BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DOCKET NO. UM 1547

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation into Call Termination Issues	REPLY COMMENTS OF COMCAST PHONE OF OREGON, LLC AND TW TELECOM OF OREGON LLC

Comcast Phone of Oregon LLC ("Comcast") and **tw telecom of oregon llc** ("tw") respectfully submit the following comments in reply to Staff's comments of April 23, 2012:

I. INTRODUCTION

Comcast and tw appreciate that Staff's investigation of call termination has raised serious issues, particularly with respect to least cost routing ("LCR") practices of third party interexchange carriers ("IXCs") that providers of competitive voice service, such as Comcast and tw, generally rely on to complete intrastate long-distance calls, including calls to rural areas within Oregon. Comcast and tw urge the Commission to ensure that any proposed solutions—including proposed rule changes—are carefully tailored to be effective in addressing the problems associated with IXC practices, e.g., calls where LCR results in calls being routed in endless loops, and which therefore are never terminated. Comcast and tw are concerned about this issue because, particularly as a competitive provider of voice services, Comcast and tw depend on the satisfaction of their customers, and is always motivated to eliminate problems that threaten their customers' service expectations.

Consistent with Comcast's and tw's desire to ensure that action to address call termination issues is well-considered and effectively targets the actual cause of the problems, Comcast and tw urge the Commission to allow carriers to have a meaningful opportunity to comment on the actual text of any proposed rule – whether temporary or permanent. Comcast and tw are concerned that, as described in Staff's comments, several of Staff's proposals may go well beyond the recommendations of the FCC, and in fact, may be outside the Commission's authority. In particular, Comcast and tw are concerned that the Commission preserve the Oregon Legislature's careful statutory balance of regulation deigned to foster competition. The Commission must be careful not to upset that balance by unduly imposing on competitive Local

Exchange Carriers ("CLECs") and IXCs non-discrimination obligations that are expressly designed to apply exclusively to incumbent Local Exchange Carriers ("ILECs"). The approach suggested by Staff's comments would upset that balance, and would also expand liability in ways that are not only unnecessary, but well beyond the Commission's authority. Moreover, Staff's proposals – aside from the enforcement of prohibitions on choking and blocking – raise serious doubts as to whether the forthcoming proposed rules are within the Commission's temporary rulemaking authority.

II. COMMENTS ON THE STAFF PROPOSAL

A. Carriers should have a meaningful opportunity to comment on the proposed temporary rule

Staff has announced, in comments filed April 23, its position that the Commission should enact a temporary rule to address perceived problems associated with call termination, particularly in rural areas.

However, Staff has not submitted the proposed language of such a rule, having provided instead only a general description of the provisions and their intended effects. Comcast and tw cannot offer detailed comments on the rule, or suggest improvements, until that language is filed in this docket. Comcast and tw request that the Commission ensure that, at a minimum, there is an opportunity to file comments regarding actual language. Allowing constructive comments will ultimately result in more effective regulations.

As described to date, Staff's recommendation is that the Commission amend OAR 860-032-0007 by including new provisions that:

"1) prohibit telecommunications service providers from subjecting any particular person, class of person, or locality to any undue or unreasonable prejudice or disadvantage;

2) prohibit blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges; and

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B. Based on Staff's description, the proposed temporary rule would: 1) go beyond federal directives, 2) fail to effectively target the perceived call termination problems, and 3) likely extend beyond the Commission's authority.

1. Staff's proposed solution goes beyond steps taken by the FCC, which emphasized the efficacy of *existing* FCC rules and federal statutes.

Staff's comments create the impression that the proposed rule would merely apply the FCC's "call termination" rules to intrastate service. That is not the case.

The FCC emphasized that <u>existing</u> rules prohibit practices impacting call termination.

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Declaratory Ruling, ¶ 3. The FCC also clarified that if a carrier engages in the practices prohibited by the no choking rule, such conduct would likely also violate statutorily imposed non-discrimination obligations under 47 U.S.C. §§ 201 and 202.

> We also make clear that practices such as those described herein that lead to call termination and call quality problems may constitute unjust and unreasonable practices in violation of section 201 of Communications Act of 1934, as amended (the "Act"), 8 and/or may violate a carrier's section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services.

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Under Staff's proposal the Commission would by rule purport to extend obligations to a group of intrastate carriers, namely, CLECs and IXCs, to whom the Legislature has specifically *declined* to extend such obligations. Declining to burden such carriers with the obligations now proposed by the Staff's temporary rule was not an oversight, but was done deliberately in order to promote competition. This State's telecommunications statutory scheme (and the regulations consistent with that scheme) seek to establish a careful balance between provisions that apply to ILECs and those that apply to CLECs and IXCs.

