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Arizona Corporation Commission

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Attorneys for Intervenor CWA

BEFORE THE ARIZONA

CORPORATION COMMISSION

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

Docket Nos. T-01051B-10-0194
T-02811B-10-0194
T-04190A-10-0194
T-20443A-10-0194
T-03555A-10-0194
T-03902A-10-0194

**INTERVENOR CWA'S MOTION TO
COMPEL #1**

(Oral Argument Requested)

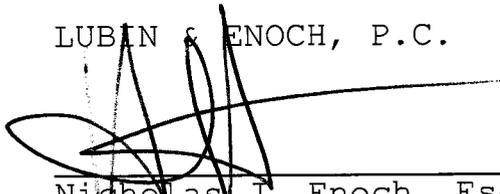
Intervenor Communications Workers of America, AFL-CIO,
CLC ("CWA"), by and through undersigned counsel, hereby
moves the Administrative Law Judge ("ALJ") for an Order,
pursuant to pages 11-12 of the Protective Order approved by
the ALJ on August 23, 2010, compelling the Joint Applicants
to permit undersigned counsel to disclose Confidential
Information and Highly Confidential Information to his

1 client's retained outside expert, Randy Barber.¹ For ease
2 of reference and in order to provide some much needed
3 background regarding this dispute, attached hereto as
4 Exhibits A, B and C are copies of recent correspondence
5 between counsel for the Joint Applicants and undersigned
6 counsel regarding this topic. Likewise, attached hereto as
7 Exhibit D is a copy of a well-reasoned Order issued last
8 week in the Minnesota proceedings dealing with, *inter alia*,
9 this exact issue.

10 For the reasons set forth in attached Exhibits B and D,
11 the CWA respectfully requests that its instant motion be
12 granted. At a minimum, the CWA respectfully requests that a
13 procedural conference/oral argument be promptly scheduled so
14 that this dispute may be fully vetted and resolved.

15 RESPECTFULLY SUBMITTED this 27th day of September 2010.

16 LUBIN & ENOCH, P.C.

17 

18 _____
19 Nicholas J. Enoch, Esq.
20 Attorney for Intervenor CWA

21
22
23
24 _____
25 ¹ Contrary to previous plans and representations to this
26 Commission, out-of-state attorney Scott J. Rubin will not be
27 filing a motion for admission *pro hac vice* in this proceeding on
28 behalf of the CWA. As such, the CWA hereby formally withdraws
the Exhibits A and B that it filed with the Commission on August
27, 2010 on behalf of attorney Rubin.

1 Original and thirteen (13) copies
2 of CWA's Motion filed this 27th day
3 of September 2010, with:

3 Arizona Corporation Commission
4 Docket Control Center
5 1200 West Washington Street
6 Phoenix, Arizona 85007-2996

7 Copies of the foregoing
8 transmitted via regular*/e-mail
9 this same date to:

10 *Belinda A. Martin, ALJ
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Janice M. Alward, Esq.
16 Chief Legal Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Steven M. Olea, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

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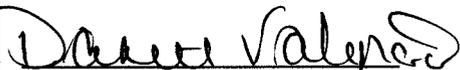
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28

EXHIBIT A

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September 1, 2010

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

Via E-Mail and U.S. Mail

Nicholas J. Enoch
Lubin & Enoch, P.C.
349 North 4th Avenue
Phoenix, Arizona 85003-1505

**Re: Objections to CWA Protective Order Exhibits A & B
Signed by Scott J. Rubin and Randy Barber
Arizona Corporation Commission Docket No. T-01051B-10-0194, et al.**

Dear Mr. Enoch:

The Joint Applicants in the above-referenced docket received an email from you on Friday, August 27, 2010, in which you transmitted a copy of your notice of filing of Exhibits A and B to the Protective Order entered on August 23, 2010 (the "Protective Order"), for yourself, outside counsel Scott J. Rubin, and consultant Randy Barber. The Protective Order provides the process by which disclosing parties may object to the designation of persons who may review Confidential Information and/or Highly Confidential Information (pages 11-12). The Joint Applicants hereby notify you that they object to the designation of Mr. Rubin and Mr. Barber with respect to Confidential Information and Highly Confidential Information.

Less than one year ago, the Oregon Public Utility Commission declared that the actions of Mr. Rubin and Mr. Barber violated a protective order issued by that agency, by disclosure and use of protected information outside of the proceeding. The Oregon proceeding also involved a merger of telecommunications companies, Verizon and Frontier, much like this very proceeding, and the claims against Mr. Rubin and Mr. Barber involved violation of a protective order much like the Protective Order in the Arizona docket. In the Oregon proceeding, Mr. Rubin and Mr. Barber appeared on behalf of the International Brotherhood of Electrical Workers ("IBEW"). The Oregon Commission found that by and through Mr. Rubin and Mr. Barber, the IBEW had used confidential information obtained through discovery in Oregon in a Pennsylvania proceeding, and had made such information public, in violation of the terms of the protective order from the Oregon docket. As a result, IBEW had its party status revoked, and IBEW was kicked out of the Oregon proceeding. A copy of the order of expulsion from the Oregon Commission is attached to this letter.

Nicholas J. Enoch
September 1, 2010
Page 2

The Oregon Commission also found that "the documentary evidence supports a finding that IBEW attempted to use the regulatory process to gain information on matters outside the scope of this proceeding." It appears that the conduct of Messrs. Rubin and Barber are part of a pattern of abuse of regulatory process. The Oregon Order attached to this letter describes a similar finding made by the Washington Utilities and Transportation Commission in yet another merger proceeding before that agency:

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).

In addition, in the Colorado Public Utilities Commission's ("CPUC") proceeding to review the Joint Applicants' pending merger in that state, the Joint Applicants sought, and were granted, an Order denying Messrs. Rubin and Barber access to Confidential and Highly Confidential Information. As you are also counsel for CWA in the Colorado proceeding, you are no doubt aware of the CPUC Order limiting access to Confidential and Highly Confidential Information to only yourself. The Colorado Hearing Commissioner found the decisions of the Oregon and Washington Commissions, cited to above, "to be instructive." Furthermore, the Colorado Hearing Commissioner expressed concern about "repeated and recent violations" of protective orders, "in dockets similar to this one, and the risk of the same occurring here."

The foregoing demonstrates good cause for the Joint Applicants (and ultimately the Arizona Corporation Commission) to deny Messrs. Rubin and Barber access to Confidential and/or Highly Confidential Information in this docket.

You previously indicated that you will move for an order to admit Mr. Rubin to appear before the Arizona Corporation Commission *pro hac vice*. To date, no such motion appears to have been filed. Please be advised that if such a motion is filed, the Joint Applicants intend to object to Mr. Rubin's participation for the same reasons discussed above.

Nicholas J. Enoch
September 1, 2010
Page 3

Submitted on Behalf of the Joint Applicants.

Very truly yours,

Snell & Wilmer



Jeffrey W. Crockett

JWC/dcp

Attachment

cc: Kevin K. Zarling
Norman G. Curtright

ORDER NO. 09-409

ENTERED 10/14/09

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of

VERIZON COMMUNICATIONS INC.
and FRONTIER COMMUNICATIONS
CORPORATION,

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

ORDER

**DISPOSITION: MOTION 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."

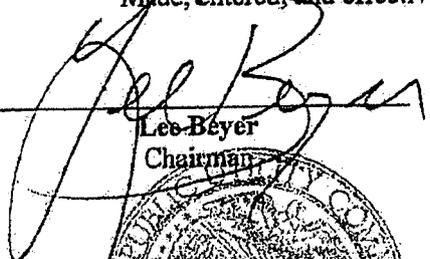
¹⁴ Although we decline to make specific findings with respect to IBEW counsel's state of mind, we find resonance in the WUTC's comments referred to in Footnote 1, *supra*.

ORDER

IT IS ORDERED that:

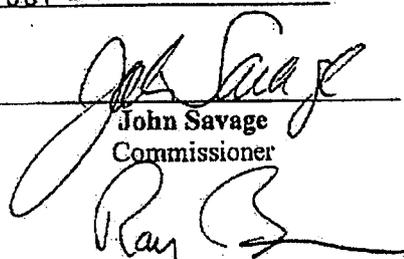
1. The Motion to Enforce Commission Orders filed by Verizon Communication Inc. is GRANTED.
2. The status of the International Brotherhood of Electrical Workers, Local 89, as an intervening party in this proceeding granted pursuant to OAR 860-012-0001 is hereby REVOKED.
3. With respect to documentation 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. 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-

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**

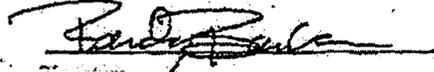
I, Randy Barber, as

- 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
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
jcheskis@paoca.org

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).

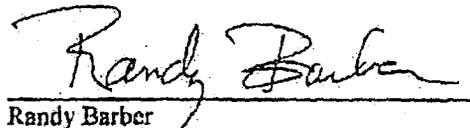

Randy Barber

EXHIBIT B

LUBIN & ENOCH, P.C.

PHOENIX | DENVER | EL PASO

Stapley Lubin
Nicholas J. Enoch

Jarrett J. Haskovec
David G. McCracken of Counsel*
*Admitted in Texas only

349 North 4th Avenue
Phoenix, Arizona 85003-1505
(602) 234-0008
Fax (602) 626-3586

September 8, 2010

**Via Regular Mail and Facsimile
(602/382-6070) this date to:**

Jeffrey W. Crockett, Esq.
Snell & Wilmer, L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202

**Re: CWA (Qwest Merger - AZCC Case)
Our File No. 1871-002**

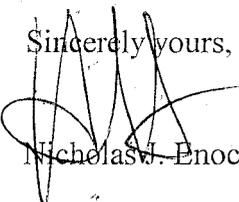
Dear Jeffrey:

This letter is written in response to the Joint Applicants' recent objection in the State of Arizona regarding the production of Confidential Information and/or Highly Confidential Information to Messrs. Rubin and Barber.

As you probably already know, our clients are presently debating this same exact issue in Colorado and Minnesota. For the sake of brevity, I will not needlessly rehash the CWA's arguments in this letter. Instead, enclosed herein you will find a copy of the CWA's recent filings in Colorado and Minnesota which set forth my client's position regarding this particular topic. In the likely event that the Joint Applicants do not promptly withdraw their objections regarding Messrs. Rubin and Barber, it is my plan to file a similar motion with the Arizona Corporation Commission. As I will probably incorporate this new motion into the motion to compel addressed in my letter to you dated September 3, 2010, I will give the Joint Applicants a few extra days to respond to both letters.

Should I fail to hear back from you by Monday, September 13, 2010 regarding these discovery-related issues, my client will proceed with filing Motions to Compel in Arizona and Colorado.

Sincerely yours,


Nicholas J. Enoch

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2
3
4 **BEFORE THE PUBLIC UTILITIES COMMISSION**
5 **OF THE STATE OF COLORADO**

6 DOCKET NO. 10A-350T

7 IN THE MATTER OF THE JOINT APPLICATION OF QWEST
8 COMMUNICATIONS INTERNATIONAL, INC. AND CENTURYLINK, INC. FOR
9 APPROVAL OF INDIRECT TRANSFER OF CONTROL OF QWEST
CORPORATION, EL PASO COUNTY TELEPHONE COMPANY, QWEST
COMMUNICATIONS COMPANY LLC, AND QWEST LD CORP.

10 **INTERVENOR CWA'S:**

- 11 **(1) MOTION TO AMEND THE AUGUST 30, 2010 INTERIM ORDER; and**
12 **(2) REQUEST FOR EXPEDITED HEARING REGARDING THE SAME**
-

13 Pursuant to Rules 1400 and/or 1502(d) of the
14 Commission's Rules of Practice and Procedure, Intervenor
15 Communications Workers of America, AFL-CIO, CLC ("CWA"), by
16 and through undersigned counsel, respectfully requests the
17 Hearing Commissioner amend the portion of his August 30,
18 2010 Interim Order in which he found "that the disclosure to
19 the CWA of all ordinary confidential and highly confidential
20 information in this proceeding should be limited to Mr.
21 Enoch at this time, provided he signs the appropriate non-
22 disclosure agreements." As explained below, and as will be
23 explained in even more detail should a hearing be promptly
24 scheduled regarding this matter, ¶¶11 and 14 the Interim
25 Order is premised upon a somewhat flawed and skewed
26 recitation of the underlying facts involving the Oregon
27 proceeding in which the actions of attorney Scott J. Rubin's
28 and expert witness Randy Barber were called into question.

FACTS

1
2 Mr. Rubin is an attorney and consultant who has worked
3 exclusively on public utility regulatory matters since 1983
4 when he began working for the Pennsylvania Office of
5 Consumer Advocate. He worked for that office for more than
6 ten (10) years before opening his own law and consulting
7 practice in 1994.

8 During the past twenty-seven (27) years, Mr. Rubin has
9 been an attorney, consultant, or expert witness in hundreds
10 of utility commission proceedings, many of which have
11 involved the production by utility companies of highly
12 confidential information. Mr. Rubin has received Hart-
13 Scott-Rodino filings, financial models, business plans, and
14 other highly sensitive documents in at least a dozen merger
15 proceedings involving energy, telecommunications, or water
16 utilities and has never publicly disclosed or used any
17 confidential information outside of the proceeding in which
18 it was provided. As pointed out in his recently filed
19 Verified Motion Requesting *Pro Hac Vice* Admission, Mr. Rubin
20 is a member in good standing of a number of state and
21 federal bars and, notably, "no discipline or grievance
22 proceedings have been filed or are pending."

23 Mr. Barber has been an independent financial consultant
24 for more than thirty (30) years. He has been involved in
25 many types of litigation and has signed confidentiality
26 agreements (or been bound by protective orders) in several
27 highly sensitive proceedings involving airlines,

1 manufacturing, telecommunications, and trucking companies.
2 These proceedings have included bankruptcies, mergers and
3 acquisitions, and litigation in state and federal courts.
4 In all of these cases, Mr. Barber has never publicly
5 disclosed or used any confidential information outside of
6 the proceeding in which it was provided.

7 The incident referred to in ¶¶11 and 14 the Interim
8 Order involved a proceeding before the Oregon Public
9 Utilities Commission ("Ore. PUC"). On May 13, 2009, Verizon
10 Communications Inc. ("Verizon") and Frontier Communications
11 Corp. ("Frontier") announced a transaction whereby Verizon
12 would sell to Frontier Verizon's wireline telecommunications
13 business in fourteen states. Verizon and Frontier filed an
14 application with the Ore. PUC on May 29, 2009, seeking
15 approval of the proposed transaction.

16 Shortly after the transaction was announced, Mr. Rubin
17 was jointly retained by the national offices of the
18 International Brotherhood of Electrical Workers, AFL-CIO,
19 CLC and the CWA to work with local counsel to represent
20 their local affiliates in utility commission proceedings
21 throughout the United States relating to the proposed
22 transaction.

23 Verizon, Frontier, the labor unions, and other parties
24 recognized that some of the information Verizon and Frontier
25 would be asked to produce during discovery would be highly
26 confidential business and financial information. On July
27 17, 2009, an Ore. PUC Administrative Law Judge issued a

1 protective order that established the requirements for the
2 provision and use of highly confidential information. The
3 protective order defined highly confidential information to
4 be "competitively sensitive confidential information that
5 falls within the scope of ORCP 36(C)(7) ('a trade secret or
6 other confidential research, development, or commercial
7 information'), the disclosure of which presents risk of
8 business harm." The order also provides, in relevant part,
9 that "persons who are given access to Highly Confidential
10 Information ... may not use or disclose the Highly
11 Confidential Information for any purpose other than the
12 purposes of preparation for and conduct of this
13 proceeding...."

4 On June 13, 2009, IBEW and CWA had filed pleadings in a
15 proceeding pending before the Pennsylvania Public Utility
16 Commission ("Pa. PUC") related to the proposed transaction
17 between Verizon and Frontier. CWA and IBEW alleged that the
18 proposed transaction constituted a change in control of
19 Frontier (which has various operations regulated by the Pa.
20 PUC) and, as such, that the Pa. PUC was required to review
21 the proposed transaction.

22 On September 8, 2009, Verizon filed one such pleading
23 with the Pa. PUC that stated:

24 Verizon is a publicly held company with a
25 myriad of shareholders who change daily
26 as shares are traded, and none of whom
27 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

1 not claim that any one person or group
2 will hold more than 20% of Frontier
3 stock.

4 The next day, September 9, 2009, Verizon provided a
5 document in the Oregon proceeding, prepared by Verizon's
6 advisors, that showed Verizon had information as early as
7 April 2009 that, in fact, a small group of Verizon
8 stockholders would own more than 20% of Frontier's stock if
9 the proposed transaction were approved. Each page of the
10 document was stamped "Highly Confidential" but a footnote on
11 the page of interest listed the source of the information on
12 that page as coming from public filings with the U.S.
13 Securities and Exchange Commission.

14 On September 11, 2009, Mr. Rubin filed a pleading with
15 the Pa. PUC setting forth that Verizon had information in
16 its possession showing that, in fact, a small group of its
17 stockholders would own more than 20% of Frontier if the
18 transaction were consummated. The pleading to the Pa. PUC
19 did not disclose any allegedly confidential information.
20 Indeed, there has been no allegation that Mr. Rubin
21 disclosed any confidential information at any time.
22 Further, that pleading did not use any confidential
23 information. The only information used was (1) the fact
24 that such a document was in Verizon's possession and
25 (2) that the document contained information publicly filed
26 with the Securities and Exchange Commission showing that a
27 small group of Verizon stockholders would own more than 20%
28 of Frontier.

1 livelihood. Suffice to say, the Hearing Commissioner ought
2 to be quite reticent to standby such a ruling without, at a
3 minimum, having had an opportunity to hear from Messrs.
4 Rubin and Barber.

5 REQUESTED RELIEF

6 Based upon the foregoing, the CWA respectfully requests
7 that the Interim Order be amended so as to permit Messrs.
8 Rubin and Barber the ability to review and utilize all of
9 the information Mr. Enoch is currently permitted to review.
10 At a minimum, the CWA respectfully requests the Hearing
11 Commissioner promptly schedule a hearing in which Messrs.
12 Rubin and Barber are provided with an opportunity to
13 explain, and answer pointed questions regarding, the events
14 addressed in ¶¶11 and 14 the Interim Order. Should the CWA
15 be permitted an opportunity to promptly address the Hearing
16 Commissioner's "concerns regarding Mr. Rubin and Mr.
17 Barber," it is confident that the Hearing Commissioner's
18 concerns will be alleviated and the Interim Order will be
19 amended accordingly.

20 RESPECTFULLY SUBMITTED this 1st day of September 2010.

21 INTERVENOR CWA

22
23 By: s/Nicholas J. Enoch
24 Nicholas J. Enoch, No. 27113
25 LUBIN & ENOCH, P.C.
26 999 18th Street, Ste. 3000
27 Denver, Colorado 80202-2499
28 Telephone: (303) 595-0008
E-mail: nick@lubinandenoch.com
Co-counsel for Intervenor CWA

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By: s/Scott J. Rubin
Scott J. Rubin, Esq., admitted *pro hac vice*
333 Oak Lane
Bloomsburg, Pennsylvania 17815-2036
Telephone: (570) 387-1893
Facsimile: (570) 387-1894
E-mail: scott.j.rubin@gmail.com
Co-counsel for Intervenor CWA

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September,
2010, the foregoing Motion was filed through the PUC E-
filing system.

s/Danette Valencia

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for
Approval of Indirect Transfer of Control of
Qwest Operating Companies to Century Link

**CWA's RESPONSE TO THE QWEST/CENTURYLINK RESPONSE TO
MOTIONS TO COMPEL**

On August 31, 2010, Qwest and CenturyLink filed a Response to Motions to Compel that includes within it a request to modify the Protective Order. CWA already has responded to the substance of the Qwest / CenturyLink objections, with one exception.

The Response includes a request to prohibit CWA's out-of-state counsel, Scott Rubin, and CWA's expert witness, Randy Barber, from having access to certain highly confidential information. Qwest and CenturyLink base this request on an order issued in an unrelated Oregon proceeding, and a recent Interim Order in the Colorado proceeding reviewing this transaction.

Initially, CWA would note that the Colorado order was issued prior to the filing of CWA's response to the Qwest/CenturyLink motion in that case. CWA will be seeking reconsideration of that order, so that the Colorado commission will have the benefit of hearing both sides of the argument.

Some background about the Oregon proceeding, as well as Mr. Rubin's and Mr. Barber's professional credentials and role in that proceeding, is appropriate.

Scott Rubin is an attorney and consultant who has worked exclusively on public utility regulatory matters since 1983 when he began working for the Pennsylvania Office of Consumer Advocate. He worked for that office for more than 10 years before opening his own law and consulting practice in 1994.

During the past 27 years, Mr. Rubin has been an attorney, consultant, or expert witness in hundreds of utility commission proceedings, many of which have involved the production by utility companies of highly confidential information. Mr. Rubin has received Hart-Scott-Rodino filings, financial models, business plans, and other highly sensitive documents in at least a dozen merger proceedings involving energy, telecommunications, or water utilities and has never publicly disclosed or used any confidential information outside of the proceeding in which it was provided.

Randy Barber has been an independent financial consultant for more than 30 years. He has been involved in many types of litigation and has signed confidentiality agreements (or been bound by protective orders) in several highly sensitive proceedings involving airlines, manufacturing, telecommunications, and trucking companies. These proceedings have included bankruptcies, mergers and acquisitions, and litigation in state and federal courts. In all of these cases, Mr. Barber has never publicly disclosed or used any confidential information outside of the proceeding in which it was provided.

The incident referred to in the pleading filed by Qwest and CenturyLink involved a proceeding before the Oregon Public Utilities Commission ("Ore. PUC"). Mr. Rubin discussed

this matter with counsel for Qwest and CenturyLink in Minnesota on August 3, 2010, and provided the substance of the following explanation to them at that time. Since that discussion, Qwest and CenturyLink have continued to provide Mr. Rubin and Mr. Barber with allegedly confidential information.

On May 13, 2009, Verizon Communications Inc. ("Verizon") and Frontier Communications Corp. ("Frontier") announced a transaction whereby Verizon would sell to Frontier Verizon's wireline telecommunications business in fourteen states. Verizon and Frontier filed an application with the Ore. PUC on May 29, 2009, seeking approval of the proposed transaction.

Shortly after the transaction was announced, Mr. Rubin was jointly retained by the national offices of the International Brotherhood of Electrical Workers ("IBEW") and the Communications Workers of America ("CWA") to work with local counsel to represent their local affiliates in utility commission proceedings throughout the United States relating to the proposed transaction.

Verizon, Frontier, the labor unions, and other parties recognized that some of the information Verizon and Frontier would be asked to produce during discovery would be highly confidential business and financial information. On July 17, 2009, an Ore. PUC Administrative Law Judge issued a protective order that established the requirements for the provision and use of highly confidential information. The protective order defined highly confidential information to be "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." The order also provides,

in relevant part, that “persons who are given access to Highly Confidential Information ... may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding”

On June 13, 2009, IBEW and CWA had filed pleadings in a proceeding pending before the Pennsylvania Public Utility Commission (“Pa. PUC”) related to the proposed transaction between Verizon and Frontier. CWA and IBEW alleged that the proposed transaction constituted a change in control of Frontier (which has various operations regulated by the Pa. PUC) and, as such, that the Pa. PUC was required to review the proposed transaction.

On September 8, 2009, Verizon filed one such pleading with the Pa. PUC that stated:

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.

The next day, September 9, 2009, Verizon provided a document in the Oregon proceeding, prepared by Verizon’s advisors, that showed Verizon had information as early as April 2009 that, in fact, a small group of Verizon stockholders would own more than 20% of Frontier’s stock if the proposed transaction were approved. Each page of the document was stamped “Highly Confidential” but a footnote on the page of interest listed the source of the information on that page as coming from public filings with the U.S. Securities and Exchange Commission.

On September 11, 2009, Mr. Rubin filed a pleading with the Pa. PUC setting forth that Verizon had information in its possession showing that, in fact, a small group of its stockholders would own more than 20% of Frontier if the transaction were consummated. The pleading to the

Pa. PUC did not disclose any allegedly confidential information. Indeed, there has been no allegation that Mr. Rubin disclosed any confidential information at any time. Further, that pleading did not use any confidential information. The only information used was (1) the fact that such a document was in Verizon's possession and (2) that the document contained information publicly filed with the Securities and Exchange Commission showing that a small group of Verizon stockholders would own more than 20% of Frontier.

