

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of

VERIZON COMMUNICATIONS INC. and
FRONTIER COMMUNICATIONS
CORPORATION

Joint Application for an Order Declining to Assert
Jurisdiction, or, in the alternative, to Approve the
Indirect Transfer of Control of VERIZON
NORTHWEST INC.

ORDER

**DISPOSITION: MOTION FOR AN ORDER DECLINING
JURISDICTION DENIED**

On June 23, 2009, Verizon Northwest Inc. and Frontier Communications Corporation (collectively, Applicants) filed a Motion for an Order Declining Jurisdiction (Motion). On July 8, 2009, the following parties filed responsive pleadings in opposition to Applicant's motion: International Brotherhood of Electrical Workers, Local 89 (IBEW); XO Communications Services Inc.; tw telecom of oregon llc; Integra Telecom of Oregon; Inc.; and PAETEC Business Services (collectively Joint CLECs); the Citizens' Utility Board of Oregon (CUB); Level 3 Communications LLC and 360networks (USA) inc. (Level 3/360); and the Commission staff (Staff).

DISCUSSION

A. Positions of the Parties

Applicants ask the Commission to decline to assert jurisdiction over the asset transfer transaction because ORS 759.375 and 759.380—two provisions upon which the Commission recently relied¹ to review a similar transaction—provides no authority for

¹ Order No. 09-169, entered May 11, 2009, in docket UM 1416, *In the Matter of Embarq Corporation (Embarq) and CenturyTel, Inc. (Centurytel), Joint Application for Approval of Merger between the two companies and their regulated subsidiaries (CenturyTel Order)*.

Commission review.² First, Applicants claim that ORS 759.375(1) does not apply to this transaction because there is no direct or indirect merger or consolidation between Verizon and Frontier. “[E]ach will remain a separate entity and continue to serve as a ‘telecommunications utility’ in Oregon subject to Commission regulation. Indeed, the only real effect of the transaction will be that Verizon Northwest will undergo a name change and obtain a different ultimate parent company.”³ Applicants also claim that the provisions of ORS 759.380(1) prohibiting the unauthorized purchase, acquisition, or transfer of telecommunications utility property similarly does not apply because no stocks, bonds, or other property will be acquired by or transferred from one party by the other as part of the transaction.⁴

Applicants contend that the Commission’s decision to apply these statutes to the review of a merger between CenturyTel and Embarq was in error, and ask that the Commission revisit its decision in Order No. 09-169. Applicants contend that, in asserting jurisdiction, the Commission overread the phrase “[b]y any means whatsoever, directly or indirectly” in ORS 759.375, and “directly or indirectly” in ORS 759.380. Moreover, they explain that neither provision applies here, because ORS 759.375 only applies if the two Oregon telecommunications utilities ultimately end up merged together, regardless of the method used to accomplish that merger, and, secondly, because ORS 759.380 applies only if one Oregon telecommunications utility becomes the owner of stocks, bonds, or property of the other. In this case, neither event occurs. The companies remain separate entities, and neither owns stocks, bonds, or property of the other. According to Applicants, a change resulting in common ultimate parental ownership is insufficient under the statute for the assertion of jurisdiction. Had the legislature intended jurisdiction to apply, it would have said so expressly.⁵

In its Response, CUB diagrams the three stages of the Applicants’ transaction and, noting its complexity and the characterization of it by the Applicants, asserts that it is “akin to a magician’s shell game or Three Card Monte, designed and implemented to try and avoid assertion of jurisdiction* * *.”⁶ CUB states that ORS 759.375 need not have precise language to apply to this transaction because Subsection (a) twice includes the catchall phrase “or otherwise dispose of” and Subsection (c) includes the catchall phrase “[b]y any means whatsoever, directly or indirectly,” in describing subject transactions. ORS 759.375, in CUB’s view, is clearly and broadly written to cover any situation where a telecommunications utility changes hands, directly or indirectly.⁷ CUB reaches a similar conclusion in analyzing the “directly or indirectly” language of ORS 759.380, noting that the transaction’s value is clearly greater than \$10,000.⁸ Finally, although believing it unnecessary, CUB provides its analysis of the legislative history applicable to the transaction, concluding that “the Commission’s flexing of its jurisdictional muscle is fully supported by the legislative history and, is to be encouraged.”⁹

² Motion at 1.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 3-5.

⁶ CUB Response at. 3.

⁷ *Id.* at 4-5.

⁸ *Id.* at 5-6.

⁹ *Id.* at 7-8.

Staff comments that Applicants actually seek reversal of Order No. 09-169, which is directly applicable to the merger in this case and supports Staff’s contention that the Commission has jurisdiction over this transaction. “For all important purposes, these facts are identical to those presented in [Order No. 09-169]. Under the reasoning of that recent decision, the Commission should deny the Applicants’ request to ‘decline to exercise jurisdiction.’”¹⁰ Like CUB, Staff notes the applicability of the plain language of ORS 759.375 and ORS 759.380 and contends that Applicants misread the statutory language that the Commission has so recently and properly applied. In fact, Staff notes that the Washington State Utilities and Transportation Commission interpreted its similar statutes in a similar manner.¹¹

Joint CLECs, Level 3/360, and IBEW likewise note the similarities of the instant transaction with the merger that was the subject of Order No. 09-169 and comment on Applicants’ failed attempt to distinguish the cases, each noting the broad language already discussed above in the CUB Response.¹² Level 3/360 also asserts that “sound public policy requires the Commission to review the Proposed Transaction,” as many parties are “raising serious questions as to Frontier’s ability to provide [and] maintain high quality services to wholesale and retail customers in Oregon. Commission review and approval are essential to ensure that Oregon consumers are protected.”¹³

DECISION

ORS 759.375 provides, in relevant part:

(1) A telecommunications utility doing business in Oregon shall not, without first obtaining the * * * Commission’s approval of such transaction:

* * * * *

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other * * * telecommunications utility.

ORS 759.380 further provides:

(1) No telecommunications utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or

¹⁰ Staff Reply at 2-5 and citations therein.

¹¹ *Id.* at 5-6 and citations therein.

¹² Joint CLECs Response at 1-4, Level 3/360 Response at 1-5, IBEW Answer at 1-2.

¹³ Level 3/360 Response at 6.

bonds or property utilized for utility purposes * * * of any other * * * telecommunications utility unless authorized to do so by the * * * Commission.

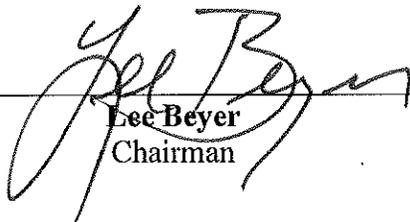
(2) Every contract by any telecommunications utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other telecommunications utility * * * without the approval of the commission shall be void * * *.

In Order No. 09-169, we recently concluded that these two provisions provide this Commission with the jurisdiction to review the merger between CentruyTel and Embarq. Applicants have failed to identify any legal error in that conclusion or any material factual differences to distinguish this transaction, which will result in a change in ultimate control of a telecommunications utility providing service in Oregon. Accordingly, we adhere to our prior order and conclude that the Commission has the statutory authority to review this transaction.

ORDER

The Motion for an order Declining Jurisdiction filed by Verizon Communications Inc. and Frontier Communications Corporation is denied.

Made, entered, and effective JUL 17 2009.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner