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[1] 47 U.S.C. § 217 reads: "In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."

By design, ORS 759.260 and ORS 759.275 limits rate discrimination and undue preferences by ILECs and not competitive carriers. ORS 759.260 states:

> (1) Except as provided in ORS 759.265, no ***telecommunications utility*** or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:
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Under 759.005(9), competitive providers are specifically excluded from the definition of telecommunications carriers, while ILECs are included:

> (9)(a) "Telecommunications utility" means:
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> (A) Any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not the plant or equipment, or any portion of the plant or equipment, is wholly within any town or city.

> (B) Any corporation, company, individual or association of individuals that is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and has an affiliated interest with the telecommunications utility.
>
> (b) "Telecommunications utility" ***does not include***:
>
> * * *
>
> (C) ***Any person acting only as a competitive telecommunications provider***.

759.005(9) (emphasis supplied).

Staff's proposal would destroy this balanced approach by applying to CLECs and IXCs broad and sweeping non-discrimination obligations that are expressly intended to apply exclusively to ILECs. This represents a major policy shift; the Legislature has clearly stated that those non-discrimination obligations, which cover all aspects of a carrier's provision of services, including rates, terms and conditions, should apply only to ILECs, not to CLECs or IXCs.

There is no evidence that such a major shift is needed, or that it would even be effective in curbing call termination issues. The proposed solution, though the exact proposal remains unknown, appears to unduly impose restrictions that do not target the actual problem.

The balance of regulatory burdens on CLECs and ILECs has worked well since the entrance of competitive Local Exchange Carriers in connection with the Telecommunications Act of 1996. In OPUC Order 96-021, January 12, 1996, the Commission determined that competitive carriers should have freedom with respect to pricing, customers, and services.

> "We decline to impose denial of service criteria on the AECs [CLECs] at this time." 96-021, at 23.
>
> "We agree with Staff and AT&T that it is unnecessary to regulate the conditions under which the entrants may deny service to potential customers. 96-021, at 23.

The Commission not only noted that it was unreasonable to require new entrants to serve all customers while still building out their networks, but also observed that once networks were built, there was "no incentive to refuse service to any customer." 96-021, at 23.

Although the Commission noted that if denial of service by AECs/CLECs created a problem in the future, the Commission had authority to impose conditions, 96-021, at 23, there is no suggestion here of *CLECs* denying service to customers. At most, there is anecdotal evidence that IXCs may be failing to terminate calls to high-cost areas. As the Commission correctly observed in 1996, CLECs have no incentive to deny service to customers that wish to pay for it.

The Commission further noted that the need for consumer protection measures stemmed from captive ratepayers and monopoly service providers, and that "those safeguards become unnecessary once customers have a choice of carriers." 96-021, at 24. The Commission observed, accurately, that competitive carriers would also "compete with the [incumbent] LECs on service, and cannot hope to succeed unless they are sensitive to consumer needs." *Id*. at 24.

The Commission's assessment was accurate then, and remains accurate now. CLECs have no incentive to ignore service quality issues. The balance of regulation that has been in place for over fifteen years should not be abandoned in the name of addressing the present call termination issues. This is particularly true here, where narrower, more carefully targeted action, would be equally, if not more, effective.

The Staff's proposal could be interpreted to severely limit CLEC pricing flexibility. CLEC pricing flexibility is absolute under the statutory scheme, *see* 759.260 and ORS 759.275, and a rule prohibiting any discriminatory pricing – even where such discrimination has a reasonable basis – would limit that flexibility, and interfere with the provision of competitive choices to customers. In fact, the Commission refuses to accept tariffs or price lists submitted by CLECs. The Staff's temporary rule, however, could lead to a situation where CLEC pricing flexibility would be entirely undermined. This unintended result would in no way solve perceived problems with call termination in rural ILEC territories. Nevertheless, the Staff proposal could create such a situation.

In the long term, as the FCC has noted, the move to bill and keep will address the call termination issue.[2] Declaratory Ruling, ¶ 10. Upsetting the competitive balance between ILECs and CLECs through hastily adopted overbroad regulations would cause unintended negative long-term consequences.

