

ORDER NO. 16 138

ENTERED APR 05 2016

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1763

In the Matter of

QWEST CORPORATION, dba
CENTURYLINK QC, FRONTIER
COMMUNICATIONS NORTHWEST INC.,
and DEX MEDIA, INC.,

Petition for Partial Waiver of
860-021-0010(6), 860-021-0610, and
860-021-0620.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on April 5, 2016, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:




Kristi Collins
Commission Secretary

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

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ITEM NO. CA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 5, 2016

REGULAR _____ CONSENT X EFFECTIVE DATE _____ Upon Approval _____

DATE: March 23, 2016

TO: Public Utility Commission

FROM: Jim Stanage *JS*

THROUGH: Jason Eisdorfer *JE*, Bryan Conway *BC*, and Bruce Hellebuyck *BH*

SUBJECT: FRONTIER COMMUNICATIONS NORTHWEST INC, QWEST CORPORATION, UNITED TELEPHONE COMPANY OF THE NORTHWEST, and DEX MEDIA:
(Docket No. UM 1763) Petition requesting a partial waiver of OAR 860-021-0010, OAR 860-021-0610, and OAR 860-021-0620.

STAFF RECOMMENDATION:

Staff recommends that the petition be granted provided Petitioners meet the following conditions.

- (1) The petitioning utilities will provide a directory, including white pages, free of charge to a residential customer upon request.
- (2) The petitioning utilities will provide a notice annually to their residential customers to inform them of the following:
 - A. that the utility will make a reasonable effort to not deliver directories to customers who opt out of receiving one;
 - B. that the utility will no longer deliver directories to customers unless the directories are requested by the customer, except in service areas where Petitioners prefer to have wider distributions of printed directories;
 - C. that customers may request a directory, including white pages, free of charge and that a toll free number for this purpose will be provided in the notice;
 - D. that customers can access directory information on-line free of charge and provide the website(s) address; and
 - E. that both the printed directories delivered to customers and the on-line directories will include in a prominent location (a) a statement summarizing the *Customers' Rights and Responsibilities*, (b) a statement that complies with the requirements of OAR 860-021-0610 pertaining to *Telephone Solicitation Notices*, and (c) a

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statement that complies with the requirements of OAR 860-021-0620 pertaining to *Customer Notification and Information Delivery Services*.

ISSUE

Whether good cause exists to grant the petition of Frontier Communications Northwest Inc. (Frontier), Qwest Corporation d/b/a CenturyLink QC (Qwest), United Telephone Company of the Northwest dba CenturyLink (United), and Dex Media (Dex) for a partial waiver of OAR 860-021-0010, OAR 860-021-0610, and OAR 860-021-0620.

APPLICABLE LAW

Under OAR 860-021-0005, the Commission may waive any of the Division 021 rules for good cause shown.

Under OAR 860-021-0010(6), a large telecommunications utility "shall give its residential customers a written summary of their rights and responsibilities" upon application for new service and annually thereafter. Under this subsection of the rule, "Large telecommunications utilities satisfy the annual notification requirement by prominent publication of the information in a telephone directory distributed to their customers annually."

Per OAR 860-021-0610, the Commission requires a large telecommunications utility to provide a notice statement regarding the telephone solicitation program either by "(a) Annual inserts in the billing statements mailed to parties; or (b) Conspicuous publication of the notice in the consumer information pages of local telephone directories."

And, under OAR 860-021-0620, the Commission requires a large telecommunications utility to provide a billing services notice. The notice must be provided by either "An annual insert in the billing statements mailed to customers or conspicuous publication of the notice in the consumer information pages of local telephone directories." The billing services notice must also be included in the letters setting out the rights and responsibilities of customers that is to be sent to new customers.

ANALYSIS

The petition requests a waiver, under specific conditions, of the requirements to provide certain *residential* customer notices through an annually published white pages telephone directory and instead be allowed to meet the notice requirement by providing the information through an electronic directory available to customers online. That is, a printed directory would only be delivered to customers who request it or who fail to opt

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out of receiving it, while an electronic directory would be an alternative method of providing the same content to the customer as the printed directory. Ultimately, a customer could still have a printed directory with all of the required notices, free of charge, if he or she requests one. Therefore, the petition requests a partial waiver of the three rules, not a full waiver.

Staff first notes that the three substantive rules set forth above apply to a "large telecommunications utility." Petitioners reference Citizens Telecommunications Company of Oregon (Citizens) in the body of the petition. However, through Commission Order No. 15-383, Citizens is not currently subject to the ORS 759.040 form of regulation and the "large telecommunications utility" rules. Petitioners filed a letter in this docket to the Commission confirming that Citizens is not a party to this petition.¹

The clear intent of the three rules is that customers be provided with information about the protections available to them under the three rules by having it included in bill inserts or published annually in a telephone directory at no additional charge.

Petitioners are requesting that the *means* for complying with the rules be expanded to include on-line directories with the required notifications. That is, the status quo would not change for customers who continue to receive printed directories and would not change materially for customers who prefer to use the available on-line electronic directories with the same informational content.

Petitioners' rationale for this request is that conditions have changed since the times when saturation delivery of telephone directories—including white pages—was a reasonable manner for distributing telephone directories and, as a by-product, the customer notifications required by the three previously cited Commission rules. Petitioners assert that there is extensive evidence to support the contention that granting a partial waiver of the rules would not harm customers or the public interest and could conserve resources that would be better used elsewhere. In effect, Petitioners assert that the requirements of the three Commission rules can be satisfied while making only modest changes in their current methods for compliance.

Staff finds on its review that there is "good cause" for a partial waiver of these rules, given certain conditions.

Although the three rules at issue here allow some flexibility, they still require large telecommunications utilities to publish certain legal and customer rights information in telephone directories that are "distributed annually." Including this information in a

¹ Petitioners also confirm that CenturyTel is not a petitioner.

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directory, Petitioners state "is much more cost effective and efficient than sending a separate written notice of rights and responsibilities annually to each customer." Staff does not dispute these assertions and recommends that Petitioners be granted a waiver that allows the on-line availability of directories to be treated as equivalent to paper directories under certain conditions as stated in the petition.

Petitioners cite Federal Communications Commission (FCC) data that show Oregonians' subscription to voice service provided by telecommunications utilities—including CenturyLink, United, and Frontier—declined 64 percent from 2,105,000 at the end of 1999 to 752,000 at the end of 2013. The FCC data also show that during the same period, Oregonians' purchase of wireline voice service from non-utility providers—including Competitive Local Exchange Carriers (CLECs) and cable TV providers—increased 1,554 percent, from 47,000 subscribers at year end 1999 to 734,000 at year end 2013 and subscribership of mobile voice service increased 394 percent from 915,000 at year end 1999 to 3,601,000 at year end 2013.

Petitioners assert that Oregonians have access to and use numerous alternatives to telecommunications utilities and their directory publishers for access to directory information. Petitioners cite the most recent Census Bureau data that show that in 2013 about 92 percent of Oregon households had a computer and over 82 percent used "high-speed" Internet access.² Petitioners assert that both of these figures are substantially above the national averages for the same period and that any household with a device that can connect to the Internet has the ability to obtain directory information from a wide variety of sources at any time, rather than looking to a print directory distributed once per year.

Petitioners assert that even the first purpose of white pages directories—subscriber and number lookup—is no longer essential because of access to online alternatives. Petitioners assert that the decline of printed white pages directory use and usefulness is understandable in the context of the broader trends in the telecommunication industry. They state that the declining use of traditional white pages is a consequence of the massive shift of subscribers from regulated telecommunications utility service to largely unregulated service using Voice over Internet Protocol (VoIP) and to Wireless³ alternatives, which do not provide listings to white pages publishers. Petitioners observe that with over two-thirds of households having dropped telecommunications utility service for wireless or some form of VoIP, there is little or no interest in those

² U.S. Census Bureau, Computer and Internet Use in the United States: 2013, American Community Survey Reports at 10 (Nov 2014 (2013 data)).

