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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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 DOCKET NO. T-02811B-10-0194 DOCKET NO. T-04190A-10-0194 DOCKET NO. T-20443A-10-0194 DOCKET NO. T-03555A-10-0194 DOCKET NO. T-03902A-10-0194

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

JOINT APPLICANTS' RESPONSE TO CWA'S MOTION TO COMPEL #1

On August 27, 2010, Communications Workers of America, AFL-CIO, CLC ("CWA") filed signed copies of Exhibit A and B to the Protective Order entered August 23, 2010, in the above-captioned dockets for Nicholas Enoch, Scott Rubin and Randy Barber. In a letter dated September 1, 2010, the joint applicants in the above-captioned docket ("Joint Applicants") timely notified CWA that they objected to the designation of Messrs. Rubin and Mr. Barber (but not Mr. Enoch) as persons who may receive and review Confidential Information and Highly Confidential Information pursuant to the provisions for objecting in the Protective Order. On September 27, 2010, CWA filed Motion to Compel #1 ("Motion") seeking permission to disclose Confidential Information and Highly Confidential Information to Mr. Barber. CWA formally

withdrew Exhibit A and B for Mr. Rubin on September 27, 2010, pursuant to footnote 1 of the Motion, and CWA is no longer seeking permission to disclose Confidential Information and Highly Confidential Information to Mr. Rubin. The Joint Applicants hereby respond to the Motion regarding Mr. Barber.

Less than one year ago, the Oregon Public Utility Commission ("Oregon PUC") declared that the actions of Mr. Barber violated a protective order issued by that agency, by disclosure and use of protected information outside of the proceeding. Like this proceeding, the Oregon proceeding also involved a merger of telecommunications companies, Verizon and Frontier, and the claims against Mr. Barber involved the violation of a protective order much like the Protective Order in this docket. In the Oregon proceeding, Mr. Barber appeared on behalf of the International Brotherhood of Electrical Workers ("IBEW"). The Oregon PUC found that by and through 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, the Oregon PUC took the appropriate and drastic step of revoking the IBEW's party status, and the IBEW was kicked out of the Oregon proceeding. A copy of the order of expulsion from the Oregon PUC is attached hereto as Attachment 1.

The Oregon PUC 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 Mr. Barber is part of a pattern of abuse of regulatory process. The Oregon order describes a finding made by the Washington Utilities and Transportation Commission ("WUTC") in a merger proceeding in which the IBEW was kicked out of that proceeding as well:

> *WUTC found that IBEW used its participation in the Embarq Corporation/CenturyTel, Inc., asset transfer case to improperly extract*

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

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 Mr. Barber access to Confidential Information and Highly Confidential Information. The CPUC hearing commissioner found the above-cited decisions by the Oregon PUC and the WUTC "to be instructive," and the 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 CWA sought rehearing of the Colorado decision denying access to Mr. Barber, and on rehearing on October 8, 2010, the CPUC did allow Mr. Barber access to confidential information, but retained the denial of access to the most sensitive and highly confidential documents. While the Joint Applicants believe that there is ample and compelling evidence to deny CWA's motion, if the Commission is inclined to grant the Motion, then the Joint Applicant's should retain the right to object to Mr. Barber's access to the most sensitive and highly confidential documents, consistent with the modified ruling in Colorado.

For the reasons set forth above, the Joint Applicants urge the Commission to deny CWA's Motion. However, in the event the Commission grants the Motion, the Joint Applicants request that the order permit them to object to the disclosure to Mr. Barber of specific documents that are deemed to be highly sensitive and/or highly confidential, consistent with the ruling by the CPUC.

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

RESPECTFULLY SUBMITTED this 12th day of October, 2010.

SNELL & WILMER L.L.P.