The pleading in Pa. included an affidavit from Mr. Barber. Mr. Barber prepared the affidavit only after confirming with counsel that the filing the affidavit in Pa. would not violate the protective order in Oregon. Mr. Rubin provided Mr. Barber with an oral legal opinion that, because no confidential information was being used or disclosed, there would not be a violation of the Oregon protective order.

Verizon filed a motion with the Oregon PUC on September 17, 2009, alleging, *inter alia*, that Mr. Rubin had violated the protective order. As we now know, the Oregon PUC disagreed with Mr. Rubin's interpretation of the protective order, and issued an order on October 14, 2009, that found his use of public information within an allegedly confidential document constituted a breach of the protective order. Even though there was no disclosure of any confidential information, the PUC found that Mr. Rubin had violated its order by using in a different proceeding the existence of a confidential document containing public information.

In summary, neither Mr. Rubin nor Mr. Barber ever disclosed any confidential information and they have never been accused of doing so. The Oregon proceeding involved a difference in interpretation of the terms of a protective order concerning the status of public information contained within a document that was marked confidential.

Moreover, Mr. Barber never knowingly violated any provision of a protective order, including the Oregon order. In Oregon, Mr. Barber sought the advice of counsel and was assured that his use of public information within a document marked confidential would not violate the protective order. That legal advice turned out to be incorrect, but that should not be held against Mr. Barber in this or any other proceeding.

WHEREFORE, the Communications Workers of America requests the Administrative Law Judge to deny CenturyLink's and Qwest's request to prevent CWA's out-of-state counsel and consultant from having access to certain information in this proceeding.

GREGG M. CORWIN & ASSOCIATE
LAW OFFICE, P.C.

Dated: September 2, 2010

s/Gregg M. Corwin
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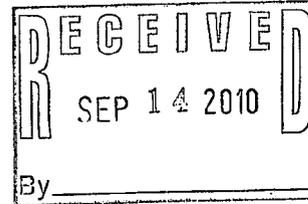
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EXHIBIT C

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DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

September 14, 2010

VIA HAND-DELIVERY

Nicholas J. Enoch, Esq.
Lubin & Enoch, P.C.
349 North Fourth Avenue
Phoenix, Arizona 85003

Re: Confidential and Highly Confidential Supplemental Responses to Integra Telecom's Second Set of Data Requests to CenturyLink Communications et al.—Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194

Dear Mr. Enoch:

Enclosed please find the confidential and highly-confidential supplemental responses and attachments of CenturyLink to Integra's Second Set of Data Requests Nos. 2, 22, 41, 47, 52, 59, 77, 78, 111, 142 and 153 which were previously withheld pending the execution of a protective order in the above-captioned dockets. Given that CenturyLink and Qwest (the "Joint Applicants") have objected to the Protective Order Exhibits A and B signed by Messrs. Rubin and Barber, I am providing these confidential and highly confidential responses and attachments with the condition that they not be distributed to Messrs. Rubin and Barber pending resolution of the objection by the Joint Applicants. In addition, you may not disclose these confidential and highly confidential responses and attachments to any other person who has not properly signed an Exhibit A and B to the Protective Order.

Very truly yours,

SNELL & WILMER

A handwritten signature in black ink that reads "Jeff Crockett". Below the signature, the name "Jeffrey W. Crockett" is printed in a standard font.

JWC:gdb/enclosures

cc (w/o enclosures): Mark Harper
Kevin Zarling, Esq.
Reed Peterson
Norm Curtright, Esq.

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September 13, 2010

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Michael W. Patten (via hand delivery)
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Gregory Merz (via first class mail)
Gray Plant Mooty
500 IDS Center
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Minneapolis, Minnesota 55402

Re: Confidential and Highly Confidential Supplemental Responses to Integra Telecom's Second Set of Data Requests to CenturyLink Communications et al.—Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194

Dear Mike and Greg:

Enclosed please find the confidential and highly-confidential supplemental responses and attachments of CenturyLink to Integra's Second Set of Data Requests Nos. 2, 22, 41, 47, 52, 59, 77, 78, 111, 142 and 153 which were previously withheld pending the execution of a protective order in the above-captioned dockets. Specifically, the following confidential and highly confidential attachments are enclosed:

Confidential Attachment Integra-22(c)(1)
Confidential Attachment Integra-22(c)(2)
Confidential Attachment Integra Supplemental-41
Highly Confidential Attachment Integra Supplemental-47
Highly Confidential Attachment Integra-52(a)
Highly Confidential Attachment Integra-52(b)
Confidential Attachment Integra-59(d)
Confidential Attachment Integra-77
Confidential Attachment Integra-78(d)
Confidential Attachment Integra-111
Confidential Attachment Integra-142

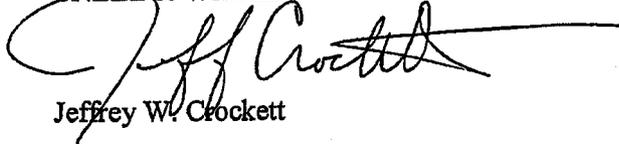
Snell & Wilmer
LLP

Messrs. Patten and Merz
September 13, 2010
Page 2

Please limit distribution of the enclosed confidential and highly confidential responses and attachments to only those persons who have properly executed Exhibit A and/or B to the Protective Order entered in these consolidated dockets. In addition, please be advised that Qwest and CenturyLink have objected to the Protective Order Exhibits A and B signed by Messrs. Rubin and Barber for the Communication Workers of America. Without limitation of your duties with respect to the Confidential Information under the Protective Order, you must not disclose Qwest or CenturyLink Confidential Information to those individuals.

Very truly yours,

SNELL & WILMER



Jeffrey W. Crockett

JWC:gdb
Enclosures
cc (w/enclosures):

Kevin Zarling, Esq.
Reed Peterson, Esq.
Mark Harper
Daniel Pozefsky, Esq.
William Rigsby
Gregory L. Rogers
Rogelio Pena
Mark DiNunzio
William Haas
Katherine Mudge
Maureen Scott, Esq.
Armanda Fimbres
Pamela Genung

cc (w/o enclosures) Norm Curtright, Esq.

EXHIBIT D

MPUC Docket No. P-421, et al./PA-10-456
OAH Docket No. 11-2500-21391-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for
Approval of Indirect Transfer of Control of
Qwest Operating Companies to
CenturyLink

**ORDER REGARDING MOTIONS TO
COMPEL FILED BY SPRINT, INTEGRA,
AND THE COMMUNICATIONS WORKERS
OF AMERICA, AND MOTION FOR A
SUPPLEMENTAL PROTECTIVE ORDER
FILED BY JOINT PETITIONERS**

The above matter is pending before the undersigned Administrative Law Judge pursuant to a Notice and Order for Hearing issued by the Minnesota Public Utilities Commission on June 15, 2010.

On August 11, 2010, Sprint filed a Motion to Compel Qwest and CenturyLink (the Joint Petitioners) to respond to seventeen Information Requests. By letter dated August 20, 2010, Sprint notified the Administrative Law Judge that the Joint Petitioners had subsequently provided supplemental responses to several of its Information Requests and that only two Information Requests remained in dispute. On August 25, 2010, the Joint Petitioners filed their response to Sprint's Motion to Compel regarding these two Information Requests.

On August 16, 2010, the Communications Workers of America (CWA) filed a Motion to Compel the Joint Petitioners to respond to eight Information Requests. On August 23, 2010, Integra Telecom filed a Motion to Compel the Joint Petitioners to respond to one Information Request. On August 31, 2010, the Joint Petitioners filed their Response to the Motions to Compel of CWA and Integra and a Motion for a Supplemental Protective Order. On September 2, 2010, the CWA filed a Reply Brief regarding its Motion to Compel.

On September 8, 2010, oral argument regarding all three Motions to Compel was heard in the Large Conference Room at the Public Utilities Commission.

On September 13, 2010, Sprint, T-Mobile, and Cbeyond Communications filed a Joint Response Opposing the Joint Petitioners' Motion for Supplemental Protective Order. On the same date, Integra, the CWA, and the CLEC Coalition also filed Responses in Opposition to the Joint Petitioners' Motion for Supplemental Protective Order. The Joint Petitioners filed their Reply Brief regarding the Motion for Supplemental Protective Order on September 15, 2010.

The OAH record with respect to the Motions closed on September 17, 2010, when the last submission pertaining to the Motions was received.

Based on all of the files and proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge issues the following:

ORDER

IT IS HEREBY ORDERED as follows:

1. Sprint's Motion to Compel the Joint Petitioners to respond to Sprint Information Requests 13 and 14 is **GRANTED**. The Joint Petitioners shall provide information responsive to Sprint-13 and Sprint -14 by 4:30 p.m. on Wednesday, September 22, 2010.
2. Integra's Motion to Compel the Joint Petitioners to respond to Request 143 of Integra's Second Set of Information Requests is **GRANTED**. The Joint Petitioners shall provide information responsive to Integra-143 by 4:30 p.m. on Wednesday, September 22, 2010 (assuming that recipients have executed Appendix C of the Supplemental Protective Order by that time).
3. CWA's Motion to Compel the Joint Petitioners to respond to its Information Requests 1-4, 15, and 24 is **GRANTED**. CWA's Motion to Compel the Joint Petitioners to respond to its Information Requests 5-6 is **GRANTED IN PART AND DENIED IN PART**, as discussed in the Memorandum below. The Joint Petitioners shall provide information responsive to CWA-1 – CWA-4, 15, and 24 by 4:30 p.m. on Wednesday, September 22, 2010, and information responsive to CWA-5 and CWA-6, as modified below, by 4:30 p.m. on Friday, September 24, 2010 (assuming that recipients have executed Appendix C of the Supplemental Protective Order by those times).
4. The Joint Petitioners' Motion for Supplemental Protective Order is **GRANTED IN PART AND DENIED IN PART**, as discussed more fully in the Memorandum below.
5. The information produced in response to this Ruling on the Integra and CWA Motions to Compel shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate. **The Joint Petitioners shall not be required to automatically provide information responsive to this Ruling to all parties.**
6. The Joint Petitioners' request to restrict dissemination of information to certain representatives of the CWA is **DENIED**.
7. The parties shall confer and attempt to reach agreement on what, if any, adjustments are needed to the schedule set forth in the First Prehearing

Order as a result of the required production of the additional information encompassed by this Order. If they are unable to reach agreement, a telephone conference call will be held to consider the matter.

8. **The parties are reminded that Trade Secret Information shall not be emailed, and Highly Sensitive Trade Secret Information and Highly Sensitive Trade Secret Information Subject to Additional Protection (as discussed in the June 15, 2010, Protective Order and the attached Supplemental Protective Order) shall not be efiled or emailed.**

Date: September 21, 2010

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The rules of the Office of Administrative Hearings (OAH) specify that any means of discovery available under the Rules of Civil Procedure for the District Court of Minnesota is allowed. The OAH rules further state that a party seeking discovery must show the discovery is needed for the proper presentation of its case, is not for delay, and the issues or amounts in controversy are significant enough to warrant the discovery. A party resisting discovery may raise any objections that are available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege.¹ Rule 26.02 of the Minnesota Rules of Civil Procedure permits discovery regarding any unprivileged matter that is "relevant to the subject matter involved in the pending action," including information relating to the "claim or defense of the party seeking discovery or to the claim or defense of any other party." Materials that may be used in impeachment of witnesses may also be discovered as relevant information.² It is well accepted that the discovery rules are given "broad and liberal treatment" in order to ensure that litigants have complete access to the facts prior to trial and thereby avoid surprises at the ultimate hearing or trial.³ Administrative Law Judges at the OAH "have traditionally been liberal in granting discovery when the request is not used to oppress the opposing party in cases involving limited issues or amounts."⁴

The definition of relevancy in the discovery context has been broadly construed to include any matter "that bears on" an issue in the case or any matter "that reasonably could lead to other matter that could bear on any issue that is or may be in the case."⁵ As a general matter, evidence is deemed to be relevant if it would logically tend to prove or disprove a material fact in issue.⁶ In administrative proceedings, information sought

¹ Minn. R. 1400.6700, subp. 2.

² See, e.g., *Boldt v. Sanders*, 261 Minn. 160, 111 N.W.2d 225 (1961).

³ See, e.g., *Hickman v. Taylor*, 329 U.S. 495, 507 (1947), quoted with approval in *Jeppesen v. Swanson*, 243 Minn. 547, 551, 68 N.W.2d 649, 651 (1955); *Baskerville v. Baskerville*, 75 N.W.2d 762, 769 (1956).