3. Staff's proposal appears to be a vast, unwarranted expansion of liability that is beyond the Commission's authority.

Staff's proposal regarding liability of carriers for the acts of their employees and agents is not well-defined. Depending on the actual language Staff ultimately proposes, it appears likely to be either (a) a reiteration of existing vicarious liability principles – and therefore unnecessary, or (b) a broad general extension of liability that is beyond the Commission's authority to impose.

To the extent that the rule targets only a carrier's actual agents, including employees, then existing principles of agency law and vicarious liability already provide sufficient protections. But this does not appear to be what is intended. Staff's comments describe the idea, stating: "The Oregon PUC cannot adopt a rule that imposes on carriers liability for anything that another carrier, perhaps several steps removed from the first, does – or omits to do."

Certainly, any extension of liability – to be within the ambit of the Commission's responsibilities – must be limited to specific telecommunication acts (e.g., blocking or choking),

[2] The FCC noted that "in comprehensively reforming ICC, the Order adopted a bill-and-keep methodology for all ICC traffic, and adopted a transition to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of telephone service." Declaratory Ruling, ¶ 10.

and not the general extension of liability for any act whatsoever that is suggested by Staff's proposed rule. A general expansion of liability is for the Legislature and Courts to determine, not the Commission.

Such an expansion of liability is unfair, in addition, because Staff's comments indicate that the problems identified are with certain IXCs, not CLECs.[3] Yet an expansion of liability would impact CLECs while largely failing to reach IXCs. IXCs do not always maintain sufficient records to allow CLECs to trace reported problems to the IXC that may be at the root of the problem. This means that problems experienced by CLEC customers can often be traced no further than the CLEC or initial IXC to which a call is routed, but not to the IXC at the root of the problem. By the time CLEC is able to trace a reported problem to an IXC, there may be no remaining record of the call, and no way to identify and hold accountable the offending IXC. CLECs should not be burdened with responsibility for the acts of those carriers with whom they may not even have contractual privity, or whom they may have trouble even identifying as the responsible entity for call termination failures. Any rule the Commission ultimately adopts should instead focus on making sure that rural carriers, IXCs and CLECs are compelled to share the data necessary to identify the root cause of any call termination issue.[4]

4. Staff's comments raise doubts as to whether proposed rules (1) and (3) are within the Commission's temporary rulemaking authority.

Staff's comments raise doubts as to whether proposed rules (1) and (3) are within the Commission's temporary rulemaking authority.

Under OAR 860-001-0260 and ORS 183.335(5), the Commission may issue temporary rules in a limited set of exigent circumstances. ORS 183.335(5), part of the Oregon Administrative Procedures Act, sets four requirements that must be met for a valid temporary rule. One of these is "[a] statement of the need for the rule and a statement of how the rule is intended to meet the need," ORS 183.335(5)(c). How—or even whether—the forthcoming Staff rule proposals address the call termination issues remains unclear. Although the foregoing requirement is procedural, the purpose is plainly to prevent ill-considered rulemaking that does not target the actual need. A rule can fail to target a need in two ways. It could simply have no impact, or can have unintended consequences that go far beyond the need it is intended to address.

Staff's comments lays out anecdotal evidence illustrating the perceived call termination problems affecting Oregon. However, it is far from clear how, or whether, the Staff's proposed solutions will remedy the specific causes of the problem. Part of the shortcoming is that Staff's diagnosis of the causes is, again, largely anecdotal, raising the possibility that the problem simply is not yet fully understood.

[3] *See also* http://www.puc.state.or.us/PUC/consumer/CallTerminationFactSheetfinal.pdf (depicting problem as looping among long-distance companies (IXCs) that engage in least-cost-routing.

[4] On a national level, Comcast has provided the National Exchange Carrier Association with contact information in an effort to work cooperatively with any rural carriers who wish to report issues to Comcast. This same cooperative approach could be encouraged among carriers at the State level.

The more obvious problem, though, is that Staff has not yet provided an analysis explaining how the proposed remedies are effective solutions targeted to the problem at hand. Staff must do that analysis and narrow its proposals to address only the specific call termination issue. The alternatives – imposing an overbroad non-discrimination obligation on competitive carriers, or imposing a vast general expansion of vicarious liability on carriers – are inconsistent with the purpose behind temporary rulemaking, and could prove to be cures that are worse than the disease.

