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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST INTERNATIONAL INC. AND CENTURYTEL, INC.

DOCKET NOS. T-01051B-10-0194
T-03902A-10-0194
T-02811B-10-0194
T-20443A-10-0194
T-04190A-10-0194
T-03555A-10-0194

JOINT APPLICANTS' REPLY TO JOINT CLECS' AND CWA IN REGARD TO JOINT APPLICANTS' MODIFICATION TO PROPOSED PROTECTIVE ORDER TO ADD "STAFF EYES ONLY" CONFIDENTIALITY

The Joint Applicants hereby reply to the response of the Joint CLECs filed on August 5, 2010, and the response of the CWA filed on August 9, 2010. In support of their proposed protective order filed on June 17, 2010, their proposed modification filed on July 27, 2010, and this Reply, the Joint Applicants state:

INTRODUCTION

The Joint CLECs claim that the Joint Applicants' proposals "deviate markedly from the form of protective order that has been used in several previous multi-party telecommunications dockets." However, the inference that there has been a single form of protective order in previous dockets is incorrect. There has never been a single form

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1 of protective order. Variations have existed between and among orders in other dockets.
2 Nor should there be a single form. The provisions of a protective order should be shaped
3 by the needs of the parties and the underlying docket, not by slavish consistency of
4 forms. Examined in that light, it is clear that more protections are necessary and
5 appropriate in this docket because the data requests propounded in this docket are more
6 intrusive into the sensitive business strategies of the respective Applicants than was the
7 discovery conducted in other dockets. The Commission should create a zone of safety in
8 which the Joint Applicants' most precious business strategies are free from unwarranted
9 legal hacking. That is the purpose of the "Staff Eyes Only" ("SEO") request.

10 The Joint CLECs urge the Commission to adopt a form of protective order entered
11 in a wholly different docket, concerning Qwest's wholesale obligations. That docket
12 requires the gathering of information about the location of CLECs' facilities. Such
13 information about CLECs' facilities and competition in Arizona at a micro level, is
14 fundamentally different from the valuable national business strategy information that
15 some Intervenors have sought in this merger application. Further, the Joint CLECs seek a
16 protective order that collapses the traditionally separate classifications of Confidential
17 and Highly Confidential, and the different protections afforded those categories, into one
18 level. The Joint CLECs' proposal for less, rather than more protections, is headed in the
19 wrong direction.

20 The Joint Applicants seek the SEO level of protection for extraordinarily sensitive
21 information. As is apparent from the document descriptions in Qwest's documents
22 submitted for *in camera* review,¹ for example, Qwest seeks protection for its analyses of
23 other transaction possibilities, compares those potential deals, and addresses the
24 sequencing of possible subsequent transactions. Those documents contain information

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26 ¹ See, Qwest Corporation Notice of Filing, August 11, 2010, description of SEO documents submitted for *in camera*
review by the Administrative Law Judge, under the Procedural Order entered August 3, 2010.

1 that continues to be highly sensitive. The CenturyLink description of documents
2 submitted for *in camera* review² regarding financial assumptions and projected market
3 rollout for IPTV, and sales and marketing strategies in the Consumer, Mass Market, and
4 Enterprise Business markets, for example, also constitute extraordinarily sensitive
5 information. Matters such as these are outside the normal scope of confidential data
6 exchanged in the course of regulatory proceedings. Extraordinary matters merit
7 exceptional treatment.

8 Moreover, this matter is first and foremost an Affiliated Interest filing pursuant to
9 A.A.C. R14-2-803 that defines the legal standard to be applied by the Commission.

10 Section C provides:

11 At the conclusion of any hearing on the organization or
12 reorganization of a public utility holding company, the Commission
13 may reject the proposal if it determines that it would impair the
14 financial status of the public utility, otherwise prevent it from
15 attracting capital at fair and reasonable terms, or impair the ability of
16 the public utility to provide safe, reasonable and adequate service.

17 Accordingly, the need and relevancy of the discovery for this particular transaction
18 should be measured against the specific legal standard cited above.

19 The Joint Applicants seek the SEO classification without waiving privilege or
20 relevancy objections that are appropriate in the circumstances. Regardless of whether the
21 Commission authorizes the protective categories sought by the Joint Applicants, the Joint
22 Applicants should be granted relief from the Intervenors' specific highly intrusive data
23 requests which caused the Joint Applicants to seek the SEO category, because the
24 requests are not relevant to the determinations the Commission must make in this docket.

25 **DISCUSSION**

26 1. The Appropriate Provisions of a Protective Order Should Be Determined in
the Context of the Needs of the Parties and the Commission in the Docket, Not by
Old Forms from Dissimilar Proceedings.

² See, CenturyLink Notice of Filing, August 11, 2010, description of documents submitted for *in camera* review by the Administrative Law Judge, under the Procedural Order entered August 3, 2010.

1 The provisions of a protective order in any given proceeding should be tailored to
2 the specific situation before the Commission. This principle has recently been articulated
3 by the Oregon Public Utilities Commission in its deliberation about how Highly
4 Confidential (“HC”) information should be protected in the CenturyLink/Qwest merger
5 docket currently underway:

6 In adopting protective orders, the Commission seeks to strike a
7 balance that permits the broadest possible discovery consistent with
8 the need to protect confidential information. The more sensitive and
9 potentially competitively damaging documents are, the more
10 stringent the protection of such documents needs to be.³

11 The Joint CLECs want the Commission to adopt the same form of protective order
12 that exists in the Qwest TRRO Wire Center docket (see Attachment A to Joint CLECs'
13 Reply). However, the TRRO Wire Center docket is not an application concerning a
14 merger, and the confidential data that is disclosed in that docket is very specific
15 information of an entirely different nature than the highly confidential information the
16 Joint Applicants seek to protect here. In fact, the Highly Confidential Information that is
17 subject to disclosure in the TRRO Wire Center docket is competitively sensitive
18 information about the CLECs--not about Qwest at all. In the TRRO Wire Center docket
19 the CLECs made the determination, for themselves, that less restrictive protections were
20 adequate to protect the disclosure of information about the facilities they have in
21 particular wirecenters. That decision, which resulted in a more liberal disclosure scheme,
22 was the product of their analysis of the risk to their data, which in any event was a very
23 small universe of information, with only very localized sensitivity. Accordingly, while
24 that form of protective order may have been fine for that docket, its use in this merger

25 ³ Highly Confidential Protective Order, *In the Matter of CenturyLink, Inc., Application for Approval of Merger*
26 *between CenturyLink, Inc., and Qwest Communications International, Inc.*, Oregon Public Utilities Commission,
Order no. 10-291, entered 07/30/2010, (the “Oregon Order”), p. 3. The Oregon Order is attached as Attachment 1
hereto.

1 application would be wildly inadequate. Applying the provisions designed to protect data
2 about Integra's fiber collocation in the Thunderbird wirecenter, for example, to
3 CenturyLink's merger and acquisition strategies on a national scale, would be
4 unreasonable and unfair.⁴

5 While the Joint CLECs ask for the protective order from the TRRO Wire Center
6 docket, they also point to the protective order the Commission issued for the U S
7 WEST/Qwest merger,⁵ a copy of which is provided as Attachment 2 (the "*Qwest/USW*
8 *Order*"). The *Qwest/USW Order* does have the looser access standards the Joint CLECs
9 seek for the "small company exemption" (see discussion below), and the large numbers
10 of in-house counsel and inside experts the Joint CLECs want to have review "Highly
11 Confidential" ("HC") information.⁶ However, the requests for the extraordinarily
12 sensitive information that the Intervenors have made in the instant application, which
13 have driven the Joint Applicants to seek the SEO category of protection, were simply not
14 an issue in that merger ten years ago. The need for the additional protections exists now,
15 and such protections should be provided, regardless of what lesser protections were
16 reasonable in old dockets.

17 2. The "Small Company Exemption" Is Not Standardized, and Makes Little
18 Sense in this Docket; Further, the "Small Company Exemption" Should Not Apply
19 to Class A Companies.

20 The Joint CLECs seek a "Small Company Exemption," claiming that such
21 provisions are routinely included in telecom protective orders in Arizona, and that the
22 Commission should include the same form of exemption that is present in the TRRO

23 ⁴ The *Oregon Order* held that the provisions of the protective order entered in the Oregon TRRO Wirecenters docket
24 were "inapposite to the current proceeding." *Oregon Order*, fn 9.

25 ⁵ Protective Order entered March 3, 2000, *In the Matter of the Merger of the Parent Corporations of Qwest*
26 *Communications Corporation, LCI international Telecom Corp, USLD Communications, Inc., Phoenix Network,*
Inc., and U S WEST Communications, Inc., Arizona Corporation Commission Docket No. T-01051B-99-0497.

⁶ For access to HC, the CLECs are asking for "a reasonable number" of in-house attorneys and five in-house experts.
The *Qwest / USW Order* provided only for one in-house attorney and one in-house expert. As discussed above, the
Joint Applicants reasonably require greater protection in this docket than either the TRRO Wire Center Order or the
Qwest / USW Order provided.

1 Wire Center docket. While the Commission has included one form or another of the
2 small company exemption concept in several other protective orders, it has not done so
3 uniformly, and there is no single form of the exemption. The *Qwest/USW Order* issued
4 in that merger docket, for example, did not contain the small company exemption.

5 The degree of flexibility the exemption may provide to a company defined as
6 "small" will vary under the different versions that have been ordered in the past. That
7 such variations exist shows that the Commission has not taken a monolithic approach,
8 and is willing to tailor protective orders to situations. In this docket, given the wide
9 ranging scope of discovery subjects that bear little or no relevance to the ultimate
10 questions in the docket (see, section 6, below regarding lack of relevancy), the
11 Commission should take the narrowest view of granting exemptions from restrictions.

12 The Joint CLECs ask for the protective order from the TRRO Wire Center docket,
13 and apparently seek to permit employees engaged in strategic or competitive decision
14 making, including sales, marketing, and pricing to access both Confidential ("C")
15 information and Highly Confidential ("HC") information. The net impact of the Joint
16 CLECs' request would be to erase differences between treatment of HC and C
17 Information, opening the Joint Applicants' HC information to the very persons who are
18 the "brains" behind their largest CLEC competitors. Further, those CLEC competitors
19 who claim to be "small" are among the largest competitive telecommunications
20 companies in the nation. It is obvious that permitting such disclosure to competitive
21 decision makers would be most unwise.