³ The Petitioners use the term Commercial Mobile Radio Service (CMRS), which is commonly known as Wireless.

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households in receiving an enumeration of the rights and responsibilities of utility customers.

Staff does not dispute the foregoing assertions of Petitioners and finds that some of the information cited is very similar to what Staff has observed from internal sources. Petitioners' assessment of the background situation concerning the distribution and use of telephone directories in Oregon has merit. Staff also understands that some customers continue to use print directories, and consideration of the needs of all customers is in the public interest.

Staff has discussed several conditions that may better address the issue of providing required notices to all customers with Petitioners, and the petition itself proposes the following conditions:

1. Dex Media may begin to reduce saturation delivery of paper directories to some households and businesses in some geographic markets in the state, including some customers of Qwest, United, and Frontier.
2. All Qwest, United, and Frontier subscribers will have access to the on-line directory and those who request a print directory will receive one at no charge.
3. Qwest, United, and Frontier will annually include a bill message advising its customers of the on-line directory web address.
4. Qwest, United, and Frontier will annually include a bill message advising customers that paper copies of that market's directories are available for free upon request and the notice will include a toll free number to make a request.
5. Dex Media will include in the on-line directories the information required by the Commission's rules for as long as Oregon maintains these regulatory requirements.
6. Dex Media will continue to include the information required by the Commission's rules in the paper versions of the directories that will be provided to customers who request them.
7. Dex Media will continue to provide paper copies to customers on request as a transition, until the number of requests becomes so miniscule as to make the publication cost per book prohibitive.

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CONCLUSION

Staff's analysis outlined above supports the following conclusions:

- 1) Petitioners' proposal of a partial waiver of the rules represents a modest change in the status quo and requests changes that are in compliance with the intent of the rules and that reflect changes in customer behavior that have already occurred.
- 2) Customers would not be harmed by a partial waiver of the rules because they (a) could continue to receive printed/paper directories that contain the required information if they wish to receive one at no additional charge or (b) could receive the same required information as they would receive in their printed/paper directories in the online directories, also at no additional charge.

Therefore, staff recommends that the Commission approve the partial waiver of OAR 860-021-0010, OAR 860-021-0610, and OAR 860-021-0620 to allow Petitioners to provide the required notices in an electronic directory available online when these rules refer to a directory, provided Petitioners meet the following conditions.

- 1) The petitioning utilities will provide a directory including white pages free of charge to a residential customer upon request.
- 2) The petitioning utilities will provide a notice annually to their residential customers to inform them of the following:
 - A. that the utility will make a reasonable effort to not deliver directories to customers who opt out of receiving one;
 - B. that the utility will no longer deliver directories to customers unless the directories are requested by the customer, except in service areas where Petitioners prefer to have wider distributions of printed directories;
 - C. that customers may request a directory, including white pages, free of charge and that a toll free number for this purpose will be provided in the notice;
 - D. that customers can access directory information on-line free of charge and provide the website(s) address; and
 - E. that both the printed directories delivered to customers and the on-line directories will include in a prominent location (a) a statement summarizing the *Customers' Rights and Responsibilities*, (b) a statement that complies with the requirements of OAR 860-021-0610 pertaining to *Telephone Solicitation Notices*, and (c) a statement that complies with the requirements of OAR 860-021-0620 pertaining to *Customer Notification and Information Delivery Services*.

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Petitioners state in the petition that they consider the conditions suggested by staff to be acceptable.

PROPOSED COMMISSION MOTION:

Approve the petition for partial waiver of OAR 860-021-0010, OAR 860-021-0610, and OAR 860-021-0620 to allow petitioners to provide the required notices in an electronic directory available online when these rules refer to a directory, subject to the conditions recommended by Staff.

UM1763.Petition.WAIVER.Directories