In addition, ORS 183.335(5)(b) requires that in adopting a temporary rule the Commission provide: "(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule." The Commission will be unable to point to any statutes that grant it authority to adopt rules that: 1) impose upon CLECs and IXCs non-discrimination obligations that, by statute, expressly apply only to ILECs; or 2) impose vicarious liability upon carriers for the acts of other carriers with whom they may or may not have contractual privity. The Commission must act within the ambit of authority expressly granted to it by the Legislature. *See Pacific Northwest Bell Telephone Co. v. Davis* 43 Or App.999, 1006, 608 P2d 547, 552 (1979) (holding that Commission acted outside its authority in enacting rule). The requirement in ORS 183.335(5)(b) that an agency provide a statement of the statutory authority underlying the temporary rule is an express recognition of the limited nature of agency powers under State law. The Staff's proposed rules are beyond the Commission's authority. A temporary rule, just like a permanent rule, cannot be promulgated if it reaches beyond the powers of the agency. The Commission should refrain from adopting a temporary rule that would be invalid.

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III. CONCLUSION

For the foregoing reasons, Comcast and tw request that the Commission: 1) provide parties an opportunity to comment upon actual proposed language for any call termination rule; 2) consider such comments in the context of a permanent rulemaking, rather than rushing forward with an ill-conceived temporary rule, and 3) carefully tailor any call termination rule the Commission ultimately decides to adopt to solve only call termination issues, and not unduly broaden carrier obligations in any unintended or potentially unlawful manner.

Dated this 29th day of May, 2012.

Respectfully submitted,

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Mark Trinchero, OSB # 883221
Alan Galloway, OSB # 083290
Davis Wright Tremaine, LLP
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201
Phone: (503) 241-2300
Fax: (503) 778-5299

Attorneys for Comcast Phone of Oregon, LLC
and **tw telecom of oregon llc**

UM 1547
SERVICE LIST

I hereby certify that, on May 29, 2012, REPLY COMMENTS OF COMCAST PHONE OF OREGON, LLC, AND TW TELECOM OF OREGON LLC was served on the following persons by email to all parties:

W	CHARLES L BEST ATTORNEY AT LAW	1631 NE BROADWAY #538 PORTLAND OR 97232-1425 chuck@charleslbest.com
W	**AT&T**	
	CYNTHIA MANHEIM	PO BOX 97061 REDMOND WA 98052 cindy.manheim@att.com
W	**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC**	
	DAVID COLLIER	645 E PLUMB LN PO BOX 11010 RENO NV 89502 david.collier@att.com
W	**CENTURYLINK**	
	RON L TRULLINGER MANAGER - OREGON REGULATORY	310 SW PARK AVE 11TH FL PORTLAND OR 97205 ron.trullinger@centurylink.com
W	**CENTURYLINK, INC.**	
	WILLIAM E HENDRICKS ATTORNEY	902 WASCO ST A0412 HOOD RIVER OR 97031 tre.hendricks@centurylink.com
W	**CITIZENS' UTILITY BOARD OF OREGON**	
	OPUC DOCKETS	610 SW BROADWAY, STE 400 PORTLAND OR 97205 dockets@oregoncub.org
	G. CATRIONA MCCRACKEN	610 SW BROADWAY, STE 400 PORTLAND OR 97205 catriona@oregoncub.org
W	**COMCAST BUSINESS COMMUNICATIONS LLC**	
	DOUG COOLEY	1710 SALEM INDUSTRIAL DRIVE NE SALEM OR 97303 doug_cooley@cable.comcast.com
W	**DAVIS WRIGHT TREMAINE LLP**	
	MARK P TRINCHERO	1300 SW FIFTH AVE STE 2300 PORTLAND OR 97201-5682 marktrinchero@dwt.com
W	**FRONTIER COMMUNICATIONS**	
	PHYLLIS WHITTEN	9260 E STOCKTON BLVD ELK GROVE CA 95624 phyllis.whitten@ftr.com