22 Even in dockets where the small company exemption was permitted, it has
23 sometimes been more closely defined and limited. For example, in the consolidated
24 dockets regarding Arizona Universal Service Fund Rules and the Investigation of the
25 Cost of Telecommunications Access, the protective order states, "[P]rovided, however,
26 that no company that is classified as a Class A telephone utility under Commission Rule

1 [103] shall qualify as a “Small Company” for purposes of this Order.”⁷ This clause
2 recognizes that the Commission has classified companies for regulatory purposes. By
3 rule, the Commission chose to determine which companies would be subjected to higher
4 regulatory requirements, and affiliated interests requirements⁸ according to annual
5 revenues, not by the number of employees as the Joint CLECs propose. There is no
6 compelling need to create *ad hoc* exceptions to the duties of Class A carriers in this
7 docket. No Class A utility should be excused from the higher obligations that pertain to
8 access and protection of C and HC information.

9 The Joint CLECs also point with approval to the protective order issued in the
10 CenturyLink/Qwest merger docket in Minnesota. However, that order, which is attached
11 to the Joining CLECs Response as Attachment B, specifically states in the small
12 company section (at p. 10) that the persons representing the small company who may be
13 authorized by the exemption to receive C or HC, “do not include individuals primarily
14 involved in marketing activities for the company[.]” This carve out from the exception is
15 an attempt (inadequate in the Joint Applicants’ view) to deal with the illogic of giving
16 key secrets away to the very persons who make the key decisions of competitors.
17 The request for a “Small Company Exemption” should be denied, for the foregoing,
18 reasons.

19 3. The Oregon Protective Order Provides the Proper Level of Protection for
20 Highly Confidential Information.

21 The Joint Applicants submit that in the circumstances of this proceeding, the most
22 appropriate protection for HC information will be to limit the classes of individuals who
23 may be granted access, to outside counsel and outside experts. This is how HC access
24

25 ⁷ CITE Procedural Order Issuing this PO

26 ⁸ The set of rules known as the Affiliated Interests Rule, specifically incorporates the Class A classification for purposes of defining which companies are subject to the rule. A.A.C. R14-2-801(8).

1 has been limited in Oregon,⁹ and in Washington.^{10 11} The Joint CLECs point out a
2 recent decision by the Washington Utilities Commission denying the Joint Applicants for
3 a SEO category; however, that decision did not change the strong protections afforded on
4 the HC access issue.

5 4. The Joint CLECs' Statements Demonstrate a Serious Risk that Highly
6 Confidential Information Will Be Abused, Proving that the Commission Should
7 Adopt Limited Access.

8 The Joint CLECs say that the same cadre of in-house lawyers at the national level,
9 the same in-house expert personnel, and the same outside counsel and experts, who they
10 would have review the HC information in his Arizona docket, are already reviewing HC
11 information, as a result of the less restrictive protective order that was entered in
12 Minnesota. They argue that it would not be possible for a participant in the Minnesota
13 docket "to review and know information in that state, but not in another." However, that
14 argument misses the point, and unwittingly makes a more fundamentally important point
15 about why individuals who serve in a role as a strategic business decision maker should
16 never be given access to HC information. It is indeed impossible for such a person to
17 "not know" a fact learned in the course of review of HC documents. Expecting such
18 persons to be on "scouts honor" to not let such knowledge color decisions about the
19 business is wholly unrealistic. That is why HC information in this case must be restricted
20 from in-house individuals, and why the better course of action for extraordinarily
21 sensitive documents such as the SEO category, is that it should not be disclosed at all
(except to Staff and RUCO).

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23 ⁹ *Oregon Order*, (Attachment 1 hereto) at p. 5.

24 ¹⁰ *Id.*, at p. 3, citing Section C of Order 01 in WUTC Docket UT-100820, the Washington proceeding governing the
instant transaction.

25 ¹¹ The Joint Applicants' proposed protective order limited access to no more than one outside counsel and one
26 outside expert. The Joint Applicants state here that they are willing to accept the Oregon and Washington treatment
of HC access; i.e. limiting access to outside experts and attorneys. However, the Joint Applicants reserve the right
to object to the designation of any individual counsel or consultant, as authorized by the Joint Applicants' proposed
protective order.

1 The Joint CLECs statement is troubling for another reason. The Joint CLECs are
2 saying that, contrary to the restrictions of the Minnesota order requiring that they use the
3 C and HC information strictly for the purposes of that proceeding, they believe they will
4 use it in other dockets. That attitude displays a disregard for the basic protections and
5 purpose of any protective order—to keep a matter confidential and to bring it up strictly
6 for the purposes of the docket in which access was provided. The CLECs expression of
7 their inability to limit the use of information in accordance with an applicable protective
8 order seems cavalier, and is another reason why the Commission should be very cautious
9 about granting greater access.

10 5. The CWA Should Not Have Access to Unredacted SEO Documents the
11 Applicants Offer to Disclose to the State Agencies, Because the CWA Stands to
Gain by Access to the Highly Sensitive Business Information.

12 The CWA's Response opposes the Joint Applicants' proposal that certain highly
13 sensitive information be disclosed only to Staff and RUCO and that such SEO
14 information would not be disclosed to CWA. CWA does not appear to contest the
15 validity of SEO-type treatment for certain information, only that CWA should not be
16 subject to the restrictions of SEO treatment. CWA's primary argument is that the Joint
17 Applicants have cited the risk of harm from disclosure of this highly sensitive
18 information to the Joint Applicants' competitors, and that CWA is not a competitor of the
19 Joint Applicants so CWA should be allowed access to the SEO information. The Joint
20 Applicants agree that CWA is not a competitor. However, the disclosure of the SEO
21 information to the CWA would result in bargaining disadvantage and risk of economic
22 harm to the Joint Applicants, and confer an advantage on the CWA, in their dealings with
23 the Joint Applicants. The Joint Applicants information should therefore be protected for
24 the same reasons that are described above with respect to disclosure to competitors.
25 Further, there is no nexus between the kind of information contained in the SEO
26 documents and the purposes of this proceeding, set out in Rule 803, regarding whether

1 the financial strength of the companies and their ability to provide utility services would
2 be harmed by the transaction.

3 Disclosure of SEO information to CWA does present an unreasonable risk of harm
4 to the Joint Applicants. The Joint Applicants and CWA periodically engage in
5 negotiations to establish collective bargaining agreements ("CBA"). The Joint
6 Applicants could be placed at a severely unfair disadvantage in CBA negotiations if the
7 CWA were given access to information to which it would not otherwise be entitled. Such
8 information would not only unfairly advantage CWA in this state, but because much of
9 the SEO information reflects nationwide analysis and plans such information could be
10 unfairly used against the Joint Applicants in CBA negotiations across multiple states. It
11 should be noted that the CWA represents members that work for other
12 telecommunications carriers, so to that extent, it may not only help them in the CBA
13 negotiations with the Joint Applicants, but may provide them with insight in the
14 negotiations with another carrier or provide information to that carrier through those
15 dealings. Such unauthorized disclosure could be inadvertent, careless, or purposeful.

16 The outside counsel for CWA and CWA's outside consultant involved in this
17 proceeding have been sanctioned for abusing discovery and the regulatory process by a
18 state regulatory agency in another merger approval matter. That fact weighs against
19 disclosure of highly sensitive information. In the merger proceeding involving Verizon
20 and Frontier, the Oregon Public Utility Commission sanctioned the International
21 Brotherhood of Electrical Workers ("IBEW"), as a result of discovery abuse by IBEW's
22 outside counsel and consultant. The Oregon Commission found that the IBEW had used
23 confidential information obtained in Oregon in a Pennsylvania proceeding, and had made
24 such information public, in violation of the terms of the protective order for that docket.
25 As a result, IBEW had its party status revoked and was kicked out of the Oregon
26 proceeding. (A copy of the order of expulsion from the Oregon commission is attached

1 as Attachment 3). Consequently, disclosure of SEO information to CWA presents the
2 type of unreasonable risk of harm, weighed against the value of the information, that the
3 Joint Applicants' motion explicitly mentioned.

4 In support of its position that the SEO limitations should not apply to the CWA,
5 they argue that the Joint Applicants (in a motion they filed in Colorado for heightened
6 protective measures) did not include the CWA as a competitor. CWA attached the Joint
7 Applicants' Colorado motion as Attachment A to CWA's response. However, the
8 Colorado motion demonstrates that the Joint Applicants' were only seeking specific
9 treatment for information classified as "Highly Confidential," and the Colorado motion
10 was not seeking the protections being sought here for SEO-type documents.
11 Furthermore, the fact that CWA was not included in the Joint Applicants' footnoted list
12 of competitors is hardly dispositive of whether the CWA was included within the scope
13 of the protections that the Joint Applicants' were seeking in their *Colorado* motion.
14 There can be no dispute that the protections sought by the Joint Applicants' Colorado
15 motion for Highly Confidential information would also apply to CWA as an Intervenor
16 party (e.g., disclosure would be limited to only one outside counsel and one outside
17 consultant - - similar to the request here) even if CWA were not considered a
18 "competitor."

19 Although the Joint Applicants' motion did refer to SEO documents as
20 competitively sensitive, the motion was clear that the request was to limit disclosure to
21 only Staff and RUCO and to prohibit disclosure to all other Intervenor parties - - the
22 motion was not limited specifically to competitors. Indeed, the Joint Applicants also
23 noted that, even if considered relevant, "the value of disclosing such information to
24 Intervenors (other than Staff and RUCO) is far outweighed by the harm that could result
25 to the Joint Applicants if such highly competitively sensitive information was disclosed."
26 Therefore, the Joint Applicants' arguments for heightened protections extend beyond

1 strictly competitive concerns.

2 6. Even If the Commission Rejects the Request for a Staff Eyes Only
3 Category, the Commission Should Not Foreclose Granting Objections Based on
4 Lack of Relevancy.

5 The Joint Applicants seek the SEO classification without waiving privilege or
6 relevancy objections that are appropriate in the circumstances. Regardless of whether the
7 Commission authorizes the protective categories sought by the Joint Applicants, the Joint
8 Applicants should be granted relief from the Intervenors' specific highly intrusive data
9 requests which caused the Joint Applicants to seek the SEO category, because the
10 requests are not relevant to the determinations the Commission must make in this docket.
11 The Commission is not deciding whether, for example, Qwest or CenturyLink should
12 have entered a transaction with XYZ company, or with some other company—it is only
13 deciding whether this transaction will impair the financial status of any of the public
14 utilities involved, prevent them from attracting capital at fair and reasonable terms, or
15 impair their ability to provide safe, reasonable and adequate service. Those are the
16 ultimate material facts the Commission must determine under Rule 803, and only
17 evidence which tends to establish the existence of any of those conditions, is relevant.

18 7. The Probative Value of Disclosing the Highly Sensitive Information
19 Requested by the Intervenors in this Docket is far Outweighed by the Risk of
20 Harm That Would Result if the Commission Were to Require Disclosure.

21 The Commission's deliberations are generally conducted in accordance with the
22 Rules of Evidence applied in the courts in Arizona.¹² The Commission must determine
23 whether evidence, even if relevant, should be excluded from disclosure because "its
24 probative value is substantially outweighed by the danger of unfair prejudice, confusion
25 of the issues, ... or by considerations of undue delay, waste of time, or needless
26 presentation of cumulative evidence."¹³ This doctrine is not limited to situations in which

¹² A.A.C. R 14-3-109(K).

¹³ Ariz. R. Evid. 403; cf. *English-Clark v. City of Tucson*, 142 Ariz. 522, 526, 690 P.2d 1235, 1239 (App. 1984)
("The balancing process under Rule 403 ... is left to the trial judge, who must determine whether the probativeness

1 there is a possibility that the evidence would be prejudicial at trial—it also applies for
2 evidence that risks violations of confidentiality and trade secrets.¹⁴

3 The Commission’s duty is heightened in cases such as this, where Intervenors are
4 seeking disclosure of highly sensitive confidential information. Arizona, through
5 enactment of the Uniform Trade Secrets Act, has established a policy specifically aimed
6 at “protect[ing] valuable confidential information from discovery” through the use of
7 injunctions, protective orders, and judicial oversight.¹⁵ The trade secret protections apply
8 to information, including formulas, patterns, compilations, programs, devices, methods,
9 techniques or processes that: 1) derive “independent economic value, actual or potential,
10 from not being generally known to, and not being readily ascertainable by proper means
11 by, other persons who can obtain economic value from its disclosure or use”; and 2) have
12 been subject to reasonable efforts to maintain their secrecy.¹⁶ Trade secrets include
13 information that, similar to the information Joint Applicants are seeking to protect here, is
14 used or has “the potential to be used in one’s business and that gives one an opportunity
15 to obtain an advantage over competitors who do not know of or use it.”¹⁷

16 of the offered evidence is substantially outweighed by its unfair prejudice, confusion of issues, etc.”)

17 ¹⁴ *Mo. Pub. Serv. Comm’n v. Mo. Pipeline Co.*, Case No. GC 2006-0378, 2006 WL 3733309, at *2 (Mo.P.S.C.
18 2006) (“In deciding whether a party should be allowed to discover certain information, the court, or administrative
19 agency, must weigh ‘the probative value of the evidence against the dangers to the opposing party of unfair
20 prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality.”);
21 *YMCA of the Rockies v. Pub. Serv. Co. of Colo.*, Case No. 05F167G, R0608951, 2005 WL 1994293 (Colo.P.U.C.
22 2005) (requiring the Colorado PUC to analyze the probative value of evidence, even though the Colorado
Commission, similar to Arizona, is not strictly bound by the technical rules of evidence); *In re Qwest Corp.*, Order
No. 03-533, 2003 WL 24038510 (Or.P.U.C. 2003) (applying the probative value versus unfair prejudice balancing
test and analyzing the limit on disclosure of trade secrets in the context of a motion to compel a data response).

23 ¹⁵ *Enterprise Leasing Co. of Phoenix v. Ehmke*, 197 Ariz. 144, 148, 3 P.3d 1064, 1068 (App. 2000) (holding that
24 internal financial information and “general business principles” were trade secrets protected from disclosure); see
also A.R.S. §§ 44-405 (courts shall preserve the secrecy of an alleged trade secret by “reasonable means” including
the grant of a protective order in connection with discovery and holding *in camera* hearings).

25 ¹⁶ A.R.S. § 44-401(4).

26 ¹⁷ *Ehmke*, 197 Ariz. at 148, 3 P.3d at 1068.

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3. Adopt the Joint Applicants' proposed form of protective order as modified on July 27, 2010.

RESPECTFULLY SUBMITTED this 13th day of August, 2010.

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By: 

ATTACHMENT

1

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1484

In the Matter of

CENTURYLINK, INC.,

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

HIGHLY CONFIDENTIAL
PROTECTIVE ORDER

DISPOSITION: MOTION FOR HIGHLY CONFIDENTIAL
PROTECTIVE ORDER ADOPTED AS MODIFIED

I. SUMMARY

In this order, we issue a protective order establishing procedures for the disclosure and protection of information identified as being "highly confidential."

II. INTRODUCTION

On May 24, 2010, CenturyLink, Inc. (CenturyLink or Applicant), filed a request for a General Protective Order with the Public Utility Commission of Oregon (Commission). The Commission granted the request by Order No. 10-192, entered May 26, 2010.

On June 21, 2010, CenturyLink filed a Motion for a Highly Confidential Protective Order (Motion) with the Commission to govern the production and use of information the Applicant deemed "highly confidential," and included a draft of its proposed order. On June 24, 2010, Joint CLECS¹ filed an Opposition to CenturyLink's Motion for Highly Confidential Protective Order (Opposition). CenturyLink filed a Response to the Opposition (Response) on July 7, 2010, and on that same day, Qwest Corporation (Qwest) filed a Joinder that "fully supports" the CenturyLink Response. On July 12, 2010, Joint CLECs supplemented their Opposition by providing a copy of an amended Protective Order

¹ The Joint CLEC parties are tw telecom of oregon llc; Covad Communications Company; XO Communications Services, Inc.; Integra Telecom of Oregon, Inc.; Advanced TelCom, Inc.; Electric Lightwave, LLC; Eschelon Telecom of Oregon, Inc.; Oregon Telecom Inc.; and United Telecommunications Inc., d/b/a Unicom; Priority One Telecommunications, Inc.; and Charter Fiberlink OR-CCVII LLC.

issued by the Minnesota Public Utilities Commission on June 15, 2010, as part of its review of the instant transaction.

The sole issue in dispute between the Applicant and Joint CLECs is which classes of individuals should be granted access to highly confidential information.

The CenturyLink Motion. Applicant seeks greater protection for certain information it claims to be competitively sensitive. Applicant states that it has received discovery requests:

that would require it to provide highly sensitive information, including information regarding non-regulated services that, if disclosed to its competitors without strict protections, would seriously compromise its competitiveness in Oregon * * *.

However, as a remedial measure for some of this category of information, CenturyLink asserts that it is, at a minimum, critical that this information not be shared with any employees of companies who compete with CenturyLink including in-house attorneys and experts. * * *.

[The Washington Utilities and Transportation Commission] does not allow highly confidential information to be provided to in-house experts or counsel. The highly confidential provisions proposed by CenturyLink in the attached draft Order mirror the language used by the WUTC in its protective orders. See Order No. 02 in UT-082119 * * *.²

The Joint CLEC Opposition. Joint CLECs claim that the order proposed by the Applicant is overly restrictive and would require parties with limited resources, including Joint CLECs, to engage outside experts in order to review the designated information. Joint CLECs argue that such a requirement is unduly burdensome and expensive, as only outside counsel and outside experts could view testimony identified as highly confidential.³ Joint CLECs recommend the adoption of the less restrictive Highly Confidential Protective Order No. 09-271 adopted by the Commission in docket UM 1431 which permits access to in-house personnel who are not involved various product-related endeavors and only under certain "need-to-know" circumstances. Joint CLECs also recommend the adoption of provisions found in Order No. 10-216, the Amended Protective Order in docket UM 1486, a mechanism which would allow smaller companies, whose employees might be engaged in proscribed areas of interest, to seek resolution from the Administrative Law Judge in the event the disclosing party refuses to provide the requested authorization.⁴

² Motion at 1-2 citing *In the Matter of the Joint Application of Embarq Corporation and CenturyTel, Inc., for Approval of Transfer of Control of United Telephone Company of the Northwest, d/b/a Embarq and Embarq Communications, Inc.* Applicant also cites to a protective order issued in the Frontier/Verizon transaction.

³ Opposition at 1-2.

⁴ *Id.* at 2-3.

The CenturyLink Response. CenturyLink asserts that “the joint CLECs’ claims fail to account for the critically sensitive nature of the confidential information and the intensely competitive environment in which CenturyLink and other providers operate.”^{5 6} Noting the decline in ILEC access lines due to competition from CLECs and a variety of other communications service providers, CenturyLink claims that “the competitive landscape would be unfairly skewed if this highly sensitive information were to find its way to CenturyLink’s competitors.” The Applicant asserts that the Joint CLECs have made no showing of having only limited resources, as they have been active participants in numerous dockets; furthermore, Applicant is concerned that the smaller competitors are the ones most likely to have employees whose responsibilities overlap with proscribed areas of authority and interest. Moreover, most, if not all, of the Joint CLECs have intervened in the Washington State proceeding and have therefore signed the WUTC protective order agreement, which covers information common to both states. Thus, the incremental financial and logistical burden is slight as most of the experts and counsel are identical; the parties likely pool and share the costs and burdens.⁷

The Joint CLEC Supplement. Joint CLECs supplemented their Opposition by providing a copy of an amended protective order issued by the Minnesota Public Utilities Commission in its review of the instant transaction and noted at page 2 that the Minnesota order permits parties to designate in-house counsel and in-house experts to have access to highly sensitive trade secret information.

