

ORDER NO. 11 250

ENTERED: JUL 07 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1484

In the Matter of

CENTURYLINK, INC.,

Application for Approval of Merger
between CenturyTel, Inc., and Qwest
Communications International, Inc.

ORDER

DISPOSITION: NO ACTION TAKEN ON MOTION OR COMMENTS

In Order No. 11-095, as corrected by Order No. 11-101, we approved a merger between CenturyTel Inc. (CenturyLink) and Qwest Communications International, Inc. (Qwest). Our approval was subject to numerous conditions, including Condition 54, the so-called Most Favored State (MFS) condition.

Following our approval of the merger, parties have made two filings relating to the MFS condition. On May 26, 2011, a group of competitive local exchange carriers¹ (CLECs) filed comments related to the MFS condition. On May 27, 2011, the Citizens' Utility Board of Oregon (CUB) filed a motion seeking to add conditions adopted in the states of Washington and Colorado.

We decline to take action on either filing at this time, because our approval of the merger between CenturyLink and Qwest has been appealed to the Court of Appeals. Once an order has been appealed, an agency's ability to modify or otherwise reconsider a decision is limited by statute.

ORS 183.482(6) governs an agency's ability to reconsider an order that has been appealed. That statute provides in relevant part:

At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for

¹ Integra Telecom of Oregon, Inc., Advanced Telecom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., United Telecommunications Inc. d/b/a Unicom, and McLeodUSA Telecommunications Services L.L.C., d/b/a PAETEC Business Services.

purposes of reconsideration, the agency shall, within such time as the court may allow, affirm, modify or reverse its order.

ORS 183.482(5) similarly restricts an agency's ability to consider new evidence in a case that has been appealed:

If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that the agency elects to stand on its original findings and order, as the case may be.

As we have previously noted,² whether ORS 183.482(5) or (6) apply to Commission proceedings is a question that has not yet been addressed by the appellate courts. Although this agency is not expressly exempt from those provisions under ORS 183.315(6), the provisions appear to conflict with ORS 756.568, which provides:

The Public Utility Commission may *at any time*, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders. (Emphasis added.)

To address the filings at this time would require us to proceed at the risk of crossing the court, or seek permission from the court and risk delay and confusion of issues. We decline to take either path, and will not address either filing until the appeal has been resolved.

² See *In Re Portland General Electric Company, Investigation into Least Cost Plan Plant Retirement, et al*, Dockets DR 10, UE 88, and UM 989; Order No. 09-093 at 4.

ORDER

IT IS ORDERED that no action is taken at this time on the motion filed by the Citizens' Utility Board of Oregon on May 27, 2011, or the comments of Integra Telecom of Oregon, Inc., Advanced Telcom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., United Telecommunications Inc. d/b/a Unicom, and McLeodUSA Telecommunications Services L.L.C., d/b/a PAETEC Business Services, submitted in this docket.

Made, entered, and effective JUL 07 2011.



John Savage
Commissioner



Susan K. Ackerman
Commissioner