W	**FRONTIER COMMUNICATIONS NORTHWEST INC**	
	RENEE WILLER	20575 NW VON NEUMANN DR BEAVERTON OR 97006-6982 renee.willer@ftr.com
W	**INTEGRA TELECOM**	
	GEORGE SCHRECK	1201 NE LLOYD BLVD, STE 500 PORTLAND OR 97232 george.schreck@integratelecom.com
W	**INTEGRA TELECOM OF OREGON INC**	
	DOUGLAS K DENNEY	1201 NE LLOYD BLVD, STE 500 PORTLAND OR 97232 dkdenney@integratelecom.com
W	**LAW OFFICE OF RICHARD A FINNIGAN**	
	RICHARD A FINNIGAN	2112 BLACK LAKE BLVD SW OLYMPIA WA 98512 rickfinn@localaccess.com
W	**LEVEL 3 COMMUNICATIONS LLC**	
	GREGORY DIAMOND	1505 5TH AVE STE 501 SEATTLE WA 98101 greg.diamond@level3.com
W	**MCDOWELL RACKNER & GIBSON PC**	
	LISA F RACKNER	419 SW 11TH AVE., SUITE 400 PORTLAND OR 97205 dockets@mcd-law.com
W	**OCTA**	
	MICHAEL DEWEY	1249 COMMERCIAL ST SE SALEM OR 97302 mdewey@oregoncable.com
W	**OREGON EXCHANGE CARRIER ASSN**	
	CRAIG PHILLIPS	1104 MAIN ST., #300 VANCOUVER WA 98660 cphillips@oeca.com
W	**OREGON TELECOMMUNICATIONS ASSN**	
	BRANT WOLF	777 13TH ST SE - STE 120 SALEM OR 97301-4038 bwolf@ota-telecom.org
W	**PUBLIC UTILITY COMMISSION OF OREGON**	
	MALIA BROCK	PO BOX 2148 SALEM OR 97308 malia.brock@state.or.us

W	**PUC STAFF - DEPARTMENT OF JUSTICE**		
		JOHANNA RIEMENSCHNEIDER	BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4796 johanna.riemenschneider@doj.state.or.us
W	**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
W	**VERIZON**		
		RICHARD B SEVERY	2775 MITCHELL DR, BLDG. 8-2 WALNUT CREEK CA 94598 richard.b.severy@verizon.com
W	**VERIZON CALIFORNIA INC**		
		LORRAINE A KOCEN	2523 W HILLCREST DR, 2ND FL NEWBURY PARK CA 91320 lorraine.kocen@verizon.com
W	**VERIZON CORPORATE COUNSEL**		
		RUDOLPH M REYES	201 SPEAR STREET 7TH FLOOR SANFRANCISCO CA 94105 rudy.reyes@verizon.com
W	**WILLIAMS, KASTNER & GIBBS PLLC**		
		MARC M CARLTON	888 SW FIFTH AVE, STE. 600 PORTLAND OR 97204-2025 mcarlton@williamskastner.com

____

Jan E. Brooker, Davis Wright Tremaine, LLP
1300 SW 5th Avenue, Suite 2400, Portland, OR 97201

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> (9)(a) "Telecommunications utility" means:
>
> (A) Any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not the plant or equipment, or any portion of the plant or equipment, is wholly within any town or city.

> (B) Any corporation, company, individual or association of individuals that is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and has an affiliated interest with the telecommunications utility.
>
> (b) "Telecommunications utility" ***does not include***:
>
> * * *
>
> (C) ***Any person acting only as a competitive telecommunications provider.***

759.005(9) (emphasis supplied).

Staff's proposal would destroy this balanced approach by applying to CLECs and IXCs broad and sweeping non-discrimination obligations that are expressly intended to apply exclusively to ILECs. This represents a major policy shift; the Legislature has clearly stated that those non-discrimination obligations, which cover all aspects of a carrier's provision of services, including rates, terms and conditions, should apply only to ILECs, not to CLECs or IXCs.

There is no evidence that such a major shift is needed, or that it would even be effective in curbing call termination issues. The proposed solution, though the exact proposal remains unknown, appears to unduly impose restrictions that do not target the actual problem.

The balance of regulatory burdens on CLECs and ILECs has worked well since the entrance of competitive Local Exchange Carriers in connection with the Telecommunications Act of 1996. In OPUC Order 96-021, January 12, 1996, the Commission determined that competitive carriers should have freedom with respect to pricing, customers, and services.

> "We decline to impose denial of service criteria on the AECs [CLECs] at this time." 96-021, at 23.
>
> "We agree with Staff and AT&T that it is unnecessary to regulate the conditions under which the entrants may deny service to potential customers. 96-021, at 23.

The Commission not only noted that it was unreasonable to require new entrants to serve all customers while still building out their networks, but also observed that once networks were built, there was "no incentive to refuse service to any customer." 96-021, at 23.

Although the Commission noted that if denial of service by AECs/CLECs created a problem in the future, the Commission had authority to impose conditions, 96-021, at 23, there is no suggestion here of *CLECs* denying service to customers. At most, there is anecdotal evidence that IXCs may be failing to terminate calls to high-cost areas. As the Commission correctly observed in 1996, CLECs have no incentive to deny service to customers that wish to pay for it.

The Commission further noted that the need for consumer protection measures stemmed from captive ratepayers and monopoly service providers, and that "those safeguards become unnecessary once customers have a choice of carriers." 96-021, at 24. The Commission observed, accurately, that competitive carriers would also "compete with the [incumbent] LECs on service, and cannot hope to succeed unless they are sensitive to consumer needs." *Id.* at 24.

The Commission's assessment was accurate then, and remains accurate now. CLECs have no incentive to ignore service quality issues. The balance of regulation that has been in place for over fifteen years should not be abandoned in the name of addressing the present call termination issues. This is particularly true here, where narrower, more carefully targeted action, would be equally, if not more, effective.

The Staff's proposal could be interpreted to severely limit CLEC pricing flexibility. CLEC pricing flexibility is absolute under the statutory scheme, *see* 759.260 and ORS 759.275, and a rule prohibiting any discriminatory pricing – even where such discrimination has a reasonable basis – would limit that flexibility, and interfere with the provision of competitive choices to customers. In fact, the Commission refuses to accept tariffs or price lists submitted by CLECs. The Staff's temporary rule, however, could lead to a situation where CLEC pricing flexibility would be entirely undermined. This unintended result would in no way solve perceived problems with call termination in rural ILEC territories. Nevertheless, the Staff proposal could create such a situation.

In the long term, as the FCC has noted, the move to bill and keep will address the call termination issue.[2] Declaratory Ruling, ¶ 10. Upsetting the competitive balance between ILECs and CLECs through hastily adopted overbroad regulations would cause unintended negative long-term consequences.

3. Staff's proposal appears to be a vast, unwarranted expansion of liability that is beyond the Commission's authority.

Staff's proposal regarding liability of carriers for the acts of their employees and agents is not well-defined. Depending on the actual language Staff ultimately proposes, it appears likely to be either (a) a reiteration of existing vicarious liability principles – and therefore unnecessary, or (b) a broad general extension of liability that is beyond the Commission's authority to impose.

To the extent that the rule targets only a carrier's actual agents, including employees, then existing principles of agency law and vicarious liability already provide sufficient protections. But this does not appear to be what is intended. Staff's comments describe the idea, stating: "The Oregon PUC cannot adopt a rule that imposes on carriers liability for anything that another carrier, perhaps several steps removed from the first, does – or omits to do."

Certainly, any extension of liability – to be within the ambit of the Commission's responsibilities – must be limited to specific telecommunication acts (e.g., blocking or choking),

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[2] The FCC noted that "in comprehensively reforming ICC, the Order adopted a bill-and-keep methodology for all ICC traffic, and adopted a transition to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of telephone service." Declaratory Ruling, ¶ 10.

and not the general extension of liability for any act whatsoever that is suggested by Staff's proposed rule. A general expansion of liability is for the Legislature and Courts to determine, not the Commission.

Such an expansion of liability is unfair, in addition, because Staff's comments indicate that the problems identified are with certain IXCs, not CLECs.[3] Yet an expansion of liability would impact CLECs while largely failing to reach IXCs. IXCs do not always maintain sufficient records to allow CLECs to trace reported problems to the IXC that may be at the root of the problem. This means that problems experienced by CLEC customers can often be traced no further than the CLEC or initial IXC to which a call is routed, but not to the IXC at the root of the problem. By the time CLEC is able to trace a reported problem to an IXC, there may be no remaining record of the call, and no way to identify and hold accountable the offending IXC. CLECs should not be burdened with responsibility for the acts of those carriers with whom they may not even have contractual privity, or whom they may have trouble even identifying as the responsible entity for call termination failures. Any rule the Commission ultimately adopts should instead focus on making sure that rural carriers, IXCs and CLECs are compelled to share the data necessary to identify the root cause of any call termination issue.[4]

4. Staff's comments raise doubts as to whether proposed rules (1) and (3) are within the Commission's temporary rulemaking authority.

Staff's comments raise doubts as to whether proposed rules (1) and (3) are within the Commission's temporary rulemaking authority.

Under OAR 860-001-0260 and ORS 183.335(5), the Commission may issue temporary rules in a limited set of exigent circumstances. ORS 183.335(5), part of the Oregon Administrative Procedures Act, sets four requirements that must be met for a valid temporary rule. One of these is "[a] statement of the need for the rule and a statement of how the rule is intended to meet the need," ORS 183.335(5)(c). How—or even whether—the forthcoming Staff rule proposals address the call termination issues remains unclear. Although the foregoing requirement is procedural, the purpose is plainly to prevent ill-considered rulemaking that does not target the actual need. A rule can fail to target a need in two ways. It could simply have no impact, or can have unintended consequences that go far beyond the need it is intended to address.