III. DISCUSSION

In adopting protective orders, the Commission seeks to strike a balance that permits the broadest possible discovery consistent with the need to protect confidential information. The more sensitive and potentially competitively damaging documents are, the more stringent the protection of such documents needs to be. In this case, the only aspect of the proposed Highly Confidential Protective Order in contention is which classes of individuals may be designated by the parties to receive information classified as “highly confidential.”

Applicant and Qwest seek the following language, derived from the WUTC orders:

6. Parties who seek access to or disclosure of Highly Confidential documents or information must designate one or more outside counsel and one or more outside consultant, legal or otherwise, to receive and review materials marked “Highly Confidential * * *.” In-house experts and attorneys shall not be designated. For each person for whom access to Highly Confidential information is

⁵ Response at 1.

⁶ On July 7, 2010, Qwest Corporation (Qwest) filed a Joinder that “fully supports” the CenturyLink Response, asserting that the “small company” exception to which it acceded in docket UM 1486 was part of a global settlement and under circumstances inapposite to the instant proceeding. A non-impairment proceeding might have a financial impact on a small CLEC, but no such impact was demonstrated in the Joint CLEC Opposition.

⁷ *Id.* at 2-4, citing Section C of Order 01 in WUTC Docket UT-100820, the Washington proceeding governing the instant transaction.

sought, parties must submit to the party that designated the material as Highly Confidential and file with the Commission the Highly Confidential Information Agreement * * * certifying that the person requesting access to Highly Confidential Information:

- a. Is not now involved, and will not for a period of two years involve themselves in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information with respect to the pricing, marketing, and sales of [retail] telecommunications services in the state of Oregon [Washington];⁸

Joint CLECs propose that we adopt language contained in Highly Confidential Protective Order No. 09-271 of the recent application for indirect transfer of control of Verizon Northwest Inc. from Verizon Communications, Inc., to Frontier Communications Corporation in docket UM 1431. In paragraph 6 to that order, we stated that, in order for a party to gain access to designated information, the party had to certify that the person requesting access:

Has a need to know for the purpose of presenting its party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers;

Joint CLECs further ask the Commission to consider and adapt language from docket UM 1486, *In the Matter of Qwest Corporation Petition for Commission Approval of 2010 Addition to Non-impaired Wire Center List*, Modified Protective Order No. 10-216, which stated in pertinent part under paragraph 1. (c) Persons Entitled to Review, as follows:

- (3) Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRRO Proceedings; (3) only those employees of the party who are directly involved in these TRRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services.

In that same order, paragraph 4. Small Company, provides that companies with fewer than 5,000 employees may have a limited number of persons within certain legal, consulting, and

⁸ Motion, Attachment at 2. Underlining indicates language not present in WUTC Order No. 02 in UT-082119; brackets indicated language present in the WUTC order, but absent in the attachment.

executive categories with access to highly confidential information provided that “[s]uch persons do not include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization * * *.”

IV. RESOLUTION

With certain modifications, we adapt the CenturyLink-proposed Highly Confidential Protective Order language to our Highly Confidential Protective Order.

Joint CLECs do not dispute Applicant’s assertions that restrictions similar to the ones it seeks have been adopted in Washington State. Neither do they dispute that their constituent members, regardless of size, are to a great degree also parties in the Washington proceeding and have actively participated in numerous dockets. Thus, whatever burden might be imposed upon the members of the Joint CLECs by being required to retain outside counsel and experts has already been imposed in Washington and any Oregon impact would be only incremental.⁹

We adapt the language proposed by CenturyLink regarding the issue of eligible recipients, with the exception of the sentence “[i]n-house experts and attorneys shall not be designated” in paragraph 7 which we reject as redundant. In so doing, we maintain consistency with the procedures in the case simultaneously under review in Washington State and avoid the circumstance of an order in one state undermining the conditions imposed in an order adopted in a contiguous jurisdiction with common parties.

We also modify paragraph 10 by adding language to provide for the possibility of a situation arising where outside counsel for a party seeking highly confidential information believes that disclosure of such information to a party’s employees is necessary to adequately represent that party’s interests requiring an exception to the Highly Confidential Protective Order. If an agreement as to the procedures for disclosing and protecting that information cannot be concluded between the parties holding and seeking such information, counsel may request an *in camera* proceeding with the Administrative Law Judge, who will rule on the request for the exception.

⁹ In adapting the Washington state-based language, we also reject the argument that smaller companies should have a lesser standard of separation. We find the rationale to adapt language from paragraph 4 of Order No. 10-216 inapposite to the current proceeding. The subject matter of this proceeding—transfer of control of a corporate parent—affects small companies far less directly than does a wire center designation and the resulting changes in availability and pricing of particular features and functions.

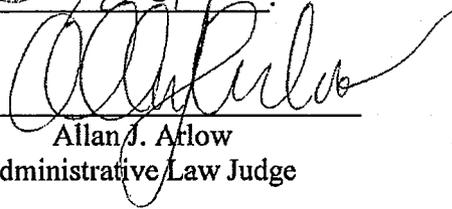
V. ORDER

IT IS ORDERED that the Highly Confidential Protective Order, attached as Appendix A, shall govern the disclosure of highly confidential information in this case.

Made, entered, and effective on

July 30, 2009




Allan J. Aflow
Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

HIGHLY CONFIDENTIAL PROTECTIVE ORDER
DOCKET NO. UM 1484

Scope of this Order-

1. This order governs the acquisition and use of "Highly Confidential Information" in this proceeding.

Definition-

2. "Highly Confidential Information" is competitively sensitive confidential information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"), the disclosure of which presents risk of business harm.

Designation and Disclosure of Highly Confidential Information-

3. Intervenors in this proceeding may include competitors, or potential competitors. Moreover, information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of Highly Confidential documents or information, the disclosure of which imposes a highly significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential and such documents or information will be disclosed only in accordance with the provisions of this Section.

4. Parties must carefully scrutinize responsive documents and information and strictly limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

HIGHLY CONFIDENTIAL – USE RESTRICTED PER
HIGHLY CONFIDENTIAL PROTECTIVE ORDER
NO. 10-291 IN DOCKET UM 1484.

5. Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. To ensure protection, each page that contains Highly Confidential Information must be printed on green paper, marked separately as "Highly Confidential" to indicate where Highly Confidential Information is redacted, and provided under seal. Multiple pages from a document containing "Highly Confidential" information may be sealed in the same envelope. A separate envelope must be provided for

each document or filing. The unredacted versions of each page containing Highly Confidential Information and provided under seal also must be stamped "Highly Confidential" and submitted on green paper with references (*i.e.*, highlighting or other markings) to show where Highly Confidential Information is redacted in the original document. An original and five copies, each separately sealed, must be provided to the Commission. The envelopes/containers must bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER
NO. 10-291 AND CONTAINS HIGHLY CONFIDENTIAL
INFORMATION. THE INFORMATION MAY BE SHOWN
ONLY TO QUALIFIED PERSONS AS DEFINED IN THE ORDER.

6. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

7. Parties who seek access to or disclosure of Highly Confidential documents or information must designate one or more outside counsel and one or more outside consultant, legal or otherwise, to receive and review materials marked "Highly Confidential * * * ." For each person for whom access to Highly Confidential Information is sought, parties must submit to the party that designated the material as Highly Confidential and file with the Commission the Highly Confidential Information Agreement certifying that the person requesting access to Highly Confidential Information:

- a. Is not now involved, and will not for a period of two years involve themselves in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of Highly Confidential Information with respect to the pricing, marketing, and sales of telecommunications services in the state of Oregon; and
- b. Has read and understands, and agrees to be bound by, the terms of the Highly Protective Order in this proceeding, including this Section of the Highly Protective Order.

8. The restrictions in paragraph 7 do not apply to the Commission Staff or employees or attorneys in the Office of the Attorney General representing Commission Staff. However, Commission Staff must submit the Highly Confidential Information Agreement, in the form prescribed by this Order, for any external experts or consultants they wish to have review the Highly Confidential Information. The Citizen's Utility Board ("CUB") may

designate in-house attorneys and experts to review Highly Confidential Information who must submit the Highly Confidential Information Agreement in the form prescribed by this Order.

9. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. The objection must be filed within 10 days of the filing of the Highly Confidential Order. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after filing of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

10. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies must also be subject to the provisions of this Highly Confidential Order. If the outside counsel or outside consultant to whom Highly Confidential documents or information have been given access believes that disclosure of such Highly Confidential documents or information to a non-eligible individual is necessary in order to adequately represent the party's interests in the proceeding, such outside counsel or consultant may petition the Administrative Law Judge, who, after reviewing presentations from the petitioning and objecting parties, shall promptly issue a ruling with respect to the request.

11. Staff of designated outside counsel and staff of designated outside consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Outside counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all Highly Confidential Information consistent with the terms of this Order.

12.. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

13. The designation of any document or information as Highly Confidential may be challenged by motion and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

14. Highly Confidential documents and information will be provided to Commission Staff and the Commission under the same terms and conditions of this Highly Confidential Protective Order as govern the treatment of Confidential Information provided to Commission Staff and CUB and as otherwise provided by the terms of the General Protective Order in this proceeding.

Appeal/Subsequent Proceedings-

15. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the Federal Communications Commission (FCC), but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

Summary of Record-

16. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Highly Confidential Information referred to in the Order to be placed on the public record.

Preservation of Confidentiality-

17. All persons who are given access to Highly Confidential Information by reason of this Order shall not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all reasonable precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Highly Confidential Information only to other qualified persons associated with the same party.

Duration of Protection-

18. The Commission shall preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the

release of Highly Confidential Information. This Order shall continue in force and effect after docket UM 1484 is closed, as set out in this paragraph.

Destruction After Proceeding-

19. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Highly Confidential Information or documents containing such Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Additional Protection-

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

HIGHLY CONFIDENTIAL PROTECTIVE AGREEMENT

UM 1484

I, _____, as

- Commission Staff attorney
- Commission Staff expert
- CUB Attorney
- CUB Expert
- Outside attorney
- Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I am not now involved, and will not for a period of two years involve myself in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of Highly Confidential information with respect to the pricing, marketing, and sales of telecommunications services in the state of Oregon; and
- b. I have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Section C of the Protective Order.