⁴ G. Beck, M. Gossman & L. Nehl-Trueman, *Minnesota Administrative Procedure*, § 8.5.2 at 135 (1998).

⁵ *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

⁶ *Boland v. Morrill*, 270 Minn. 86, 132 N.W.2d 711, 719 (1965).

in discovery typically is considered to be relevant if the information "has a logical relationship to the resolution of a claim or defense in the contested case proceeding, is calculated to lead to such information, or is sought for purposes of impeachment."⁷ Rule 26.02 makes it clear that "[r]elevant information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."⁸ Accordingly, the definition of "relevancy" for discovery purposes is not limited by the definition of "relevancy" for evidentiary purposes.⁹

Rule 26.02 of the Minnesota Rules of Civil Procedure also authorizes a court to place limitations on the frequency or extent of use of discovery methods if it finds that . . . (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."¹⁰

The application of these discovery standards in the present case must take into consideration the nature of this proceeding and whether the information requested bears on the issues identified by the Commission or could reasonably lead to other matter that could bear on those issues. The Commission indicated in the Notice and Order for Hearing that it concurred with the Joint Petitioners' request for expedited action on their petition, "subject to the requirements of proper record development and informed decision-making," and requested that the Administrative Law Judge submit her report by November 30, 2010, "if that can be done consistent with due process, full evidentiary development, and due deliberation."¹¹ The Commission specified that the ultimate issue to be addressed in this case is whether the proposed merger is in the public interest under Minn. Stat. §§ 237.23 and 237.74, subd. 12, including:

- Whether the post-merger company would have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota;
- What impact the transaction would have on Minnesota customers and on competition in the local telecommunications market; and
- What impact the transaction would have on Commission authority.¹²

The Commission's Notice and Order for Hearing thus makes clear its intention that the focus of this proceeding must be on the specific identified issues and that the matter must proceed in an expeditious fashion to the extent consistent with due process principles.

⁷ G. Beck, M. Gossman & L. Nehl-Trueman, *Minnesota Administrative Procedure*, § 9.2 at 146 (1998).

⁸ Minn. R. Civ. P. 26.02(a).

⁹ 2 D. Herr & R. Haydock, *Minnesota Practice* 9 (2d Ed. 1985), citing *Detweiler Brothers v. John Graham & Co.*, 412 F. Supp. 416, 422 (E.D. Wash. 1976), and *County of Ramsey v. S.M.F.*, 298 N.W.2d 40 (Minn. 1980).

¹⁰ Minn. R. Civ. P. 26.02(b)(3).

¹¹ Notice and Order for Hearing at 4-5.

¹² *Id.* at 2.

Sprint's Motion to Compel

In its Motion to Compel, Sprint seeks an order compelling the Petitioners to respond to its Information Requests 13 and 14. Sprint sought the following information from Qwest and CenturyLink in those requests:

Sprint 13: Provide the interstate switched access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger (e.g., total interstate switched access charges Qwest charged CenturyLink affiliated IXC, total interstate switched access charges CenturyLink charged Qwest affiliated IXC, etc.). Provide the charges separately by IXC and by ILEC legal entity.

Sprint 14: Provide the total special access charges for the 2009 calendar year for each ILEC legal entity in the state imposed on each of the affiliated IXCs that will be part of the proposed merger (e.g., total intrastate and interstate special access charges Qwest charged CenturyLink affiliated IXC, total intrastate and interstate special access charges CenturyLink charged Qwest affiliated IXC, etc.). Provide the charges separately by IXC and by ILEC legal entity.

In their responses to these Information Requests, CenturyLink and Qwest objected to the requests on the grounds that they were not reasonably calculated to lead to the discovery of admissible or relevant evidence. They indicated that, "[a]s set forth by the Commission in its June 15th Order, the scope of this proceeding is to establish whether the merger of the CenturyLink and Qwest parent companies is in the public interest in Minnesota," and asserted that "[t]his is not the proper forum for determining the proper level of access rates." Subject to and without waiving its objections, CenturyLink responded that CenturyLink and each of its affiliates pay and receive payment from Qwest and each of its affiliates for interstate switched access services and special access services pursuant to the tariffs filed by each entity with the FCC. Qwest similarly noted that Qwest and each of its affiliates pay and receive payment from CenturyLink and each of its affiliates for interstate switched access services and special access services pursuant to the tariffs filed by each entity with the FCC. Qwest further indicated that its intrastate special access charges could be found in its Private Line Transport Services Catalog and provided a website address for that catalog.¹³

In its Motion to Compel, Sprint generally argues that, because CenturyLink and Qwest are major wholesalers of access and interconnection, and are also retailers of the services that use those wholesale inputs, such as long distance and broadband, a broad view must be taken of their operations in order to assess the effect of the merger on competition and whether it is in the public interest. Sprint asserts that discovery regarding access charges is appropriate in light of the Commission's interest in determining whether the proposed transaction might distort or impair competition.

¹³ Sprint Request No. 13 and the Responses from CenturyLink and Qwest are attached to Sprint's Motion to Compel.

Sprint maintains that questions relating to access revenues are relevant in analyzing the competitive impacts of the merger and considering whether conditions should be imposed. It further argues that access rates and revenues have a direct impact on competition at the wholesale and retail levels and thus are relevant to the issues raised in this proceeding. In particular, Sprint contends that the requested information relating to switched and special access charges is relevant and likely to lead to the discovery of admissible evidence because such information "will demonstrate the amount of access charge savings that the merged company will obtain when access charge payments are merely intracompany payments and are no longer payments from the Qwest entities to the CenturyLink entities, and vice versa." Sprint asserts that any access savings can have an impact on competition because Qwest and CenturyLink will be able to use the savings to develop and market competitive alternatives in the marketplace. Even though the Joint Petitioners are not seeking to change access rates in this proceeding, Sprint contends that they will have the opportunity to do so as a result of the merger and that a reduction in such costs could affect competition by enabling them to more aggressively price their products.

In support of its motion, Sprint relied in part upon a discovery order issued by the Commission in 2009 in connection with Qwest's petition for approval of its Second Revised Alternative Form of Retail Regulation (AFOR) Plan for 2010-2013.¹⁴ In that proceeding, Sprint sought (among other things) to have Qwest provide: the amount of interstate switched access revenue Qwest generated in Minnesota in 2008 from switching, transport, and carrier common line; the billed interstate access minutes associated with those revenue amounts; and copies of all documents describing or supporting those amounts.¹⁵ Qwest objected to these information requests at least in part based upon a contention that the interstate information requested was irrelevant. Qwest asserted that it was not appropriate to allow inquiry into services that were not at issue in the AFOR proceeding and over which the Commission had no jurisdiction. Qwest also argued that "an AFOR proceeding cannot be used as a vehicle for a fishing expedition to gain information that may be of use in other proceedings, such as the Commission's access reform rulemaking docket."¹⁶ The Commission ultimately ordered Qwest to produce, in table format, information relating to the amount of interstate switched access revenue Qwest generated in Minnesota in 2008 from switching, transport, and carrier common line and the billed interstate access minutes associated with those revenue amounts. The Commission found that these requests were relevant to the subject matter of the proceeding because the information "could be helpful to the Commission in analyzing the reasonableness of 1) the rates that Qwest has proposed to charge in its New AFOR Plan and 2) Qwest's request in this docket for authority to offset, via an increase to local rates, a flat monthly end-use charge or surcharge of equivalent value, any future reductions in access charge elements."¹⁷ The Commission found Sprint's request for "all documents" relating to the amount of interstate switched

¹⁴ Order Granting Motion to Compel, in Part, and Setting Procedural Timetable in *In the Matter of a Petition by Qwest Corporation for Approval of its Second Revised Alternative Form of Retail Regulation (AFOR) Plan*, PUC Docket No. P-421/AR-09-790 (Oct. 26, 2009).

¹⁵ *Id.* at 3-5.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 4-5.

access revenue and billed interstate access minutes to be overbroad and unduly burdensome, and merely directed Qwest to provide the information in table format.¹⁸

In opposing Sprint's Motion to Compel, the Joint Petitioners again argue that the information sought by Sprint in Requests 13 and 14 involve interstate services that are subject to regulation by the FCC, not the Minnesota Public Utilities Commission. The Joint Petitioners contend that the information sought by Sprint is not relevant to the determination of any of the issues that are properly in dispute in this proceeding. They assert that access charge payments will not change after the merger. They also emphasized that, as noted in the Joint Petition, the transaction "contemplates a parent-level transfer of control of QCII only" and, after completion of the transaction, "end user and wholesale customers will continue to receive service from the same carrier, at the same rates, terms and conditions and under the same tariffs, price plans, interconnection agreements, and other regulatory obligations as immediately prior to the Transaction" The Joint Petitioners also pointed out that they had indicated in responses to other Sprint discovery requests that the QC entities and the CenturyLink entities "will continue to charge each other pursuant to switched access and other tariffs and agreements, and reductions in such payments are not part of the synergy savings the companies hope to achieve."¹⁹ Because the Joint Petitioners "are not proposing, and the transaction does not result in any change to access charge rates," the Joint Petitioners assert that access charges are not relevant to the Commission's review and consideration of this merger. They maintained that the Commission did not review or adjust access charges in its prior merger cases involving CenturyLink and Embarq,²⁰ Frontier and Citizens,²¹ or U.S. West and Qwest,²² and noted that any concerns that Sprint may have regarding intrastate access charge rates could be raised in the Commission's pending rulemaking proceeding pertaining to such rates.²³

The Administrative Law Judge presiding in the parallel merger proceeding pending before the Oregon Commission recently denied a similar motion to compel filed by Sprint in that case.²⁴ However, the Administrative Law Judge presiding in the

¹⁸ *Id.*

¹⁹ Joint Petitioners' Response in Opposition to Motion to Compel at 4; Response to Sprint Information Request No. 47 (attached as Exhibit A to Joint Petitioners' Response).

²⁰ Docket No. P6441 et al./PA-08-1392.

²¹ Docket No. P3131, 5316/PA-02-1991.

²² Docket No. P-3009, 5096, 421, 3017/PA-99-1192.

²³ *In the Matter of the Request for Comments of the Minnesota Public Utilities Commission Relating to a Rule to Modify State Access Charges*, MPUC Docket No. P-999/R-06-51.

²⁴ See Ruling of Administrative Law Judge Dismissing Sprint's Motion to Compel as Moot in Part and Denying Motion in Part in *In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyTel, Inc., and Qwest Communications International, Inc.*, UM 1484 (Sept. 7, 2010) (Judge Arlow ruled that evidence relating to special and interstate access charges that the Joint Petitioners' ILECs charge each others' CLEC affiliates was not reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the Oregon proceeding, reasoning that ILECs are required to "place their competitive operations in fully separated subsidiaries with separate management, technical and financial staffs and operations, so the access charges which they pay to their ILEC affiliate will have the same economic impact upon their operations as they would to an unaffiliated CLEC competitor"). Sprint notified the Administrative Law Judge on September 17, 2010, that it has filed a motion to certify to the Oregon Public Utility Commission the question of whether the Administrative Law Judge erred in denying the motion to compel.

parallel merger proceeding in Washington granted Sprint's motion to compel production of the access charge information.²⁵

After careful consideration of the competing arguments of the parties, and in light of the broad definition of relevancy applied in considering motions to compel, the Administrative Law Judge concludes that Sprint has shown that Information Requests 13 and 14 are reasonably calculated to lead to the discovery of information that is relevant to the issues in this proceeding. The potential impact of the merger on access charges and competition is a proper inquiry in this case. Although it is undisputed that the Commission does not regulate interstate access charges, Sprint has demonstrated that the information sought bears on (or could lead to other matter that could bear on) the impact of the merger on Minnesota customers and on competition in the local telecommunications market. Even if separate organizational entities remain in existence after the merger, and even if there is not any current intention to change the access charges to subsidiaries, the manner in which the access charges are recognized or handled after the merger may create efficiencies or cost reductions that could affect competition in Minnesota.

Accordingly, Sprint's Motion to Compel is granted. The Joint Petitioners' Motion for a Supplemental Protective Order did not encompass these documents, and they shall be provided by no later than Wednesday, September 22, 2010, in accordance with the terms of the Protective Order entered by the Commission on June 15, 2010.