Staff's comments lays out anecdotal evidence illustrating the perceived call termination problems affecting Oregon. However, it is far from clear how, or whether, the Staff's proposed solutions will remedy the specific causes of the problem. Part of the shortcoming is that Staff's diagnosis of the causes is, again, largely anecdotal, raising the possibility that the problem simply is not yet fully understood.

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[3] *See also* http://www.puc.state.or.us/PUC/consumer/CallTerminationFactSheetfinal.pdf (depicting problem as looping among long-distance companies (IXCs) that engage in least-cost-routing.

[4] On a national level, Comcast has provided the National Exchange Carrier Association with contact information in an effort to work cooperatively with any rural carriers who wish to report issues to Comcast. This same cooperative approach could be encouraged among carriers at the State level.

The more obvious problem, though, is that Staff has not yet provided an analysis explaining how the proposed remedies are effective solutions targeted to the problem at hand. Staff must do that analysis and narrow its proposals to address only the specific call termination issue. The alternatives – imposing an overbroad non-discrimination obligation on competitive carriers, or imposing a vast general expansion of vicarious liability on carriers – are inconsistent with the purpose behind temporary rulemaking, and could prove to be cures that are worse than the disease.

In addition, ORS 183.335(5)(b) requires that in adopting a temporary rule the Commission provide: "(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule." The Commission will be unable to point to any statutes that grant it authority to adopt rules that: 1) impose upon CLECs and IXCs non-discrimination obligations that, by statute, expressly apply only to ILECs; or 2) impose vicarious liability upon carriers for the acts of other carriers with whom they may or may not have contractual privity. The Commission must act within the ambit of authority expressly granted to it by the Legislature. *See Pacific Northwest Bell Telephone Co. v. Davis* 43 Or App.999, 1006, 608 P2d 547, 552 (1979) (holding that Commission acted outside its authority in enacting rule). The requirement in ORS 183.335(5)(b) that an agency provide a statement of the statutory authority underlying the temporary rule is an express recognition of the limited nature of agency powers under State law. The Staff's proposed rules are beyond the Commission's authority. A temporary rule, just like a permanent rule, cannot be promulgated if it reaches beyond the powers of the agency. The Commission should refrain from adopting a temporary rule that would be invalid.

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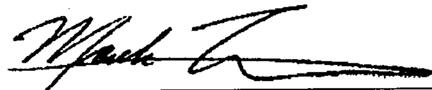
III. CONCLUSION

For the foregoing reasons, Comcast and tw request that the Commission: 1) provide parties an opportunity to comment upon actual proposed language for any call termination rule; 2) consider such comments in the context of a permanent rulemaking, rather than rushing forward with an ill-conceived temporary rule, and 3) carefully tailor any call termination rule the Commission ultimately decides to adopt to solve only call termination issues, and not unduly broaden carrier obligations in any unintended or potentially unlawful manner.

Dated this 29th day of May, 2012.

Respectfully submitted,



Mark Trinchero, OSB # 883221
Alan Galloway, OSB # 083290
Davis Wright Tremaine, LLP
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201
Phone: (503) 241-2300
Fax: (503) 778-5299

Attorneys for Comcast Phone of Oregon, LLC
and **tw telecom of oregon llc**

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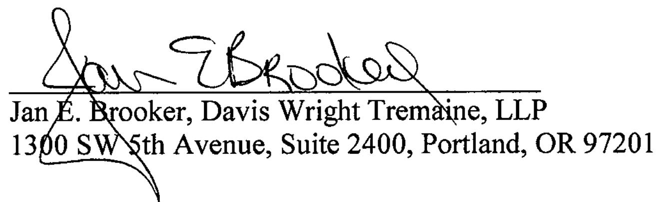
I hereby certify that, on May 29, 2012, REPLY COMMENTS OF COMCAST PHONE OF OREGON, LLC, AND TW TELECOM OF OREGON LLC was served on the following persons by email to all parties:

W	CHARLES L BEST ATTORNEY AT LAW	1631 NE BROADWAY #538 PORTLAND OR 97232-1425 chuck@charleslbest.com
W	**AT&T**	
	CYNTHIA MANHEIM	PO BOX 97061 REDMOND WA 98052 cindy.manheim@att.com
W	**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC**	
	DAVID COLLIER	645 E PLUMB LN PO BOX 11010 RENO NV 89502 david.collier@att.com
W	**CENTURYLINK**	
	RON L TRULLINGER MANAGER - OREGON REGULATORY	310 SW PARK AVE 11TH FL PORTLAND OR 97205 ron.trullinger@centurylink.com
W	**CENTURYLINK, INC.**	
	WILLIAM E HENDRICKS ATTORNEY	902 WASCO ST A0412 HOOD RIVER OR 97031 tre.hendricks@centurylink.com
W	**CITIZENS' UTILITY BOARD OF OREGON**	
	OPUC DOCKETS	610 SW BROADWAY, STE 400 PORTLAND OR 97205 dockets@oregoncub.org
	G. CATRIONA MCCRACKEN	610 SW BROADWAY, STE 400 PORTLAND OR 97205 catriona@oregoncub.org
W	**COMCAST BUSINESS COMMUNICATIONS LLC**	
	DOUG COOLEY	1710 SALEM INDUSTRIAL DRIVE NE SALEM OR 97303 doug_cooley@cable.comcast.com
W	**DAVIS WRIGHT TREMAINE LLP**	
	MARK P TRINCHERO	1300 SW FIFTH AVE STE 2300 PORTLAND OR 97201-5682 marktrinchero@dwt.com
W	**FRONTIER COMMUNICATIONS**	
	PHYLLIS WHITTEN	9260 E STOCKTON BLVD ELK GROVE CA 95624 phyllis.whitten@ftr.com

W	**FRONTIER COMMUNICATIONS NORTHWEST INC**	
	RENEE WILLER	20575 NW VON NEUMANN DR BEAVERTON OR 97006-6982 renee.willer@ftr.com
W	**INTEGRA TELECOM**	
	GEORGE SCHRECK	1201 NE LLOYD BLVD, STE 500 PORTLAND OR 97232 george.schreck@integratelecom.com
W	**INTEGRA TELECOM OF OREGON INC**	
	DOUGLAS K DENNEY	1201 NE LLOYD BLVD, STE 500 PORTLAND OR 97232 dkdenney@integratelecom.com
W	**LAW OFFICE OF RICHARD A FINNIGAN**	
	RICHARD A FINNIGAN	2112 BLACK LAKE BLVD SW OLYMPIA WA 98512 rickfinn@localaccess.com
W	**LEVEL 3 COMMUNICATIONS LLC**	
	GREGORY DIAMOND	1505 5TH AVE STE 501 SEATTLE WA 98101 greg.diamond@level3.com
W	**MCDOWELL RACKNER & GIBSON PC**	
	LISA F RACKNER	419 SW 11TH AVE., SUITE 400 PORTLAND OR 97205 dockets@mcd-law.com
W	**OCTA**	
	MICHAEL DEWEY	1249 COMMERCIAL ST SE SALEM OR 97302 mdewey@oregoncable.com
W	**OREGON EXCHANGE CARRIER ASSN**	
	CRAIG PHILLIPS	1104 MAIN ST., #300 VANCOUVER WA 98660 cphillips@oeca.com
W	**OREGON TELECOMMUNICATIONS ASSN**	
	BRANT WOLF	777 13TH ST SE - STE 120 SALEM OR 97301-4038 bwolf@ota-telecom.org
W	**PUBLIC UTILITY COMMISSION OF OREGON**	
	MALIA BROCK	PO BOX 2148 SALEM OR 97308 malia.brock@state.or.us

W	**PUC STAFF - DEPARTMENT OF JUSTICE**	
	JOHANNA RIEMENSCHNEIDER	BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4796 johanna.riemenschneider@doj.state.or.us
W	**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
W	**VERIZON**	
	RICHARD B SEVERY	2775 MITCHELL DR, BLDG. 8-2 WALNUT CREEK CA 94598 richard.b.severy@verizon.com
W	**VERIZON CALIFORNIA INC**	
	LORRAINE A KOCEN	2523 W HILLCREST DR, 2ND FL NEWBURY PARK CA 91320 lorraine.kocen@verizon.com
W	**VERIZON CORPORATE COUNSEL**	
	RUDOLPH M REYES	201 SPEAR STREET 7TH FLOOR SANFRANCISCO CA 94105 rudy.reyes@verizon.com
W	**WILLIAMS, KASTNER & GIBBS PLLC**	
	MARC M CARLTON	888 SW FIFTH AVE, STE. 600 PORTLAND OR 97204-2025 mcarlton@williamskastner.com



Jan E. Brooker, Davis Wright Tremaine, LLP
1300 SW 5th Avenue, Suite 2400, Portland, OR 97201