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address

ATTACHMENT

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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKETED

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2 **CARL J. KUNASEK**
Chairman
3 **JAMES M. IRVIN**
Commissioner
4 **WILLIAM A. MUNDELL**
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY 

5
6
7 **IN THE MATTER OF the Merger of the**)
Parent Corporations of Qwest)
8 **Communications Corporation, LCI**)
International Telecom Corp., USLD)
9 **Communications, Inc. Phoenix Network, Inc.**)
and U S WEST Communications, Inc.)

DOCKET NO. T-01051B-99-0497

10 **IN THE MATTER OF THE NOTICE OF**)
11 **U S WEST, INC. AND U S WEST**)
12 **COMMUNICATIONS, INC. CONCERNING**)
13 **RESTRUCTURING OF HOLDING**)
14 **COMPANY; IN THE MATTER OF THE**)
15 **PETITION OF U S WEST, INC. AND**)
16 **U S WEST COMMUNICATIONS, INC. FOR**)
17 **THE APPROVAL OF THE TRANSFER OF**)
18 **UTILITY ASSETS TO A NEWLY FORMED**)
19 **SUBSIDIARY, A LIMITED WAIVER OF**)
20 **COMPLIANCE WITH AFFILIATED**)
21 **INTEREST RULES, AND APPROVAL OF**)
22 **SERVICE AGREEMENTS**)

~~DOCKET NO. T-01051B-99-0497~~

PROTECTIVE ORDER

23 To facilitate the disclosure of documents and information during the course of
24 discovery and to protect trade secret and other confidential information not in the public
25 domain, the Commission now issues this Protective Order ("Order") to govern these
26 proceedings:

1. (a) Confidential Information. All documents, data information,
studies and other materials furnished pursuant to any requests for information, subpoenas or

1 other modes of discovery (formal or informal), and including depositions, that are claimed to
2 be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential
3 Information"), shall be so marked by the providing party by stamping the same with a
4 designation indicating its trade secret, proprietary or confidential nature. In addition, all
5 notes or other materials that refer to, derive from, or otherwise contain parts of the
6 Confidential Information will be marked by the receiving party as Confidential Information.
7 Access to and review of Confidential Information shall be strictly controlled by the terms of
8 this Order.
9

10 (b) Use of Confidential Information. All persons who may be
11 entitled to review, or who are afforded access to any Confidential Information by reason of
12 this Order shall neither use or disclose the Confidential Information for purposes of business
13 or competition, or any purpose other than the purpose of preparation for and conduct of
14 proceedings in the above-captioned dockets, and shall keep the Confidential Information
15 secure as trade secret, confidential or proprietary information and in accordance with the
16 purposes and intent of this Order.
17

18 (c) Persons Entitled to Review. Access to information shall be
19 limited to (1) attorneys employed or retained by a party in this proceeding and the
20 attorneys' staff; (2) experts, consultants and advisors who need access to the material to
21 assist a party in this proceeding; (3) employees of any party (including in-house counsel)
22 who are directly involved in these proceedings; (4) Commissioners and all Commission
23 Hearing Officers and staff members to whom disclosure is necessary.
24

25 (d) Nondisclosure Agreement. Confidential Information shall not
26 be disclosed to any person who has not signed a nondisclosure agreement in the form which

1 is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be
2 asked to sign an Exhibit "A."

3 The nondisclosure agreement (Exhibit "A") shall require the person to whom
4 disclosure is to be made to read a copy of this Protective Order and to certify in writing that
5 they have reviewed the same and have consented to be bound by its terms. The agreement
6 shall contain the signatory's full name, employer, business address and the name of the party
7 with whom the signatory is associated. Such agreement shall be delivered to counsel for the
8 providing party before disclosure is made, and if no objection thereto is registered to the
9 Commission within five (5) days, then disclosure shall follow. An attorney who makes
10 Confidential Information available to any person listed in paragraph (c)(1)-(3) above shall
11 be responsible for having each such person execute an original of Exhibit A and a copy of
12 all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after
13 execution.
14

15
16 2. (a) Notes. Limited notes regarding Confidential Information may
17 be taken by counsel and experts for the express purpose of preparing pleadings, cross-
18 examinations, briefs, motions and argument in connection with this proceeding.

19 (b) Return. With the exception of notes otherwise protected as
20 work product or attorney-client communications, all notes and copies of Confidential
21 Information which have not been received into evidence shall be returned to the providing
22 party within thirty (30) days after the final settlement or conclusion of this matter, including
23 administrative or judicial review thereof.
24

25 3. Highly Confidential Trade Secret Information: Any party may
26 designate certain competitively sensitive information as "Highly Confidential Information"
if it determines in good faith that it would be competitively disadvantaged by the disclosure

1 of such information to its competitors. Highly Confidential information includes, but is not
2 limited to, documents, appropriate portions of deposition transcripts, or other information
3 that relates to marketing, retail business planning or business strategies.

4 Parties must scrutinize carefully responsive documents and information and
5 limit their designations as Highly Confidential Information to information that truly might
6 impose a serious business risk if disseminated without the heightened protections provided
7 in this Section. The first page and individual pages of a document determined in good faith
8 to include Highly Confidential Information must be marked by a stamp that reads:

9
10 "HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER IN DOCKET NO. T-01051B-
11 99-0497." Placing a "Highly Confidential" stamp on the first page of a document indicates
12 only that one or more pages contain Highly Confidential Information and will not serve to
13 protect the entire contents of a multi-page document. Each page that contains Highly
14 Confidential Information must be marked separately to indicate Highly Confidential
15 Information, even where that information has been redacted. The unredacted versions of
16 each page containing Highly Confidential Information, and provided under seal, should be
17 submitted on paper distinct in color from non-confidential information and "Confidential
18 Information" described in §1 of this Protective Order.
19

20 Parties seeking disclosure of Highly Confidential Information must designate
21 the person(s) to whom they would like the Highly Confidential Information disclosed in
22 advance of disclosure by the providing party. Such designation may occur through the
23 submission of the non-disclosure agreement identified in §1(d). Parties seeking disclosure
24 of Highly Confidential Information may not designate more than (1) one in-house attorney;
25 (2) one in-house expert; and (3) a reasonable number of outside counsel and outside experts
26 to review materials marked as "Highly Confidential." Highly Confidential information may

1 not be disclosed to persons engaged in strategic or competitive decision making for any
2 party, including the sale or marketing of products or services on behalf of any party.

3 Any party may object in writing to the designation of any individual as a
4 person who may review Highly Confidential Information within three (3) days after
5 receiving notice of the designation. Any such objection must demonstrate good cause to
6 exclude the challenged individual from the review of the Highly Confidential documents or
7 information. Written response to any objection must be sent within three (3) days after
8 service of the objection. If after receiving a written response to the providing party's
9 objection, the providing party still declines to produce the requested information, the
10 Commission Hearing Division shall determine whether the Highly Confidential Information
11 must be disclosed to the challenged individual. The disclosing party shall make such
12 documents available for inspection and review by in-house counsel and in-house experts at a
13 mutually agreed upon time and place. Copies of highly confidential documents shall be
14 provided to outside counsel and outside experts. Any person designated to review Highly
15 Confidential Information must execute the non-disclosure agreement identified in §1(d).
16
17

18 Persons authorized to review the highly confidential information will
19 maintain the documents and any notes reflecting their contents in a secure location to which
20 only designated counsel and experts have access. No additional copies will be made. Any
21 testimony or exhibits prepared that reflect highly confidential information must be
22 maintained in the secure location until removed to the hearing room for production under
23 seal and under circumstances that will ensure continued protection from disclosure to
24 persons not entitled to review highly confidential documents or information.
25
26

1 Unless specifically addressed in this Section, all other sections of this
2 Protective Order applicable to Confidential Information apply to Highly Confidential
3 Information.

4 4. Objections to Admissibility. The furnishing of any document,
5 information, data, study or other materials pursuant to this Protective Order shall in no way
6 limit the right of the providing party to object to its relevance or admissibility in proceedings
7 before this Commission.

8 5. Challenge to Confidentiality. This Order establishes a procedure for
9 the expeditious handling of information that a party claims is confidential; it shall not be
10 construed as an agreement or ruling on the confidentiality of any document. Any party may
11 challenge the characterization of any information, document, data or study claimed by the
12 providing party to be confidential in the following manner:

- 13
- 14
- 15 (a) A party seeking to challenge the confidentiality of any
16 materials pursuant to this Order shall first contact counsel for
17 the providing party and attempt to resolve any differences by
18 stipulation;
- 19 (b) In the event that the parties cannot agree as to the character of
20 the information challenged, any party challenging the
21 confidentiality shall do so by appropriate pleading. This
22 pleading shall:
- 23 (1) Designate the document, transcript or other material
24 challenged in a manner that will specifically isolate
25 the challenged material from other material claimed
26 as confidential; and
- (2) State with specificity the grounds upon which the
documents, transcript or other material are deemed to
be non-confidential by the challenging party.
- (c) A ruling on the confidentiality of the challenged information,
document, data or study shall be made by a Hearing Officer
after proceedings in camera, which shall be conducted under
circumstances such that only those persons duly authorized

1 hereunder to have access to such confidential materials shall
2 be present.

3 (d) The record of said in camera hearing shall be marked
4 "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN
5 DOCKET NO. T-01051 B-99-0497 and DOCKET NO. T-
6 01051 B-99-0499." Court reporter notes of such hearing shall
7 be transcribed only upon agreement by the parties or Order of
8 the Hearing Officer and in that event shall be separately
9 bound, segregated, sealed, and withheld from inspection by
10 any person not bound by the terms of this Order.

11 (e) In the event that the Hearing Officer should rule that any
12 information, document, data or study should be removed from
13 the restrictions imposed by this Order, no party shall disclose
14 such information, document, data or study or use it in the
15 public record for five (5) business days unless authorized by
16 the providing party to do so. The provisions of this
17 subparagraph are entered to enable the providing party to seek
18 a stay or other relief from an order removing the restriction of
19 this Order from materials claimed by the providing party to be
20 confidential.

21 6. (a) Receipt into Evidence. Provision is hereby made for receipt
22 into evidence in this proceeding materials claimed to be confidential in the following
23 manner:

- 24 (1) Prior to the use of or substantive reference to any
25 Confidential Information, the parties intending to use
26 such Information shall make that intention known to
the providing party.
- (2) The requesting party and the providing party shall
make a good-faith effort to reach an agreement so the
Information can be used in a manner which will not
reveal its trade secret, confidential or proprietary
nature.
- (3) If such efforts fail, the providing party shall separately
identify which portions, if any, of the documents to be
offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the
providing party to be placed in a sealed record shall be
made.

1 (5) The copy of the documents to be placed in the sealed
2 record shall be tendered by counsel for the providing
3 party to the Commission, and maintained in
4 accordance with the terms of this Order.

5 (b) Seal. While in the custody of the Commission, materials
6 containing Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO
7 PROTECTIVE ORDER IN DOCKET NO. T-01051 B-99-0497 and DOCKET NO. T-
8 01051B 99-0499," and shall not be examined by any person except under the conditions set
9 forth in this Order.

10 (c) In Camera Hearing. Any Confidential Information that must
11 be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an
12 in camera hearing, attended only by persons authorized to have access to the information
13 under this Order. Similarly, any cross-examination on or substantive references to
14 Confidential Information (or that portion of the record containing Confidential Information
15 or references thereto) shall be received in an in camera hearing, and shall be marked and
16 treated as provided herein.

17 (d) Access to Record. Access to sealed testimony, records and
18 information shall be limited to the Hearing Officer and persons who have signed an Exhibit
19 "A," unless such information is released from the restrictions of this Order either through
20 agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a
21 Hearing Officer, the order of the Commission and/or the final order of a court having final
22 jurisdiction.

23 (e) Appeal. Sealed portions of the record in this proceeding may
24 be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal
25 as designated herein for the information and use of the court. If a portion of the record is
26

1 forwarded to a court under seal for the purpose of an appeal, the providing party shall be
2 notified which portion of the sealed record has been designated by the appealing party as
3 necessary to the record on appeal.

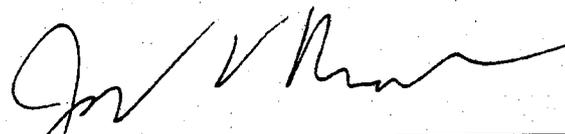
4 (f) Return. Unless otherwise ordered, Confidential Information
5 and Highly Confidential Information, including transcripts of any depositions to which a
6 claim of confidentiality is made, shall remain under seal, shall continue to be subject to the
7 protective requirements of this Order, and shall be returned to counsel for the providing
8 party within thirty (30) days after final settlement or conclusion of this matter, including
9 administrative or judicial review thereof.

11 7. Use in Pleadings. Where references to Confidential Information in
12 the sealed record or with the providing party is required in pleadings, briefs, arguments or
13 motions (except as provided in Paragraph 4), it shall be by citation of title or exhibit number
14 or some other description that will not disclose the substantive Confidential Information
15 contained therein. Any use of or substantive references to Confidential Information shall be
16 placed in a separate section of the pleading or brief and submitted to the Hearing Officer or
17 the Commission under seal. This sealed section shall be served only on counsel of record
18 and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A."
19 All of the restrictions afforded by this Order apply to materials prepared and distributed
20 under this Paragraph.
21

22 8. Summary of Record. If deemed necessary by the Hearing Officer, the
23 providing party shall prepare a written summary of the Confidential Information referred to
24 in the Order to be placed on the public record.
25
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1 9. The provisions of this Order are specifically intended to apply to all
2 data, documents, information, studies, and other material designated as confidential by any
3 party to Docket Nos. T-01051B-99-0497 or T-01051B-99-0499.

4 Dated this 3rd day of March, 2000.

5
6
7 
8 _____
9 JERRY L. RUDIBAUGH
10 CHIEF HEARING OFFICER

11 Copies of the foregoing mailed/delivered/
12 faxed this 3rd day of March, 2000 to:

13 Service List for T-01051B-99-0497

14 Lyn Farmer
15 LEGAL DIVISION
16 1200 W. Washington Street
17 Phoenix, AZ 85007

18 Deborah R. Scott
19 UTILITIES DIVISION
20 1200 W. Washington St.
21 Phoenix, Arizona 85007

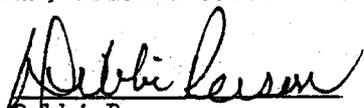
22 By: 
23 Debbi Person
24 Secretary to Jerry Rudibaugh
25
26

EXHIBIT "A"

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I have read the foregoing Protective Order dated March ____, 2000 in Docket Nos. T-01051 B-99-0497 and T-01051B-99-0499 and agree to be bound by the terms and conditions of this Order.

Name

Employer or Firm

Business Address

Party

Signature

Date

ATTACHMENT

3

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of

VERIZON COMMUNICATIONS INC.
and FRONTIER COMMUNICATIONS
CORPORATION,

ORDER

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

**DISPOSITION: MOTION GRANTED; INTERVENOR PARTICIPATION
TERMINATED; PARTY STATUS REVOKED**

In this Order, the Public Utility Commission of Oregon (Commission) terminates the participation of the International Brotherhood of Electrical Workers, Local 89 (IBEW), in this proceeding and revokes its status as a party hereto.

BACKGROUND

At the commencement of this proceeding, IBEW was granted party status with certain conditions. In granting IBEW's petition to intervene, the Administrative Law Judge (ALJ) noted that IBEW's improper behavior had led to its dismissal as a party in a recent proceeding before the Washington Utility and Transportation Commission (WUTC),¹ and stated:

I am concerned, however, about IBEW's apparent belief that its conduct in the WUTC case was proper given its role as a private litigant * * *. The use of the regulatory process by one party against another to extract concessions regarding matters exogenous to a case would constitute a

¹ WUTC found that IBEW used its participation in the Embarq Corporation/CenturyTel, Inc., asset transfer case to improperly extract labor concessions from the applicants via a side agreement that prompted IBEW to withdraw from the case. The WUTC rejected the agreement and dismissed IBEW from the proceeding, noting "its participation is not in the public interest." (Docket UT-082119, Order 05, Service Date May 28, 2009, par. 95.) Among other things, the WUTC called into question the credibility of counsel and representations made that "were disingenuous at best." (*Id.*, par. 69.) IBEW argued that the WUTC was in error.

serious abuse that must be guarded against. I grant IBEW's petition under OAR 860-012-0001, but throughout the course of this proceeding will entertain a motion by the Applicants to terminate IBEW's participation upon a showing that IBEW has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding * * *. A finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.²

On July 17, 2009, the Commission entered Order No. 09-273, a Superseding Highly Confidential Protective Order (Protective Order), setting forth the conditions under which parties could view highly sensitive information (Appendix A). IBEW executed signatory pages indicating its pledge to comply with the terms of the Protective Order, including among its signatories, acting on behalf of IBEW, Randy Barber, self-identified as an "Outside expert" and Scott Rubin, self-identified as "Outside counsel" in the instant proceeding (Appendix B).³

Among the provisions of the Protective Order are the following relevant to the matter before us:

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

* * * * *

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under

² ALJ Ruling, July 2, 2009, at 2-3.

³ As will be discussed further below, Mr. Rubin is also counsel to the IBEW in a related proceeding before the Pennsylvania Public Utility Commission (PPUC). *Application of Verizon North Inc. for Any Approvals Required Under the Public Utility Code for Transactions Related to the Restructuring of the Company in a Pennsylvania-Only Operation and Notice of Affiliate Transaction*, Docket Nos. A-2009-2111330, A-2009-2111331, and A-2009-2111337. (Pennsylvania Dockets).

circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

* * * * *

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

MOTION TO TERMINATE PARTICIPATION

On September 17, 2007, counsel for the Applicant Verizon Communications Inc. (Verizon) filed a motion to terminate IBEW's participation in this case (Motion). Verizon alleges two violations of Commission Orders by IBEW. First, Verizon asserts that IBEW violated the terms of the Protective Order by using discovery obtained in this proceeding to advocate its position in the Pennsylvania Dockets and, second, by seeking to use the discovery process in this case to obtain labor-related information not relevant to its role in the case. In support of its allegations with respect to the Pennsylvania Dockets, Verizon submitted copies of a transmittal letter from Scott Rubin to the PPUC, a Motion for Leave to Reply to Verizon's Opposition to Petition for Interlocutory Review (Pennsylvania Motion) and an Affidavit of Randy Barber (Barber Affidavit) (Appendix C).

Regarding the first assertion, Verizon explains that IBEW filed a pleading before the PPUC that described the contents of a document that Verizon had designated as confidential and provided to IBEW in response to a discovery request in this docket. Verizon further explains that, in its pleading before the PPUC, IBEW acknowledged that IBEW received

the document through discovery in Oregon and that the document had been designated as confidential.

Regarding the second assertion, Verizon contends that IBEW propounded discovery requests soliciting information that could be used for labor negotiations. These include inquiring about seniority levels of employees, the potential for lay-offs, and questions on collective bargaining agreement obligations.

On September 18, 2009, IBEW filed an answer opposing Verizon's motion (Answer). With respect to the first allegation, IBEW does not dispute Verizon's version of the facts, but asserts that its actions do not violate the Protective Order. First, IBEW claims that the definition of Highly Confidential information is narrow in scope, limited to trade secrets, confidential research development, or commercial information whose disclosure would present a risk of business harm and would exclude the shareholder information gleaned from the documents declared confidential. Second, IBEW claims that it didn't actually use the document. Rather, it claims that it merely identified the existence of documents supporting the statement on stockholder data submitted in the Pennsylvania Dockets by Mr. Barber, and that Mr. Barber's statement—offered to demonstrate that Verizon had the stockholder information in its possession—was in fact a summary of information publicly available from the Securities and Exchange Commission of the United States.⁴ Nowhere in its Answer does IBEW indicate that it sought to challenge the confidential treatment of the stockholder information under the provisions of paragraph 12 of the Protective Order.

