



CARLA M. BUTLER

September 28, 2012

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Oregon Public Utility Commission  
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P.O. Box 2148  
Salem, OR 97308-2148

Re: AR 566

Dear:

Enclosed for filing in the above entitled matter please find an original and (5) copies of CenturyLink's Initial Comments, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carla".

Carla M. Butler  
Paralegal

Enclosures  
cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 566

In the Matter of )  
 ) CENTURYLINK'S INITIAL  
Amendments to OAR 860-032-0007 to Address ) COMMENTS  
Call Termination Issues )  
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United Telephone Company of the Northwest, CenturyTel of Oregon, CenturyTel of Eastern Oregon, and Qwest Corporation (collectively "CenturyLink") offer these comments in response to the Notice of Proposed Rulemaking Hearing ("Notice"), which the Commission entered in this docket on July 13, 2012. CenturyLink appreciates this opportunity to comment. CenturyLink urges the Commission to consider carefully whether the language proposed in the Notice is the appropriate way for the Commission to address the issues the Notice describes. CenturyLink believes that there are other more appropriate and flexible ways to address the issues that the Commission has raised. We hope these comments are instructive on the approach the Commission should adopt.

**The FCC and the Industry Have Taken Steps to Resolve the Issues**

In September of last year, the FCC established the Rural Call Completion Task Force to address rural call termination issues. Since that time, the FCC entered the Declaratory Ruling, DA 12-154 (released February 6, 2012) ("Declaratory Ruling")<sup>1</sup>, which addresses the very same issues that are raised in the Notice. In addition, just this month ATIS (Alliance for Telecommunications Industry Solutions) announced the publication of the Intercarrier Call Completion/Call Termination Handbook<sup>2</sup>, which will help mitigate call termination issues. CenturyLink believes that allowing these processes the opportunity to work, or providing clarification with respect to the existing statutes and rules, is essential, and highly preferable to adoption of the rules contained in the Notice.

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<sup>1</sup> [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-154A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-154A1.pdf)

<sup>2</sup> <http://www.atis.org/PRESS/pressreleases2012/090412.html>

## **The Rules as Proposed in the Notice are Unnecessary Because the Commission's Existing Authority is Sufficient**

The Commission already has authority, under current Oregon law, to regulate service quality<sup>3</sup> and to proscribe discriminatory practices<sup>4</sup>. Moreover, the Commission's rules permit aggrieved parties to complain to the Commission for violations of law. The proposed rules add little to these existing requirements and remedies. Addressing the same concerns at the federal level, the FCC clarified, without promulgating new rules, that existing federal law protects against call termination problems. Citing Section 202 of the Federal Telecom Act, the FCC stated in the Declaratory Ruling that:

We further clarify that adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act.

Section 202 provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.<sup>5</sup>

Section 202 is similar to Oregon's undue preference law, which states:

(1) No telecommunications utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

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<sup>3</sup> See, ORS 759.450 and .455.

<sup>4</sup> See, ORS 759.275.

<sup>5</sup> 47 U.S.C. § 202.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination.<sup>6</sup>

The FCC, in the Declaratory Ruling, explored the very same issues that have been raised in this case.<sup>7</sup> CenturyLink believes that the Commission could take the same approach as the FCC and simply clarify by order whether and to what extent the existing law applies to call termination, and then address specific issues on a case by case basis. This approach would eliminate the need for the rules that are proposed in the Notice and provide a more targeted, accurate, and flexible means to address the issues.

CenturyLink is also concerned that the rules, as drafted in the Notice, would lead to unintended consequences. The ability of carriers to use legitimate means to efficiently route calls might be diminished under the current proposal, resulting in higher priced long distance service for consumers. In addition, there are legitimate circumstances in which a carrier might “block, choke, or restrict” traffic, including for security reasons, failure by a customer to pay charges owed, or to respond to a natural disaster or other emergency situation. It would be difficult to capture every scenario in which it might be prudent or necessary to block, choke or restrict traffic.