Integra's and CWA's Motions to Compel Production of Documents filed under the HSR Act

In its Motion to Compel, Integra seeks an order requiring CenturyLink to produce documents responsive to Request No. 143 of Integra's Second Set of Information Requests:

Integra 143. Refer to page 6 of CenturyTel Inc.'s Form S-4, dated June 4, 2010. Provide a copy of the requisite notice, report forms, and any other documents (including supplemental filings) filed by CenturyLink and Qwest under the Hart-Scott-Rodino (HSR) Act with the Department of Justice and the Federal Trade Commission.

²⁵ See Order Granting in Part and Denying in Part Sprint Nextel Corp.'s Motion to Compel Joint Applicants to Respond to Data Request in *In the Matter of the Joint Application of Qwest Communications International and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.*, UT-100820 (Sept. 10, 2010) (Judge Friedlander ruled that the Washington Commission's examination of a merger's impact on the public interest includes the impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition, and determined that the impact of the CenturyLink/Qwest merger on access charges and competition is within the purview of the Commission's examination; Judge Friedlander further found that Joint Applicants' argument that interstate data was irrelevant because the Washington Commission does not regulate interstate telecommunications services was misplaced in light of the ability of a party to request discovery of inadmissible information, including information relating to activities outside the jurisdiction of the Commission, so long as the information is reasonably calculated to lead to admissible evidence).

In its response to this Information Request, CenturyLink stated:

CenturyLink objects to this request insofar as it is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The filings prepared by CenturyLink as required by the HSR Act are specifically designed to provide the Department of Justice and the Federal Trade Commission the information that it requires to analyze the merger on a national level addressing specific federal antitrust issues. This is not the proper jurisdiction for such an analysis. In addition, the information requested is highly confidential, commercially sensitive information the release of which, particularly to CenturyLink's competitors such as Integra, would cause irreparable competitive harm to CenturyLink, the impact of which would not be mitigated by the terms of the Protective Order.

Similarly, in its Motion to Compel, the CWA seeks to compel Qwest and CenturyLink to respond to two similar Information Requests requesting the companies' filings under the HSR Act:

CWA 1. Please provide all documents submitted by or on behalf of Qwest to the U.S. Department of Justice and the Federal Trade Commission pursuant to the requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act, as amended.

CWA 2. Please provide all documents submitted by or on behalf of CenturyLink to the U.S. Department of Justice and the Federal Trade Commission pursuant to the requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act, as amended.

In their responses to these CWA Information Requests, Qwest and CenturyLink objected to providing the requested documents on the same grounds that were noted in response to Integra's Request No. 143.

To date, CenturyLink has not produced any of the HSR documents in the Minnesota proceeding.

Relevancy of HSR Documents

Based on brief document descriptions provided by CenturyLink in connection with an *in camera* review performed in the Arizona proceeding, Integra argues that a number of documents included in CenturyLink's filing under the HSR Act are potentially relevant to the wholesale issues in which Integra and other CLECs in this matter are interested. Integra contends that these documents address CenturyLink's plans relating to wholesale markets, potential product offerings and opportunities in unspecified "market segments," CenturyLink's staffing and sales approach regarding Enterprise Business marketing, and the impact on CenturyLink revenues of intrastate access reductions. Integra asserts that these documents may be relevant to wholesale customers, CenturyLink's plans for the wholesale market, or the potential impact that financial pressures on the merged company may have on wholesale services.

CWA similarly argues with respect to its Information Requests 1 and 2 that it is likely that the filings made by the Joint Petitioners under the HSR Act contain information that is directly relevant to the issues involved in this proceeding, such as basic information about the companies and the transaction; analyses of the costs and benefits of the proposed transaction; issues addressed by officers, directors, and advisors when deciding whether or not to enter into the proposed transaction; the financial fitness of CenturyLink; synergy savings that may be produced by the proposed transaction; and potential impacts on employment, pricing, and in-state services. The CWA asserts that CenturyTel and Embarq provided their HSR files to the CWA without objection in connection with the 2008 proceedings in Pennsylvania involving the merger of CenturyTel and Embarq to form CenturyLink.²⁶ The CWA also noted that, in 1999, the Montana Public Service Commission compelled Qwest to produce its HSR filings in connection with the Qwest-U.S. West merger proceedings.²⁷ Moreover, the CWA contends that the Joint Petitioners provided their HSR filings to staff and public counsel in the pending proceeding before the Washington Utilities and Transportation Commission, which suggests that the Joint Petitioners agree that the information is relevant.

In response to the Integra and CWA motions to compel seeking access to the HSR documents, the Joint Petitioners contend that the HSR information is not relevant to the issues in the current proceeding because it addresses how CenturyLink intends to compete after the merger, and not the impact that the merger itself would have on Minnesota customers or local competition. They indicated that the HSR documents disclose such matters as the Joint Petitioners' "plans for developing and rolling out competitive products" and "analyses of competition in their markets and how to successfully meet that competition in the future."²⁸ They further stated that the HSR documents include "detailed and specific data relating to customer profile information including market segmentation, churn data, marketing and retention strategies, market shares and trends, penetration rates, product development and trends, product rollout and launch dates, marketing plans, financial assumptions and projections relating to specific product rollouts and market launches, company staffing and sales approach by product and market area, and long-range company strategic plans."²⁹ They argue that the HSR documents "have already served their required purpose" because Federal Trade Commission and the U.S. Department of Justice have completed their analysis of the documents and have determined that the proposed merger does not require any further anti-trust review.³⁰ They further contend that the Commission's consideration in the present proceeding relies upon an analysis of the local telecommunications marketplace, and not a consideration of potential impact on the entire national economy, and argue that the subject matter of the present case thus is separate and distinct from that considered by the FTC and DOJ under the HSR Act.

²⁶ See Ex. 3 attached to CWA's Motion to Compel.

²⁷ *Joint Application of Qwest Communications Corporation, et al., and US West Communications, Inc.*, 1999 Mont. PUC LEXIS 121 (Dec. 14, 1999).

²⁸ Joint Petitioners' Response to Motions to Compel at 4.

²⁹ *Id.* at 9; see also Affidavit of Jeff Glover, ¶ 3, and Affidavit of Timothy J. Goodwin, ¶ 3 (attached as Attachments 2 and 3 to Joint Petitioners' Motion for Supplemental Protective Order).

³⁰ Response at 8; see 75 Fed. Reg. 47810.

Finally, the Joint Petitioners indicated that they are unaware of any instance in which HSR filings have been produced or considered by the Commission in evaluating a telecommunications or other merger approval request. They acknowledge that such information was produced in the Pennsylvania CenturyTel/Embarq merger but asserted that the disclosure was made under very stringent confidentiality protections. The Joint Petitioners acknowledge that they have produced HSR documents in the parallel proceeding in Washington involving the CenturyLink/Qwest merger, but emphasize that the protective order in that proceeding limits disclosure of "highly confidential information" including HSR information to parties' outside counsel and outside experts. The Joint Petitioners indicated in their Response in Opposition to the CWA and Integra motions that "the HSR documents or other confidential information discussed in this Motion have only been produced to outside counsel/outside experts or regulatory 'staff eyes only' in other states considering this transaction consistent with the disclosure protections requested in this Response and the accompanying Motion for Supplemental Protective Order."³¹

The Administrative Law Judge concludes that Integra Information Request 43 and CWA Information Requests 1 and 2 are reasonably calculated to lead to the discovery of information that is relevant to the issues raised in this proceeding. Based upon the Joint Petitioners' description of the contents of the HSR documents, it appears that the documents contain information that bears on (or could lead to other matter that could bear on) the impact of the transaction on Minnesota customers and on competition in the local marketplace. As discussed in further detail below, the information provided shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate.

Remainder of CWA's Motion to Compel

In its Motion to Compel, the CWA also argued that the Joint Petitioners should be compelled to produce documents responsive to six other Information Requests: CWA Requests 3, 4, 5, 6, 15, and 25. These requests are discussed below.

Appendices to the Merger Agreement (CWA Information Request No. 3)

In Request No. 3, the CWA requested the following information:

CWA 3. Please provide all non-public documents which are part of the April 21, 2010 Agreement and Plan of Merger Among Qwest Communications International, Inc., CenturyTel, Inc. and SB44 Acquisition Company, including any attachments, appendices and disclosure letters.

The Joint Petitioners objected to this request on the grounds that "the information requested is highly confidential, commercially sensitive information the release of which would cause irreparable harm to [the Joint Petitioners], such that even the Protective Order would not be sufficient to mitigate the impact."

³¹ *Id.* at 11, n. 15.

In its Motion to Compel, the CWA points out that the public portion of Articles III of the merger agreement states that CenturyLink and Merger Sub "jointly and severally represent and warrant to Qwest that the statements contained in this Article III are true and correct except as set forth in the CenturyLink SEC Documents filed and publicly available after January 1, 2010 . . . or in the disclosure letter delivered by CenturyLink to Qwest at or before the execution and delivery by CenturyLink and Merger Sub of this Agreement The CWA maintains that a similar caveat by Qwest appears at the beginning of Article IV of the merger agreement. Accordingly, Articles III and IV contain representations that can be contradicted or nullified by information contained in the non-public disclosure letters. The CWA argues that the true nature of the merger agreement cannot be known without access to the non-public attachments, and urges that the production of those documents be compelled.

In their response in opposition to the Motion to Compel, the Joint Petitioners indicated that the information responsive to this request consists of due diligence letters prepared for Qwest and CenturyLink as a basis for their consideration of approval of the merger. They contend that the letters contain attorney-client privileged information, information concerning third parties that they are prohibited by law or contract from disclosing, and one note describing a new product line. They maintain, without further explanation, that "this information is extraordinarily sensitive information which would cause irreparable harm to the Joint Petitioners if improperly used or disclosed."³² However, Joint Petitioners stated that they would be prepared to produce copies of these documents (with privileged information, third-party information, and the product line notation redacted) under the "outside counsel/outside experts" designation they urge in their Motion for Supplemental Protective Order.

The Administrative Law Judge concludes that the information sought in CWA 3 is reasonably calculated to lead to the discovery of information that is relevant to the issues raised in this proceeding. Because Qwest and CenturyLink are asking for approval of the transaction, it is logical that the entire merger agreement (except material appropriately deemed privileged) should be produced in order for the Commission and the parties to understand the full nature of that agreement. As discussed in further detail below, the information provided shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate.

Presentations to Boards of Directors and Other Documents (CWA Information Requests 5 and 6)

In Requests 5 and 6, the CWA sought information relating to specific presentations that were made to the Joint Petitioners' Boards of Directors and other documents that were referenced in the Joint Petitioners' proxy statement filed with the Securities and Exchange Commission:

CWA 5. To the extent not provided in the Hart-Scott-Rodino filings, please provide all materials developed by or for CenturyTel and/or Qwest for presentation to their respective Board of Directors and the separate

³² Joint Petitioners' Response to Motions to Compel at 14.

Qwest Transaction committee (including backup documentation and underlying computations), and notes taken at the following meetings, as identified in the June 4, 2010 CenturyLink S-4 filing:

- a) The November 18, 2009 CenturyLink Board of Directors meeting (p. 34).
- b) Mr. Post's January 9, 2010 communication with CenturyLink Board of Directors (p. 34).
- c) The January 19, 2010 CenturyLink Board of Directors [sic] (p. 34).
- d) The February 17 and 18, 2010 Qwest Board of Directors meeting (p. 34).
- e) The February 23, 2010 CenturyLink Board of Directors meeting (p. 35).
- f) The March 15, 2010 joint special meeting of the Qwest Board of Directors and transaction committee, including the presentations by Mr. Mueller and Lazard (p. 36).
- g) The March 18, 2010 Qwest Board of Directors meeting, including management's updated presentation regarding Qwest's long-range plan (p. 36).
- h) The March 22, 2010 meeting of the Qwest Board of Directors transaction committee, including the presentation by Lazard (p. 36).
- i) The March 29, 2010 meeting between the Qwest transaction committee and representatives of Perella Weinberg (p. 37).
- j) The March 31, 2010 meeting of the Qwest Board of Directors and Qwest senior management, including reports by Mr. Mueller and Qwest management (p. 37).
- k) The April 1, 2010 meeting between the Qwest transaction committee and representatives of Perella Weinberg, including Perella Weinberg's report (p. 37).
- l) The April 4, 2010 meeting between the Qwest transaction committee and representatives of Perella Weinberg, including any Perella Weinberg report (p. 37).
- m) The April 5, 2010 meeting of the Qwest Board of Directors, including the Perella Weinberg presentation and the report that Lazard provided to the Board prior to this meeting (p. 37-38).