In response to allegations that IBEW attempted to use the discovery process to obtain information in ways that exceeded the scope of the docket, IBEW contends that the improper questions were included inadvertently and that e-mail correspondence from IBEW did not include the four improper data requests. "Since that initial oversight, counsel has been more vigilant in attempting to ensure that questions about employee matters are not asked in discovery in Oregon."⁵ IBEW also asserts that, since the Pennsylvania Dockets were initiated prior to IBEW's intervention petition in Oregon, the Pennsylvania filing was not made to influence the applicant, but in furtherance of the labor unions' efforts to have the PPUC review the proposed transaction for its effects on Frontier's operation in Pennsylvania.⁶ Finally, IBEW argues that if there were a "technical violation," sanctions should be imposed against counsel and not the client, as the filings were made on behalf of different clients.⁷

On September 21, 2009, Verizon filed a Reply in Support of Motion to Enforce Commission Orders (Reply). In its Reply, Verizon asserts that IBEW provided inaccurate claims in its Answer and failed to rebut the allegations in the Motion. Specifically, Verizon states that IBEW's parsing of the word "use" in conjunction with the highly confidential information attempts to draw meaningless distinctions; IBEW told the PPUC that it had obtained "newly

⁴ Answer at 2-3. To support its claim that the information in the Barber affidavit is not covered by the Protective Order, IBEW notes that Verizon appended it to its pleading without redacting the contents.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 6.

provided information" through the Oregon discovery process and asked the PPUC to consider it in a ruling on a request for interlocutory review.⁸

Verizon also voices its skepticism, supported by documentation, at IBEW's claim that the four labor-related discovery questions were submitted through inadvertence:

As shown in a copy of the email from IBEW's counsel dated July 21 attached as Attachment 1, Request No. 30 was among the listed requests that IBEW sought, and did, pursue with counsel from the Applicants on the referenced conference call. Moreover, the notion that IBEW did not violate the Limitation Ruling because it backed off pursuing discovery requests in the face of objections from the Applicants (*see* IBEW Answer at 5) is wrong. It was the original requests themselves, regardless of IBEW's ultimate decision on whether to pursue them, that constituted the 'attempt to use the regulatory process to influence the Applicants in areas beyond of the scope of the proceeding.'⁹

With respect to sanctioning counsel, Verizon notes that the ALJ had already indicated the remedy that the Commission would invoke in the case of a violation of its orders by IBEW and suggests that any sanctions of counsel should be in addition to, rather than in lieu of, sanctions against IBEW directly.¹⁰

DISCUSSION

IBEW acknowledges in its Answer that "Verizon's basic recitation of the facts is accurate" but asserts that "those facts do not show that there has been a violation of the Order."¹¹ The only factual question in dispute, as shown by a conflict between the Answer at 4 and the Reply at 3, is whether the four labor discovery requests, Nos. 28 through 31,¹² "were not listed among the matters that IBEW's counsel wanted to pursue with Applicants" as IBEW asserts.

Based upon our review of the pleadings and the factual statements therein and the supporting documentary evidence supplied by the parties, we find that IBEW provided information designated as highly confidential to the PPUC and, in so doing, disclosed information and made it publicly available. Although not providing the PPUC with the documents themselves, IBEW, in violation of the stewardship provisions of paragraph 9 of

⁸ Reply at 2.

⁹ *Id.* at 3. The e-mail from IBEW counsel, dated July 21, 2009, to which both parties have referred, states in pertinent part: "I would like to schedule a time to discuss your objections to IBEW data requests 16 (a, b and c), 17, 23, 30, 34 and 37 in the Oregon case. I would like to better understand your basis for objecting and explain why I believe the requests are properly within the scope of discovery in this case."

¹⁰ *Id.* at 4.

¹¹ e.g., at 2: "Of course, IBEW acknowledges that its counsel (and its consultant, on advice of counsel) referred to the document (without disclosing its contents) in the Pennsylvania proceeding."

¹² The four labor-related data requests deemed by both parties to fall outside of the scope of this proceeding appear on Attachment 3 at 2 of the Verizon Motion. Request 30 is, by far, the most detailed and extensive of the four.

the Protective Order, gave access to "information and any notes *reflecting their contents* * * * to which only designated counsel and consultants have access."¹³

Furthermore, we find that the reference to the highly confidential document *and its use in the preparation of the cited pleading and accompanying affidavit* in the Pennsylvania Dockets clearly constitutes a violation of Protective Order paragraph 16 which states that a signatory "may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding."

We turn finally to the issue of IBEW's data requests on labor-related matters. Although IBEW counsel acknowledges their impropriety but asserts that the original questions were unintentionally submitted (not having been intended for Oregon, but only other states), the written evidence referred to by both parties indicates otherwise. First, Data Request No. 30 asks for Oregon-specific information by name in four of its five subparts. Second, Data Request No. 30, with its Oregon-specific information, is pursued in the July 21, 2009, e-mail from IBEW counsel.

In his Ruling granting IBEW party status in this proceeding, the ALJ in this docket unequivocally stated "throughout the course of this proceeding [I] will entertain a motion by the Applicants to terminate IBEW's participation upon a showing that IBEW *has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding* * * *. A finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case." (Emphasis added.) Success in such an attempt is not a prerequisite ground for such dismissal.

The documentary evidence supports a finding that IBEW attempted to use the regulatory process to gain information on matters outside the scope of the proceeding. The specificity of Data Request No. 30, affirmed by the July 21 e-mail from IBEW counsel, conclusively undercuts any claim that the request was one of a blanket request sent to several states and that counsel failed to remove Oregon from the list due to inadvertence.¹⁴

CONCLUSION

Despite a clear admonition from the Commission at the outset of IBEW's participation in this case, that IBEW comply with the scope and use requirements of the regulatory process, IBEW has violated those requirements. Consistent with the warning given by the ALJ in his Ruling of July 2, 2009, the Commission terminates IBEW's participation in this case. A copy of this Order will be provided to the Oregon State Bar and the Pennsylvania State Bar for possible disciplinary action.

¹³ Order No. 09-273 (emphasis added). See *Johnson v. Eugene Emergency Physicians, PC*, 159 Or. App 167, 169 974 P 2d 803 (1999); "At the outset, we reject plaintiff's argument that she did not violate the protective order because she did not reveal the documents. For plaintiff to argue that the order prevented disclosure of the documents but allowed disclosure of the contents of the documents defies the clear import of the order."

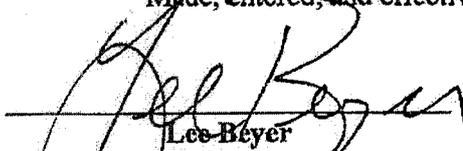
¹⁴ Although we decline to make specific findings with respect to IBEW counsel's state of mind, we find resonance in the WUTC's comments referred to in Footnote 1, *supra*.

ORDER

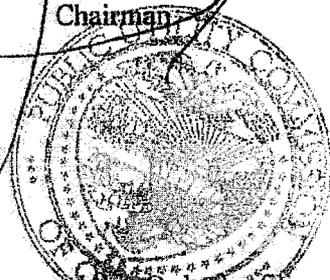
IT IS ORDERED that:

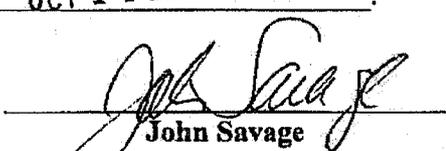
1. The Motion to Enforce Commission Orders filed by Verizon Communication Inc. is GRANTED.
2. The status of the International Brotherhood of Electrical Workers, Local 89, as an intervening party in this proceeding granted pursuant to OAR 860-012-0001 is hereby REVOKED.
3. With respect to documentation and information in the possession of the International Brotherhood of Electrical Workers, Local 89, no later than ten (10) days from the date of this Order:
 - a. All non-public documentation and information obtained pursuant to its status as an intervening party in this proceeding shall be forfeited to the Public Utility Commission of Oregon, and the International Brotherhood of Electrical Workers, Local 89, shall have no rights thereto.
 - b. Any copies, notes, summaries, and digests of the non-public documentation and information in whatever form, physical or electronic, in possession of counsel, employee, executive, officer, agent, contractor, or other person associated with the party, shall be destroyed, and counsel shall file an affidavit attesting to such destruction.
 - c. The restrictions set forth in the Superseding Highly Confidential Protective Order shall remain in full force and effect.

Made, entered, and effective OCT 14 2009

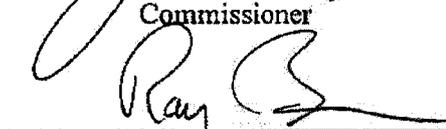


Lee Beyer
Chairman





John Savage
Commissioner



Ray Baum
Commissioner

A party may appeal this Order by filing a Petition for Review with the Court of Appeals in compliance with ORS 183.480-183.484.

SUPERSEDING HIGHLY CONFIDENTIAL PROTECTIVE ORDER

UM 1431

Scope of this Order-

1. This order replaces and supersedes Order No. 09-271, in its entirety, and is hereafter referred to as the "Superseding Order." This order governs the acquisition and use of "Highly Confidential Information" in this proceeding.

Definition-

2. "Highly Confidential Information" is competitively-sensitive confidential information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"), the disclosure of which presents risk of business harm.

Designation and Disclosure of Highly Confidential Information-

3. Intervenors in this proceeding may include competitors, or potential competitors. Moreover, information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential, and such documents or information will be disclosed only in accordance with the provisions of this Superseding Order.

4. Parties must carefully scrutinize responsive documents and information and limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Superseding Order. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

HIGHLY CONFIDENTIAL – USE RESTRICTED
PER SUPERSEDING HIGHLY CONFIDENTIAL
PROTECTIVE ORDER NO. 09-273 IN DOCKET
UM 1431.

5. Placing a "Highly Confidential" stamp on the first page of a document will not serve to protect the entire contents of a multi-page document. To ensure protection, each page that contains "Highly Confidential" material must be printed on green paper, marked separately as "Highly Confidential," and provided under seal. Multiple pages from a document containing "Highly Confidential" information may be sealed in the same envelope. A separate envelope must be provided for each document or filing. An original and five copies, each separately sealed, must be provided to the Commission. The redacted version of the document must be highlighted or otherwise marked to show where the "Highly Confidential" material has been redacted.

