheim@att.com	Public Utility Commission of Oregon Kay Marinos PO Box 2148 Salem, OR 97308-2148 kay.marinos@state.or.us
Citizens' Utility Board of Oregon G. Catriona Mccracken 610 SW Broadway, Ste 400 Portland, OR 97205 Catriona@oregoncub.org	AT&T Services, Inc. Sharon L. Mullin 400 W 15th St, Ste 930 Austin, TX 78701 Slmullin@att.com
Integra Telecom of Oregon Inc J Jeffery Oxley 6160 Golden Hills Dr Golden Valley, MN 55416-1020 Jjoxley@integratelecom.com	Oregon Exchange Carrier Association Craig Phillips 1104 Main St., #300 Vancouver, wa 98660 Cphillips@oeca.com
Mcdowell Rackner & Gibson PC Lisa F Rackner 419 SW 11th Ave., Suite 400 Portland, OR 97205 Dockets@mcd-law.com	GVNW Consulting Inc Jim Rennard PO Box 2330 Tualatin, OR 97062 Jrennard@gvnw.com
Verizon Corporate Counsel Rudolph M Reyes 201 Spear Street, 7th floor San Francisco, CA 94105 Rudy.reyes@verizon.com	Frontier Communications of America Inc Kevin L Saville 2378 Wilshire Blvd Mound, MN 55364 kevin.saville@ftr.com
Verizon Richard B Severy 2775 Mitchell Dr, Bldg. 8-2 Walnut Creek, CA 94598 Richard.b.severy@verizon.com	GVNW Consulting Inc Jeffry H Smith PO Box 2330 Tualatin, OR 97062 Jsmith@gvnw.com
Comspan Communications Inc Tim Spannring 278 NW Garden Valley Blvd Roseburg, OR 97470 Tims@comspancomm.com	Warm Springs Telecommunications Marsha Spellman 10425 SW Hawthorne Ln Portland, OR 97225 Marsha.spellman@warmspringstelecom.com

CenturyLink, Inc Ron L Trullinger 310 SW Park Ave 11th Flr Portland, OR 97205 Ron.trullinger@centurylink.com	Public Utility Commission of Oregon Roger White PO Box 2148 Salem, OR 97308 Roger.white@state.or.us
Frontier Communications Northwest Inc Renee Willer 20575 NW von Neumann Dr Beaverton, OR 97006-6982 Renee.willer@ftr.com	Oregon Telecommunications Association Brant Wolf 777 13th St SE - Ste 120 Salem, OR 97301-4038 Bwolf@ota-telecom.org
Embarq Communications Inc Barbara Young 902 Wasco St - orhdra0412 Hood River, OR 97031-3105 Barbara.c.young@centurylink.com	tw telecom of oregon llc Lyndall Nipps 9665 Granite Ridge Dr - Ste 500 San Digeo CA 92123 lyndall.nipps@twtelecom.com
Ater Wynne LLP Joel Paisner 601 Union Street SE Ste 1501 Seattle WA 98101-2327 jrp@aterwynne.com	

Dated this 14th day of November 2012 at  
Portland, Oregon.

---

Chris Pellechi  
Davis Wright Tremaine, LLP  
1300 SW 5<sup>th</sup> Avenue, Suite 2400  
Portland, OR 97201-5630