### **Any Rule Should Only Address Call Termination Issues and Not Broadly Limit Routing Practices**

The FCC clearly states in the Declaratory Ruling that “nothing in this Declaratory Ruling should be construed to dictate how carriers must route their traffic.”<sup>8</sup> Carriers route traffic in a variety ways for innumerable, legitimate reasons. Thus, the only factor the Commission should consider in whether a practice violates Oregon law (or any new rule if one is adopted) is whether the practice results in failures to complete calls. CenturyLink cannot support the rules proposed in the Notice and, in particular, sections (16) and (17), because they would unnecessarily and restrict legitimate routing practices.

### **Other Provisions Contained in the Notice are Not Appropriate**

Subsection (18) appears to be redundant of existing law regarding deceptive practices and is beyond the scope of the Commission’s jurisdiction. Deceptive practices are addressed in Oregon Revised Statutes, Titles 50, Chapter 646, while

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<sup>6</sup> ORS 759.275.

<sup>7</sup> See, Declaratory Ruling.

<sup>8</sup> Declaratory Ruling, at ¶12.

Chapters 756 through 759 contain no language that would authorize the Commission to regulate them. So while CenturyLink certainly does not engage in deceptive practices, it believes that this area of regulation falls outside the purview of the Commission's jurisdiction and expertise, and should be left to those governmental bodies that are tasked with enforcing and providing remedies under ORS Chapter 646.

CenturyLink is concerned about subsection (19) because it does not consider underlying carriers, under agency law principles, to be "agents or employees" of CenturyLink and CenturyLink does not believe the Commission is authorized to change the legal definition of, or relationship between, carriers. Because the underlying carriers are not agents or employees of CenturyLink, CenturyLink cannot control the actions of those carriers, except under the terms of a contract. But even if CenturyLink has effective agreements with underlying carriers, it is possible that those carriers could choose to engage in practices that would result in CenturyLink's non-compliance with the proposed rule. Certificate holders should not be penalized by an underlying carrier's negligent or willful non-compliance with Commission standards. Furthermore, the Staff's proposal appears to presume that CenturyLink can unilaterally modify or terminate its existing, unexpired contracts with underlying carriers to ensure compliance with the new proposed standards. This is generally not the case.

### **If the Commission Decides to Adopt Rules, it Should Consider Alternative Language**

As noted, CenturyLink opposes the rules proposed in the Notice. However, if the Commission decides to adopt rules, CenturyLink has worked with the Parties to this docket to craft rule language that it believes is a reasonable compromise.<sup>9</sup> In the event that the Commission determines that a rule is necessary, CenturyLink asks the Commission to adopt the following sections as a substitute for subsections (16) through (20) contained in the Notice:

(16) Except to the extent authorized by law, the certificate holder shall not, directly or indirectly, block, choke, reduce or restrict traffic to another certificate holder's service area in such a manner as to attempt to or to avoid paying terminating access charges. In determining whether to invoke a penalty for violation of this standard, the Commission will consider the frequency with which the violations occur and the corrective action, if any, undertaken by the certificate holder and whether the certificate holder had knowledge of the violation. The Commission will

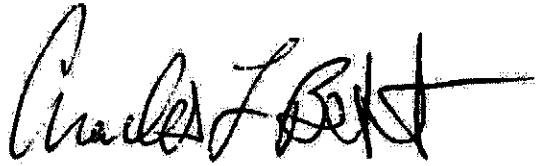
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<sup>9</sup> At the time of the filing these comments, Frontier, OTA, and CenturyLink support the alternate language.

not impose penalties in the event the certificate holder can demonstrate that it did not have knowledge of the violation. An aggrieved party is required to notify the certificate holder of any issues and parties are encouraged to resolve any issues informally before seeking relief under this rule.

(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that result in lower quality service, related to the termination of calls, to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates. In determining whether to invoke a penalty for violation of this standard, the Commission will consider the frequency with which the violations occur and the corrective action, if any, undertaken by the certificate holder and whether the certificate holder had knowledge of the violation.

Respectfully submitted, this 28<sup>th</sup> day of September 2012.



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**CERTIFICATE OF SERVICE VIA E-MAIL TRANSMISSION**

**AR 566**

I hereby certify that on the 28<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing CENTURYLINK'S INITIAL COMMENTS, in the above entitled docket, was served upon the following persons via means of e-mail transmission to the e-mail addresses listed below.

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DATED this 28<sup>th</sup> day of September, 2012.

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