6. For each person for whom access to Highly Confidential Information is sought, parties must submit to the party who designated the material as Highly Confidential and file with the Commission a Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, certifying that the person requesting access to Highly Confidential Information:

Has a need to know for the purpose of presenting its party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and

Has read and understands, and agrees to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

7. The restrictions in paragraph 6 do not apply to Commission Staff employees or attorneys in the Office of the Attorney General representing Commission Staff. However, Commission Staff must submit the Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, for any external experts or consultants they wish to have review the Highly Confidential Information.

8. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. The objection must be filed within 10 days of the filing of the Superseding Highly Confidential Information Agreement. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after filing of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

10. Staff of designated counsel and staff of designated consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Superseding Order.

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

13. Highly Confidential documents and information will be provided to Commission Staff and the Commission under the same terms and conditions of this Superseding Order and as otherwise provided by the terms of the General Protective Order filed in this proceeding.

Appeal/Subsequent Proceedings-

14. Scaled portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the Federal Communications Commission (FCC), but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded

to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

Summary of Record-

15. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Superseding Order to be placed on the public record.

Preservation of Confidentiality-

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

Duration of Protection-

17. The Commission shall preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Highly Confidential Information. This Superseding Order shall continue in force and effect after docket UM 1431 is closed, as set out in this paragraph.

Destruction After Proceeding-

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Highly Confidential Information or documents containing such Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Additional Protection-

19. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, may not be disclosed pending the Commission's ruling on the motion.

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431**

I, _____, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Full Name (Printed)

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address

ORDER NO. 09-409

ORDER NO. 09-273

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431**

I, Scott J. Rubin, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Scott J. Rubin
Full Name (Printed)

Scott J. Rubin
Signature

7/17/09
Date

Bloomsburg, PA
City/State where this Agreement was signed

self-employed
Employer

Attorney
Position and Responsibilities

333 Oak Lane
Bloomsburg PA 17815
Permanent Address

ORDER NO. 09-409

ORDER NO. 09-273

SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431

I, Randy Barber, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Randy Barber
Full Name (Printed)


Signature

July 18, 2009
Date

Takoma Park, MD
City/State where this Agreement was signed

Center for Economic Organizing
Employer

6935 Laurel Ave., # 204

President
Position and Responsibilities

Takoma Park, MD 20712
Permanent Address

APPENDIX B
PAGE 1 OF 1

APPENDIX B
PAGE 2 OF 2

ORDER NO. 09-409

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any :
Approvals Required Under the Public : Docket No. A-2009-2111330
Utility Code for Transactions Related to : Docket No. A-2009-2111331
the Restructuring of the Company to a : Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice :
of Affiliate Transaction :

MOTION OF
COMMUNICATIONS WORKERS OF AMERICA AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCALS 1451, 1635, AND 1637
FOR LEAVE TO REPLY TO
VERIZON'S OPPOSITION
TO PETITION FOR INTERLOCUTORY REVIEW

Pursuant to 52 Pa. Code §§ 5.103 and 5.302(d), the Communications Workers of America ("CWA") and International Brotherhood of Electrical Workers, Locals 1451, 1635, and 1637 ("IBEW") hereby move for leave to reply to Verizon North's Opposition to the CWA/IBEW Petition for Interlocutory Review. In support of this motion, CWA and IBEW state as follows:

1. On September 8, 2009, Verizon North Inc. ("Verizon North") filed its brief in opposition to CWA's and IBEW's Petition for Interlocutory Review.

2. In its brief, Verizon North states:

Verizon is a publicly held company with a myriad of shareholders who change daily as shares are traded, and none of whom holds more than 10% of Verizon's stock, let alone the approximately 30% that would be needed to end up with 20% of Frontier's stock. Indeed, the Unions do not claim that any one person or group will hold more than 20% of Frontier stock.

Verizon North brief, p. 5 (footnote omitted).

3. On the next day, September 9, 2009, in a related proceeding in Oregon, Verizon Communications Corp. ("Verizon") (the ultimate parent company of Verizon North) provided for the first time to the undersigned counsel and the unions' financial consultant a series of allegedly confidential documents that were filed by Verizon with the Federal Trade Commission on August 21, 2009, under the provisions of the Hart-Scott-Rodino Act.

4. Among the documents provided was a document from Verizon's financial advisors to Verizon, dated April 20, 2009, which contains a page showing the largest shareholders in both Verizon and Frontier Communications Inc. ("Frontier"), along with the number of shares owned by each shareholder in each company. Affidavit of Randy Barber, attached hereto as Appendix A, ¶ 7.

5. Straight forward calculations using these data show that a group of ten Verizon stockholders collectively would own more than 20% of Frontier's common stock if the proposed transaction between Verizon and Frontier is consummated. Id., ¶ 11.

6. Thus, at least as early as April 20, 2009 – and certainly by August 21, 2009, when the information was filed with the Federal Trade Commission – Verizon had information showing that its actions on behalf of its stockholders would result in a small group of shareholders owning a controlling interest (20% of the common stock, as defined by this Commission's policy statement at 52 Pa. Code § 69.901) in Frontier.

7. This is directly contrary to Verizon's statement in its brief that no group would own more than 20% of Frontier's common stock as a result of the proposed transaction.

8. CWA and IBEW, therefore, seek leave to have the Commission consider this newly provided information when the Commission rules on the CWA/IBEW petition for interlocutory review.

ORDER NO. 09-409

WHEREFORE, CWA and IBEW move the Commission to consider this newly provided information in ruling on the CWA/IBEW petition for interlocutory review and answer to a material question.

Respectfully submitted,



Scott J. Rubin (PA Sup. Ct. Id. 34536)
333 Oak Lane
Bloomsburg, PA 17815
(570) 387-1893
scott.j.rubin@gmail.com

Counsel for CWA and IBEW

Dated: September 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail and electronic mail.

Suzan D. Paiva
Verizon Pennsylvania Inc.
1717 Arch Street, 17N
Philadelphia, PA 19103
suzan.d.paiva@verizon.com

Steven C. Gray
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17102
sgray@state.pa.us

Joel Cheskis
Office of Consumer Advocate
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Johnnie E. Simms
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
josimms@state.pa.us



Scott J. Rubin

Dated: September 11, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any :
Approvals Required Under the Public : Docket No. A-2009-2111330
Utility Code for Transactions Related to : Docket No. A-2009-2111331
the Restructuring of the Company to a : Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice :
of Affiliate Transaction :

AFFIDAVIT

1. My name is Randy Barber. I am a financial consultant who has been retained by the International Brotherhood of Electrical Workers ("IBEW") and the Communications Workers of America ("CWA").

2. I am employed by the Center for Economic Organizing and serve as its President. My office address is Suite 204, 6935 Laurel Avenue, Takoma Park, Maryland 20912.

3. I have worked as a financial consultant for more than 25 years. I specialize in complex financial and operational analyses of companies and industries, sometimes in the context of collective bargaining, other times in support of clients' strategic or policy interests. Among the companies that I have analyzed in great depth are Alcatel, Avaya, AT&T, Boeing, Celestica, Columbia/HCA, Eastern Air Lines, Edison Schools, FairPoint Communications, Lucent Technologies, MCI, Oregon Steel, Sylvan Learning Systems, Texas Air Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, and Wal-Mart. More broadly, I have provided clients with various analyses of such industries as aerospace manufacturing, air transport, for-profit education, newspaper publishing, off-road vehicle manufacturers, and telecommunications and internet access and content providers.

4. I have testified as an expert witness (either at trial or by deposition) in several regulatory proceedings, judicial proceedings, and arbitrations. These have included, for example, a class action law suit involving BTT, National Mediation Board Single Carrier proceeding, the Big Sky Airlines Bankruptcy, an Examiner's Investigation into the Bankruptcy of Eastern Air Lines, and the state regulatory proceedings involving FairPoint Communications' purchase of Verizon's landline businesses in Northern New England. In addition, I have served as an expert financial consultant in various proceedings where it was not necessary for me to testify, such as an airline fitness investigation involving ATX, a cross-border airline merger investigation (American Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

5. I am the financial consultant for CWA and IBEW in state regulatory proceedings involving Frontier Communications' proposed acquisition of Verizon's landline operations in 14 states. To date, I have been assisting CWA and IBEW in conducting discovery in the regulatory proceedings in Illinois, Ohio, Oregon, and West Virginia.

6. On September 9, 2009, I received in discovery in the Oregon proceeding a document dated April 20, 2009, that was prepared for Verizon by its financial advisors, Barclay's and J.P. Morgan. The document also was provided by Verizon to the United States Federal Trade Commission on August 21, 2009, as part of Verizon's Hart-Scott-Rodino filing (identified therein as document 4(c)(41)). Verizon claims that the entire document is confidential, so I cannot attach the specific page of the document or disclose specific information contained therein.

7. Page 9 of the document provides a list of the largest shareholders in both Verizon and Frontier, along with the precise number of shares owned by each shareholder in each company. The page states that the source of the document is a database comprised of the latest available public information filed with the United States Securities and Exchange Commission.

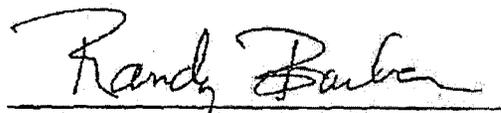
8. For each of the Verizon shareholders listed in this document, I have calculated the number of shares that the shareholder would receive in Frontier if this transaction is completed under the terms of the Agreement and Plan of Merger between Verizon and Frontier (dated as of May 13, 2009).

9. In performing this calculation, I used the lowest Frontier stock price (\$7.00 per share) under which Verizon's shareholders' interests in Frontier would be determined. I used this amount because it reflects the current value of Frontier's stock, which closed on September 10, 2009, at \$6.99 per share.

10. For those shareholders who also are listed as being among the largest holders of Frontier's stock, I added the current Frontier holdings to the Frontier stock the shareholder would receive from the proposed transaction.

11. The result of this calculation is that if the transaction is consummated at a price of \$7.00 per share, ten (10) Verizon shareholders collectively would own more than 20% of Frontier's common stock.

I have signed this Affidavit this 11th day of September, 2009, understanding that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Randy Barber