- n) The April 5, 2010 telephone conversation between members of the Qwest transaction committee and Mr. Mueller (p. 38).
- o) The April 12, 2010 meeting of the CenturyLink Board of Directors (p. 38).
- p) The April 14 and 15, 2010 meeting of the Qwest Board of Directors, including Qwest management's update and Qwest's financial advisors "detailed presentation of the strategic rationale for the proposed combination with CenturyLink, including potential opportunities for synergies" (p. 39).
- q) The April 19, 2010 meeting between Patrick J. Martin (Qwest's lead independent director and chairman of the transaction committee) and Mr. Post (p. 39).
- r) The April 19, 2010 meeting of the CenturyLink Board of Directors, including management's detailed review of their "due diligence findings" and "various sensitivity analyses," CenturyLink's financial advisors' review of "the potential impact of the transaction," and Mr. Post's report (p. 39).
- s) The April 21, 2010 meeting of the CenturyLink Board of Directors, including any reports or analyses from its senior management and its financial advisors (p. 40).
- t) The April 21, 2010 meeting of the Qwest Board of Directors, including any reports or analyses from its senior management and its financial advisors (p. 40).

CWA 6. To the extent not provided in the Hart-Scott-Rodino filings, please provide copies of all materials developed in preparation for or exchanged at, and notes taken at the following meetings or telephonic conversations, as described in the S-4:

- a) The Qwest management September 2009 "periodic review and assessment of Qwest's financial strategic alternatives" (p. 33).
- b) The October 2, 2009 meeting between Glen F. Post, III and Edward A. Mueller (p. 34).
- c) The November 11, 2009 meeting between CenturyLink and Qwest senior management teams (p. 34).
- d) November and December 2009 telephone conversations between Mr. Post and Mr. Mueller (p. 34).

- e) The December 20 and December 21, 2009 meetings between Mr. Post and Mr. Mueller (p. 34).
- f) The telephone conversation occurring "on or about February 26, 2010" between Mr. Post and Mr. Mueller (p. 35).
- g) The March 2, 2010 discussion between Mr. Post and Mr. Mueller (p. 35).
- h) The March 5, 2010 meeting between certain of CenturyLink's financial advisors and representatives of Qwest's financial advisor, Lazard (p. 35).
- i) The March 8, 2010 communication between certain of CenturyLink's financial advisors and Lazard (p. 35).
- j) The March 8, 2010 communication between Mr. Post and Mr. Mueller (p. 35).
- k) The "non-public information" exchanged by CenturyLink and Qwest as "part of their respective due diligence investigations" (p. 35).
- l) The March 11, 2010 Qwest senior management presentation to members of CenturyLink's senior management (p. 35).
- m) The March 12, 2010 telephone call from Mr. Post to Mr. Mueller (p. 35).
- n) The March 16, 2010 telephone conversation among Lazard, Deutsche Bank and Morgan Stanley (p. 36).
- o) The March 23, 2010 presentation by members of Qwest senior management to members of CenturyLink senior management and CenturyLink financial advisors (p. 37).
- p) The March 26, 2010 discussion between Mr. Post and Mr. Mueller (p. 37).
- q) The April 1, 2010 meeting between the senior management of Qwest and CenturyLink, including CenturyLink's presentation to Qwest management and its financial advisors (p. 37).
- r) The telephone calls and in-person meetings during the week of April 5, 2010 among experts for Qwest and CenturyLink to discuss various due diligence matters (p. 38).
- s) The April 7, 2010 discussion between Mr. Post and Mr. Miller (p. 38).

- t) The April 8, 2010 discussion between Mr. Post and Mr. Miller (p. 38).
- u) The April 9, 2010 discussion between Mr. Post and Mr. Miller (p. 38).
- v) The April 12, 2010 discussion between Mr. Post and Mr. Miller (pp. 38-39).

The Joint Petitioners initially objected to CWA-5 and CWA-6 on the ground that the request for "all" documentation relating to the referenced items is overly broad, unduly burdensome and excessively time consuming. They also objected to the requests insofar as the information requested is highly confidential, commercially sensitive information, and claimed that the release of the information would cause irreparable harm if the provisions of the current Protective Order are not revised. Finally, they contended that the substance of the referenced meetings is accurately and fairly disclosed in the S-4 and amended S-4 filings that were made on July 16, 2010, and alleged that "risking disclosure or misuse of this most sensitive information is not required in order to provide the Commission with full and fair information concerning the consideration of the proposed merger."

The CWA contends that the documents requested in Information Requests 5 and 6 appear to reflect critical points of analysis and decision that contributed to the Joint Petitioners' decision to enter into the merger agreement and may disclose the expectations and analyses of the officers and directors of CenturyLink and Qwest concerning the financial effects of the transaction; anticipated synergy savings; changes to pricing or service quality; integration processes and timelines; and other relevant aspects of the proposed transaction. CWA contended that it is evident from the summaries in the proxy statement filed with the SEC that the documents are relevant to such issues as financial fitness, synergy savings, and operational systems integration. It asserted that the Joint Petitioners are required to produce the full documents and not merely summaries. In response to CWA's Motion to Compel, the Joint Petitioners continue to argue that these inquiries are overreaching, burdensome and unnecessary in light of the information that has already been disclosed in the S-4. They contend that the CWA has not demonstrated the potential relevance of these requests to the issues in this proceeding, and assert that the requests are merely a "fishing expedition."

The Administrative Law Judge concludes that CWA Information Requests 5 and 6 are reasonably calculated to lead to the discovery of admissible evidence because the requested documents contain information that bears on (or could lead to other matter that could bear on) whether the post-merger company would have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota, and potential effects of the transaction upon Minnesota consumers and competitors. However, both requests are overly broad and unduly burdensome with respect to (1) the request for "all materials" relating to the described events, since that request potentially would encompass drafts that were ultimately not used, and (2) the request for all notes taken at the specified meetings or during the specified telephone conversations, since compliance with that request would necessitate approaching each

attendee or participant to obtain their informal notes. Therefore, the Motion to Compel is granted only with respect to production of the final version of materials developed by or for CenturyTel and/or Qwest for presentation to their respective Board of Directors and the separate Qwest Transaction committee or exchanged on the specified dates and by the specified individuals (including backup documentation and underlying computations); and formal minutes or reports relating to the specified meetings or conversations. As discussed in further detail below, the information provided shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate.

Financial Models and Forecasts (CWA Information Requests 4 and 15)

CWA's Information Requests 4 and 15 sought certain information relating to financial forecasts for the Joint Petitioners after the merger:

CWA 4. Please provide fully enabled copies of any computer spreadsheet models, developed by or for CenturyLink and/or Qwest, projecting the future operating and financial prospects of the combined firms.

CWA 15. The CenturyLink S-4, at page 95, presents a summary of an internal financial forecast prepared by Qwest management for Qwest on a standalone basis, for the years 2010 through 2013. To the extent not previously furnished, please provide full copies of the spreadsheet models, analyses and backup documents and calculations for these forecasts.

The Joint Petitioners objected to CWA-4 and CWA-15 on the grounds that the information sought is highly confidential, commercially sensitive information the release of which would cause irreparable harm to CenturyLink and/or Qwest. They also asserted that the CWA's request in CWA-4 for "any" computer spreadsheet models was overly broad and unduly burdensome. Qwest further maintained that the internal financial forecasts requested in CWA-15 "were not prepared with the assistance of, or reviewed, compiled or examined by, independent accountants," and "were not prepared with a view toward public disclosure [or] . . . with a view toward compliance with published guidelines of the SEC, the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial forecasts, or GAAP." Accordingly, Qwest argued that "information beyond what was provided in the S-4 and amended S-4 statement is not relevant or helpful to the Commission's consideration of the proposed transaction."

The CWA asserted that the requested information is relevant to show the financial effects of the merger and explained that it seeks fully-enabled electronic spreadsheet files rather than printed copies because the electronic files would allow the parties to evaluate the underlying assumptions and formulas used in the model. The CWA acknowledged that the financial models are highly confidential and noted that it did not object to their designation as such under the Protective Order. While the Joint Petitioners are willing to provide outside counsel and outside experts with copies of the financial documents that were shared with the Boards of Directors and are relevant to the proceeding, they objected to providing a fully-enabled computer tool. They contend that the electronic version would not be relevant because it would contain information and manipulations that were not provided to the Boards of Directors or officers.

The Administrative Law Judge is persuaded that CWA Information Requests 4 and 15 are reasonably calculated to lead to the discovery of admissible evidence. It is evident that the requested information is relevant to whether the post-merger company would have the financial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota. Because the issues in this proceeding include the financial effects of the merger and not merely what the directors and officers of the Joint Petitioners were told,

the CWA's request for a fully-enabled electronic version of the spreadsheet files is reasonable to permit discovery of the assumptions and formulas used in preparation of the forecasts. As discussed in further detail below, the information provided shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate.

Projected Free Cash Flow and Dividend Policy (CWA Information Request 24)

CWA's Information Request No. 24 sought information relating to the merged companies' free cash flow and expected dividend policy:

CWA 24.³³ Regarding the "Strategic Considerations" cited under the CenturyLink Board of Directors' "Reasons for the Merger," the CenturyLink S-4 at page 41 lists as one of the "significant strategic opportunities" provided by the proposed merger, "the expectation that the combined company will have a strong financial profile, with unadjusted pro forma 2009 revenues of \$19.8 billion and free cash flow of \$3.4 billion, anticipated positive impacts on CenturyLink's free cash flow per share upon the closing of the proposed merger (exclusive of integration costs), a sound capital structure, and an improved payout ratio with no anticipated change in CenturyLink's policy of returning significant dividends to shareholders . . ."

- a) Please provide any documents, analyses, models or notes not already furnished, regarding the projected free cash flow of the combined companies and why that obviates any anticipation of a change in CenturyLink's policy of returning significant dividends to shareholders.
- b) Has CenturyLink evaluated the circumstances under which a reduction in dividends might be indicated? If yes, please explain.
- c) Has CenturyLink performed any sensitivity analyses of the project performance of the combined companies as such performance could impact the sustainability of CenturyLink's dividend policy? If yes, please explain and please provide copies of any such analyses.

CenturyLink objected to CWA-24 on the grounds that the request for specific information regarding CenturyLink's future dividends is not relevant to the subject matter of this proceeding or reasonably calculated to lead to the discovery of admissible evidence. CenturyLink further objected on the grounds that the information requested is highly confidential, competitively sensitive information the release of which would cause irreparable harm.

³³ During the motion argument, the CWA acknowledged that its motion papers contained a typographical error and clarified that its Motion to Compel related to Request No. 24, not 25.

The CWA argues that the information requested in CWA-24 is directly related to the financial fitness of the proposed acquiring company, whether it will be able to maintain its investment grade bond rating, and how it will weigh its obligations to the public as opposed to the desires of its shareholders and related issues. The CWA contends that these Information Requests are relevant to the financial fitness of CenturyLink and will permit the Commission to evaluate whether Qwest will suffer financial harm as a result of the transaction. It asserts that an examination of the financial information developed by Qwest and CenturyLink and presented to their boards during the timeframe when the decision to enter into the transaction was made is an appropriate starting point for the assessment of the financial effects of the merger.

The Joint Petitioners assert that the information responsive to CWA-4 and CWA-15 contains extremely detailed analysis and information about the Joint Petitioners' projected financial situation, and that disclosure of this information to competitors and other adversaries would potentially jeopardize their ability to execute their business plans and compete effectively. However, they indicated that, if the information were disclosed only to the parties' outside counsel and outside experts as proposed in their Motion for Supplemental Protective Order, the information would be adequately protected. In any event, Joint Petitioners argued that they should not be required to produce "fully enabled" copies of computer spreadsheets. They noted that the spreadsheets reflect the actual information provided to the board and maintain that the CWA has not demonstrated any need to obtain "fully enabled" electronic versions that could be manipulated by CWA or other parties.

With respect to CWA-24, the Joint Petitioners argue that whether CenturyLink pays a dividend, the amount of the dividend, and the effect of the merger on the dividend "are matters between CenturyLink and its shareholders" and contend that CenturyLink's dividend policy is irrelevant to any of the issues delineated by the Commission in the Notice of Hearing.

The Administrative Law Judge concludes that the information requested in CWA Information Request No. 24 is relevant to whether the post-merger company would have the financial resources to enable the Operating Companies to continue providing reliable, quality telecommunications services in Minnesota and, as such, is reasonably calculated to lead to the discovery of admissible evidence. As discussed in further detail below, the information provided shall be governed by the Protective Order previously entered in this case on June 15, 2010, and the attached Supplemental Protective Order, as appropriate.

Protective Order Issues

Protective Order Currently in Place

The Protective Order that is now in effect in this proceeding was issued by the Commission on June 15, 2010, when the Notice of and Order for Hearing was issued, and was the result of negotiations between the Joint Petitioners and the Department of Commerce. It is very similar to the other Protective Orders that generally have been issued in telecommunications proceedings in Minnesota.

The Protective Order has two categories of protection for "Trade Secret Information" and "Highly Sensitive Trade Secret Information." Trade Secret Information is defined as data that is the subject of reasonable efforts to maintain its secrecy and "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use."³⁴ The Protective Order limits access to Trade Secret information to: "(1) attorneys employed or retained by the party in the Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in the Proceedings; (3) only those employees of the party who are directly involved in these Proceedings, provided that no such employee is engaged in the sale or marketing of that party's products or services."³⁵

Highly Sensitive Trade Secret Information is described in the Protective Order as including "information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies."³⁶ A party is authorized to designate "certain competitively sensitive" trade secret information as Highly Sensitive Trade Secret Information based upon a good faith determination that the party "would be competitively disadvantaged by the disclosure of such information to its competitors."³⁷ The Protective Order indicates that the designation must be limited to "information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section."³⁸ The Order permits disclosure of Highly Sensitive Trade Secret Information to "(1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Sensitive Trade Secret Information; (2) three in-house experts; and (3) a reasonable number of outside counsel and outside experts."³⁹ The Protective Order further requires that Highly Sensitive Trade Secret Information "may not be disclosed to persons engaged in strategic or competitive decision making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party."⁴⁰

³⁴ Minn. Stat. § 13.37, subd. 1(b); June 15, 2010, Protective Order at 2, 5.

³⁵ June 15, 2010, Protective Order at 3.

³⁶ *Id.* at 7.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 8.

The June 15, 2010, Protective Order contains a small company exception for companies with less than 5,000 employees that permits disclosure of Trade Secret Information and Highly Sensitive Trade Secret Information to (1) the company's counsel or, if not represented by counsel, a member of the company's senior management; (2) the company's employees and witnesses; and (3) independent consultants acting under the direction of the company's counsel or senior management" who are directly engaged in the proceeding.⁴¹ However, the Order specifies that such persons "do not include individuals primarily involved in marketing activities for the company" unless prior authorization from the party producing the information is obtained or the Administrative Law Judge or Commission so orders.⁴²

Joint Petitioners' Motion for Supplemental Protective Order

The Joint Petitioners indicated in their Response to the Integra and CWA Motions to Compel as well as in their separate Motion for a Supplemental Protective Order that their primary objection to the Integra and CWA Information Requests involved in these Motions to Compel is that much of the information sought⁴³ contains extremely sensitive proprietary business and competitive information that "goes to the heart of Joint Petitioners' financial status and market strategies."⁴⁴ The Joint Petitioners maintain that disclosure of such information is not sufficiently protected by the Protective Order that is currently in place. Specifically, the Joint Petitioners maintain that if the information responsive to the Integra and CWA Information Requests is disseminated to competitors or other adversarial intervenors in this docket without further protections, those parties will have knowledge of Joint Petitioners' most confidential commercial strategies. They point out that, under the current Protective Order, in-house counsel, in-house experts, and officers and employees of companies falling within the small company exception would have access to the information. In the view of the Joint Petitioners, the fact that many of the Intervenor fall within the small business exception to the current Protective Order creates an unreasonably high potential for inadvertent or intentional misuse of the information they provide.

The Joint Petitioners allege that, even if the designated individuals are not involved in marketing or competitive decision-making at the present time, there is no assurance that these employees do not have an indirect role in those areas or that they will not become involved in those areas in the future. They further argue that no adequate recourse would be available if sensitive information was disclosed in violation

⁴¹ *Id.* at 10.

⁴² *Id.* at 10 (emphasis in original).

⁴³ In Attachments 1 and 2 to the Joint Petitioners' Response to the Motions to Compel filed by the CWA and Integra, CenturyLink briefly describes 27 HSR documents that it believes should be restricted to disclosure to parties' outside counsel and outside experts only, and 12 HSR documents it believes should be restricted to disclosure to DOC and Commission staff only, upon request. In Attachment 3, Qwest listed its HSR documents with a column designating the confidential category of each document. Of the documents on Qwest's list, 33 were identified as involving Trade Secret Information; 42 were identified as involving Highly Sensitive Trade Secret Information; and 6 were identified as requiring "Staff Eyes Only" protection. The Joint Petitioners contended in their Motion for Supplemental Protective Order that the majority of the documents responsive to the remainder of CWA's Information Requests involved in the Motion to Compel should be restricted to disclosure to outside counsel and outside experts. Motion for Supplemental Order at 6.

⁴⁴ Motion for Supplemental Protective Order at 2.

of the Protective Order. They contend that the requirement in the First Prehearing Order that discovery responses be served on all parties to the proceeding will compound the potential for harm, and allege that the harm they will experience by virtue of disclosure will far exceed the value of the information to the Intervenor's limited interest in this case.

To address these concerns, Joint Petitioners argued that two additional categories of protection should be added to the Protective Order previously issued by the Commission in this matter: a "Staff Eyes Only" category that would be disclosed only to the DOC and the Commission staff upon request; and an "outside counsel/outside expert" category that would permit disclosure only to the DOC, Commission staff, and the designated outside counsel and outside expert of other parties. The Joint Petitioners asserted that these additional protections are necessary to adequately protect the information requested by CWA and Integra, as well as similar information that may continue to be requested in discovery in this proceeding. They proposed that the "outside counsel/outside expert" category apply to "information that discloses highly sensitive and specific financial metrics and current and projected business and operational plans and analyses of the Joint Petitioners and of the merged company."⁴⁵ They believe that this category would provide adequate protection for much of the information encompassed in the CWA and Integra Motions to Compel, but contend that some of the information would require the more restrictive SEO protection, such as analyses of competition in the Joint Petitioners' markets and for the merged company, the merged companies' future strategic plans to meet that competition, and specific information relating to the development and rollout of new products.⁴⁶ Joint Petitioners anticipate that the "SEO" category would include "a limited subset of the HSR Documents" that "disclose how Joint Petitioners compete or intend to compete in the market, including information relating to Joint Petitioners' plans for product development, product rollout, and the development of competitive responses."⁴⁷ They contend that the additional SEO protection would allay Joint Petitioners' concerns that disclosure to competitors and adversaries would place them at a competitive disadvantage. They further argue that DOC and Commission staff would be in the best position to determine if this information is relevant to the Commission's analysis.

Integra, the CWA, the CLEC Coalition, Sprint, T-Mobile, and Cbeyond opposed modification of the Protective Order that is already in place in this proceeding. They argued that the same type of protective order has been successfully used in several previous dockets and provides adequate safeguards for confidential or highly sensitive documents. They emphasized that the Joint Petitioners themselves proposed the Protective Order that was entered in this case. They asserted that the limitations sought by the Joint Petitioners would adversely affect due process and open meeting requirements. Moreover, Integra asserts that the Joint Petitioners have merely made generalized allegations of potential harm and have not borne their burden to show specific evidence of the potential for serious injury that would stem from disclosure of the documents. Sprint expressed a similar view during the motion argument and indicated that there is no need to supplement or change the Protective Order, and no

⁴⁵ Motion for Supplemental Protective Order at 6.

⁴⁶ Joint Petitioners' Response to Integra and CWA Motions to Compel at 13.

⁴⁷ *Id.* at 7.

reason to conclude that it will fail in this situation. The CLEC Coalition supported the motions to compel production of the HSR documents and argued that restricting access to outside counsel and outside experts would defeat the ability of the Coalition to engage in a meaningful review of those documents. It also noted that Qwest and many other parties have produced extremely sensitive competitive information under the terms of the Protective Order that is currently in effect without any reported problems. If further limitations are placed on access, the CLEC Coalition indicated that it would not object to limiting access to outside counsel, outside consultants, in-house counsel, and no more than three non-attorney in-house regulatory personnel. During the September 8, 2010, motion argument, the CWA indicated that no in-house person at CWA has signed or will sign the Protective Order acknowledgments in this proceeding, so the only CWA representatives who will have access to any type of confidential information will be outside counsel and one outside consultant.⁴⁸

Dr. Kevin O'Grady, who has been with the Commission since 1996, commented during the motion argument that the Commission has a long history of dealing with very sensitive information and he is not aware that any breaches of the standard Protective Orders issued in the telecommunications area have occurred. He noted that the Commission staff finds it beneficial if counsel and employees of the parties who have greater expertise are able to provide their analysis and evaluation of the information involved in pending cases and thereby assist them in understanding the various facets of the case.⁴⁹

CenturyLink's request that the SEO designation be added to the protective order has been denied in parallel proceedings in Washington,⁵⁰ Oregon,⁵¹ and Arizona.⁵² To the knowledge of the parties and the Administrative Law Judge, the only exception is in Colorado, where the SEO designation was added on an interim basis.⁵³ At the request of Joint Petitioners, protective orders that have been issued in Washington, Oregon, Colorado, and Montana have restricted the disclosure of "highly confidential" information to parties' outside counsel and outside experts. However, the Administrative Law Judge

⁴⁸ Transcript of September 8, 2010, Motion Argument at 30.

⁴⁹ Transcript of September 8, 2010, Motion Argument at 49.

⁵⁰ Order Denying Joint Applicants' Request to Supplement Protective Order with Creation of Additional Protected Category of Information in *In the Matter of the Joint Application of Qwest Communications International Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.*, Docket UT-100820 (Aug. 3, 2010) (attached to CWA's Motion to Compel as Ex. 5), at 8-

⁵¹ Highly Confidential Protective Order in *In the Matter of CenturyLink, Inc., Application for Approval of Merger between CenturyLink and Qwest Communications International, Inc.*, Docket UM 1484, Order No. 10-291 (July 30, 2010)

⁵² Procedural Order of Administrative Law Judge issued in *In the Matter of the 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 Communications International Inc., and CenturyTel, Inc.*, Docket No. T-01051B-10-0194 et al. (Aug. 23, 2010) (attached to August 24, 2010, letter from counsel for Integra).

⁵³ Interim Order (1) Granting Motion for Protective Order on an Interim Basis and Shortening Response Time Thereto; and (2) Shortening Response Time to Motion to Amend in *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC and Qwest LD Corp.*, 10A-350T (Sept. 3, 2010).

presiding in the parallel proceeding in Arizona recently denied the request of Qwest and CenturyLink to limit review of documents designated as "Highly Confidential" to outside counsel and outside consultants. Judge Martin determined that the suggested approach was "untenable in this situation involving multiple jurisdictions, multiple entities, in-house counsel, local counsel and regional counsel" and noted that restricting access to a very limited number of individuals "may prevent the intervenors from being able to develop and advocate their positions." She concluded that Qwest and CenturyLink had not adequately demonstrated that the protections afforded by the "Confidential" and "Highly Confidential" designations typically used in Arizona protective orders were insufficient, and emphasized that the "Highly Confidential" designation in prior Arizona Commission protective orders required that individuals reviewing the information not be engaged in strategic or competitive decision making for any party including the sale or marketing or pricing of products or services on behalf of any party. She found that this protection was adequate and that an exception for small companies was not needed because a majority of the intervenors in that proceeding were Arizona Class A utilities.⁵⁴

The Administrative Law Judge finds that Integra and the CWA have demonstrated their need for the requested information, particularly because the Joint Petitioners' responses to other Information Requests designed to obtain information about the impact of the merger have lacked detail and substance. This view is supported by prefiled testimony filed on behalf of the Department of Commerce noting that "CenturyLink's [discovery] responses do not appear to be adequately detailed or complete to allow clear analysis for the Commission of the impact of the merger on wholesale customers."⁵⁵ After considering the parties' arguments, the Administrative Law Judge concludes that the Joint Petitioners have not demonstrated a need for the unprecedented limitations on disclosure they have proposed. The practical effect of the limitations they seek would deprive the private party Intervenor and their counsel and experts of any opportunity whatsoever to review documents designated as "SEO," and would limit review of information designated "outside counsel/outside party" in a fashion that would prevent outside attorneys and outside experts from consulting with the party that retained them about what, if any, significance the information has in this proceeding. It would be unreasonable to limit outside counsel and outside experts in this fashion, and would hinder their ability to effectively represent their clients. Moreover, as emphasized by Commission staff, private party Intervenor have significant expertise, play an important role in developing the evidentiary record, and provide valuable input for the Commission's consideration.

Although the Joint Petitioners have not shown that the extreme limitations on disclosure sought in their Motion are warranted, they have adequately demonstrated that they have legitimate concerns about the potentially broad disclosure of certain documents to employees of companies that fall within the Small Company exception set forth in Section 4 of the current Protective Order. During the motion argument, there was general agreement that a number of the Intervenor in the current proceeding

⁵⁴ *Id.* at 3-4. Judge Martin's Procedural Order was limited in scope to the form of the protective order to be imposed and did not address further arguments made by Qwest and CenturyLink that certain documents were irrelevant and should be excluded from discovery.

⁵⁵ Direct Testimony of Bruce L. Linscheid at 18.

would fall within that exception.⁵⁶ It appears that all of the Intervenors involved in this case are represented by outside counsel,⁵⁷ so the terms of the June 15, 2010, Protective Order permitting disclosure to a member of the company's senior management if the company is not represented by counsel would not come into play. However, the Small Company exception in the June 15 Protective Order would more broadly permit disclosure to "the company's employees and witnesses" who are "not primarily involved in marketing activities for the company" (unless the parties agree otherwise or the Commission or Administrative Law Judge so orders). The Joint Petitioners have shown that the potential dissemination of the information responsive to the CWA and Integra Motions to Compel to this broad a segment of their competitors' workforce could be problematic in light of the extremely sensitive nature of this information.

Under the circumstances, in order to strike an appropriate balance between the Intervenors' need for the information and Joint Petitioners' confidentiality concerns, the Administrative Law Judge has determined that it is appropriate to grant the Joint Petitioners' Motion in part and issue a Supplemental Protective Order which will apply where appropriate to documents produced in response to this Ruling on the Integra and CWA Motions to Compel. The Supplemental Protective Order, which is attached hereto, modifies the Small Company exception set forth in Section 4 of the June 15 Protective Order along the lines of the alternative approach suggested by the CLEC Coalition. It also takes into consideration that the small companies involved in this proceeding are represented by outside counsel and deletes the language that would otherwise permit a member of the company's senior management to review the information. Accordingly, where small companies are concerned, the attached Supplemental Protective Order will limit disclosure of the information designated as "Highly Sensitive Trade Secret Information Subject to Additional Protection" produced in response to the Integra and CWA Motions to Compel to a reasonable number of outside attorneys; a reasonable number of outside consultants; a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Sensitive Trade Secret Information; and no more than three non-attorney in-house regulatory personnel. The Supplemental Protective Order will continue to specify that such persons should not be primarily involved in marketing activities for the company, absent agreement or an order to the contrary.

The Administrative Law Judge is not persuaded that the Joint Petitioners have demonstrated a need to change the approach set forth in Section 3 of the June 15 Protective Order governing disclosure to companies that do not fall within the Small Company exception. Section 3 restricts disclosure to in-house attorneys, three in-house experts, and a reasonable number of outside counsel and outside experts, and clearly prohibits disclosure to persons engaged in strategic or competitive decision making for any party. The Administrative Law Judge concludes that this portion of the June 15 Protective Order already includes adequate protection for the information produced in response to this Order.

Propriety of Restrictions on Disclosure to CWA Representatives

⁵⁶ Transcript of September 8, 2010, Motion Argument at 55-56.

⁵⁷ *Id.* at 53-54.

In their response to the Motions to Compel and their Motion for Supplemental Protective Order, the Joint Petitioners urge that CWA's outside counsel, Scott Rubin, and CWA's outside expert witness, Randy Barber, not be permitted to have access to the information produced in response to the Integra and CWA Motions to Compel under any circumstances due to their past conduct in Oregon and Pennsylvania. Joint Petitioners do not object to CWA's local Minnesota counsel having access to the information upon execution of the appropriate certificate.

The Joint Petitioners' request is based primarily on an order issued on August 30, 2010, by Hearing Commissioner Ronald J. Binz in Colorado's proceeding involving the Qwest/CenturyLink merger.⁵⁸ Commissioner Binz granted the Joint Petitioners' request to prohibit disclosure of confidential information to Mr. Rubin or Mr. Barber and ruled that the disclosure to the CWA of all ordinarily confidential and highly confidential information in the Colorado proceeding would be limited to Nicholas Enoch (a Colorado attorney), provided he signed the appropriate non-disclosure agreements. In reaching his determination, Commissioner Binz took note of decisions issued in May and October of 2009 by the Washington and Oregon Commissions involving Mr. Rubin and/or Mr. Barber and indicated that he was "especially concerned about repeated and recent violations of protective orders by a licensed attorney, in dockets similar to this one, and the risk of the same occurring here."⁵⁹

In the Washington case,⁶⁰ the State Utilities and Transportation Commission on its own motion dismissed the International Brotherhood of Electrical Workers as a party in an asset transfer proceeding involving Embarq and CenturyTel. Mr. Rubin represented the IBEW in that matter. The decision does not mention whether Mr. Barber was involved in that proceeding. In that case, the IBEW entered into a side-agreement with CenturyTel and Embarq in which the companies made a series of labor relations concessions in exchange for the union's agreement to withdraw from state and federal regulatory proceedings and acknowledge that the merger met applicable standards.⁶¹ The Washington Commission expressed concern about IBEW "and its counsel," noting that, "[d]espite IBEW's representations at prehearing that it would keep labor relations out of this case, and its unreasoned argument later that it did so," it was evident that the IBEW had nevertheless "used its status as a party in this proceeding principally, if not exclusively, to extract labor concessions from the Applicants."⁶² The Washington Commission indicated that this "undermines the credibility of counsel who

⁵⁸ Interim Order of Colorado Hearing Commissioner Ronald J. Binz Addressing Motions for Protective Order and Related Proceedings in *In the matter of the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC and Qwest LD Corp.*, 10A-350T (Aug. 30, 2010) (attached to Joint Petitioners' Response to Motion to Compel as Attachment 5).

⁵⁹ *Id.* at 7-8.

⁶⁰ Final Order of Washington State Utilities and Transportation Commission Approving and Adopting Settlement Agreement; Authorizing Transaction Subject to Conditions; Rescinding Order 03; Approving and Rejecting Side-Agreements; Granting and Denying Pending Requests for Leave to Withdraw; and Dismissing Party in *In the Matter of the Joint Application of Embarq Corp. and CenturyTel, Inc. For Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc.*; UT-082119 (May 28, 2009).

⁶¹ *Id.* at 23.

⁶² *Id.* at 24.

made representations to the tribunal that were disingenuous at best.”⁶³ The Commission ultimately rejected the side-agreement between the IBEW and the applicants because it concerned only matters that were outside the Commission’s jurisdiction and inappropriate to the proceeding; denied the IBEW’s request for leave to withdraw voluntarily; and dismissed IBEW from the proceeding because it had no substantial interest in the subject matter of the proceeding and its participation was not in the public interest.⁶⁴

In the Oregon case,⁶⁵ the Public Utility Commission terminated the participation of the IBEW and revoked its party status in a case involving a Verizon/Frontier merger. The decision was based in part on a finding that the IBEW provided information it had obtained from a highly confidential document in the Oregon proceeding to the Pennsylvania Public Utilities Commission and, in so doing, disclosed that information and made it publicly available. Although the Oregon Commission found that the IBEW did not provide the Pennsylvania Commission with the highly confidential documents themselves, it concluded that the IBEW violated the applicable protective order by giving access to information reflecting the contents of those documents. The Oregon Commission also found that IBEW attempted to use the regulatory process to gain information on matters outside the scope of the proceeding by requesting data on labor-related matters. Mr. Rubin was outside counsel in that matter and Mr. Barber was an outside expert. The Oregon Commission also ruled that a copy of the order would be given to the Oregon State Bar and the Pennsylvania State Bar for possible disciplinary action.

The CWA opposed the request to limit access by Mr. Rubin and Mr. Barber. It indicated that the Colorado order was issued prior to the filing of CWA’s response to the Joint Petitioners’ motion in that case, and stated that it has recently sought reconsideration of that order. According to the CWA’s reply brief and Mr. Rubin’s presentation during the motion argument on September 8, 2010, Mr. Rubin received access during the Oregon proceeding to a document in which each page was stamped “Highly Confidential.” A footnote on a page of particular interest to Mr. Rubin listed the source of the information on that page as coming from public filings with the U.S. Securities and Exchange Commission. Mr. Rubin thereafter filed a pleading in the Pennsylvania PUC proceeding involving the Verizon-Frontier transaction in which he indicated that Verizon had a document in its possession showing that a small group of its stockholders would own more than 20 percent of Frontier if the transaction was consummated. The pleading included an affidavit from Mr. Barber, which Mr. Barber prepared only after Mr. Rubin provided him with a legal opinion that there would be no violation of the Oregon protective order because no confidential information was being used or disclosed. Mr. Rubin emphasized that the pleading he filed in Pennsylvania disclosed only public information contained within a document marked highly

⁶³ *Id.* at 25.

⁶⁴ *Id.* at 27, 29, 30, 31

⁶⁵ Order of Oregon Public Utility Commission Granting Motion, Terminating Intervenor Participation, and Revoking Party Status in *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation, Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, UM 1431 (Oct. 14, 2009) (attached to Joint Petitioners’ Response to Motion to Compel as Attachment 4).

confidential. He acknowledged that he made an error in interpreting the Oregon protective order as protecting confidential information, and not the mere existence of a confidential document, and indicated that he would not make that mistake again. Because Mr. Barber simply relied on erroneous legal advice, the CWA argues that he did nothing wrong and should not be precluded from access to documents.

The CWA asserts that neither Verizon nor Frontier took any action to remove Mr. Rubin or Mr. Barber from the other three state proceedings in which they were actively participating at the time, and did not attempt to restrict their access to HSR or other confidential documents in those states. Mr. Rubin stated that he will not make the same mistake again, and asked that producing parties be required to provide public redacted copies of each allegedly highly confidential document. The CWA also argued that the challenge to Mr. Rubin and Mr. Barber having access to highly confidential information is untimely since the Joint Applicants did not raise objections to Mr. Rubin or Mr. Barber seeing confidential documents within three days of their filing of signed Protective Order acknowledgments.

The conduct of the union and counsel reflected in the Washington and Oregon decisions raises concerns and cannot be condoned. However, the Administrative Law Judge is not persuaded that these decisions warrant excluding Mr. Rubin or Mr. Barber from being permitted to review confidential information produced in this docket. The Washington decision did not allege that Mr. Rubin mishandled confidential information, and there is no indication that Mr. Barber was involved in that case. Although the Oregon Commission found that a violation of its protective order had occurred because the IBEW (through the filing of a pleading by Mr. Rubin and an affidavit by Mr. Barber) had disclosed the existence of a highly confidential document in a parallel Pennsylvania proceeding, it appears that the information that was actually disclosed from that document was derived from public sources. Mr. Rubin acknowledged that he erred in his interpretation of the Oregon protective order, and it appears that Mr. Barber (a non-attorney) merely relied on his erroneous advice. Under the circumstances, the Joint Petitioners' request to preclude Mr. Rubin and Mr. Barber from reviewing the confidential information is denied.

B. L. N.



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September 21, 2010

To All Parties as Listed on the E-Docket **BY EFILING, EMAIL AND U.S. MAIL**
Service List

Re: *In the Matter of the Joint Petition for Approval of Indirect
Transfer of Control of Qwest Operating Companies to CenturyLink*
OAH Docket No. 11-2500-21391-2;
PUC Docket No. P-421, et al/PA-10-456

Dear Parties:

Enclosed herewith and served upon you as listed on the E-Docket Service List is the Administrative Law Judge's Orders on the Motions to Compel and for a Supplemental Protective Order and Supplemental Protective Order in the above-entitled matter.

Sincerely,

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Telephone: (651) 361-7845

BLN:nh

Encl.

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink</i>	OAH Docket No. 11-2500-21391-2 PUC Docket No. P-421, et al/ PA-10-456
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Michael Lewis certifies that on the 21st day of September, 2010 (eFiling and email) and the 22nd day of September, 2010 (U.S. Mail), he served true and correct copies of the attached Administrative Law Judge's Orders on the Motions to Compel and for a Supplemental Protective Order and Supplemental Protective Order, by serving them as indicated on the attached E-docket Service List.