By _____
Jeffrey W. Crockett, Esq.
Bradley S. Carroll, Esq.
One Arizona Center
400 E. Van Buren
Phoenix, Arizona 85004-2202

and

Kevin K. Zarling, Senior Counsel
(admitted *pro hac vice*)
Senior Counsel, CenturyLink
400 W. 15th Street, Suite 315
Austin, Texas 78701

Attorneys for CenturyLink

QWEST CORPORATION

By _____, for
Norman G. Curtright
Associate General Counsel, Qwest
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

Attorney for Qwest Corporation

ORIGINAL and 13 copies filed
this 12th day of October, 2010, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

COPY of the foregoing hand-delivered
this 12th day of October, 2010, to:

Belinda Martin, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85007

Daniel Pozefsky, Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

COPY of the foregoing sent via e-mail and
First Class Mail this 12th day of October, 2010, to:

Michael Patten
Roshka DeWulf & Patten, PLC
One Arizona Center
400 E. Van Buren St. – 800
Phoenix, Arizona 85004
mpatten@rdp-law.com

Lyndall Nipps
Vice President, Regulatory Affairs
twtelecom of Oregon, llc
9665 Granite Ridge Drive, Ste. 500
San Diego, California 97123
lyndall.nipps@twtelecom.com

Katherine Mudge
Director, State Affairs & ILEC Relations
Covad Communications, Inc.
7000 N. Mopac Expressway, 2nd Floor
Austin, Texas 78731
kmudge@covad.com

Mark DiNunzio
Cox Arizona Telcom, LLC
1550 W. Deer Valley Rd.
MS:DV3-16, Bldg. C
Phoenix, Arizona 85027
Mark.DiNunzio@cox.com

Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Greg.rogers@level3.com

Rex Knowles
XO Communications, Inc.
7050 Union Park Ave., Ste. 400
Midvale, Utah 84047
Rex.knowles@xo.com

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

James C. Falvey
Senior Regulatory Counsel
Pac-West Telecomm, Inc.
420 Chinquapin Round Rd., Ste. 2-1
Annapolis, Maryland 21401
jfalvey@pacwest.com

William A. Haas
Vice President of Public Policy & Regulatory
PAETEC Holding Corp.
One Martha's Way
Hiawatha, Iowa 52233
William.haas@paetec.com

Rogelio Pena
Pena & Associates
4845 Pearl East Circle, - 101
Boulder, Colorado 80301

Joan Burke
Law Office of Joan S. Burke
1650 N. First Avenue
Phoenix, Arizona 85003
joan@jsburkelaw.com

Nicholas Enoch
Lubin & Enoch, PC
349 N. Fourth Ave.
Phoenix, Arizona 85003
Nick@lubinandenoch.com

Scott Rubin
333 Oak Lane
Bloomsburg, Pennsylvania 17815
Scott.j.rubin@gmail.com

Harry Gildea
Snavely King Majoros O'Connor & Bedell, Inc.
1111 14th St., N.W., Suite 300
Washington, District of Columbia 20005
hgildea@snavely-king.com

Stephen S. Melnikoff
Regulatory Law Office
U.S. Army Litigation Center
901 N. Stuart St., Suite 700
Arlington, Virginia 22203-1837
Stephen.melnikoff@hqda.army.mil

Michael Singer-Nelson
360networks (USA), Inc.
270 Interlocken Blvd., Suite 600
Broomfield, Colorado 80021
mnelson@360.net

Penny Stanley
360networks (USA), Inc.
270 Interlocken Blvd, Suite 600
Broomfield, Colorado 80021
Penny.stanley@360.net

Gregory Merz
Gray Plant Mooty
500 IDS Center
80 S. Eighth St.
Minneapolis, Minnesota 55402
Gregory.merz@spmlaw.com

Karen L. Clauson
Vice President, Law & Policy
Integra Telecom
6160 Golden Hills Dr.
Golden Valley, Minnesota 55416-1020
klclauson@integratelecom.com

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

John Ilgen, Vice President
Sales and Marketing
WESTEL INC.
99606 North Mopac Expressway, Ste 700
Austin, TX 78759
john.ilgen@westel.net

12071315.1

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

ATTACHMENT 1

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-2009-21111337. (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

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[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

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[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.

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[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.

ORDER NO. 09-409

ORDER NO. 09-273

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.

ORDER NO. 09-409

ORDER NO. 09-273

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
X 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

333 Oak Lane
Bloomsburg PA 17815
Permanent Address

Attorney
Position and Responsibilities

APPENDIX B
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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
x 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
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ORDER NO. 09-409

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

Joel Cheskis
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
jcheskis@paoca.org

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

Johnnie B. 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 Utility Code for Transactions Related to the Restructuring of the Company to a Pennsylvania-Only Operation and Notice of Affiliate Transaction	:	Docket No. A-2009-2111330 Docket No. A-2009-2111331 Docket No. A-2009-2111337

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

Randy Barber