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August 17, 2009

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *In the Matter of the Joint Application of Verizon Communications, Inc. and Frontier
Communications Corporation*
Docket UT-090842

Dear Mr. Danner:

Enclosed for filing in the above-referenced docket are the original and seven copies of
Commission Staff's Answer to Petitions for Interlocutory Review of IBEW And BCAW,
and Certificate of Service.

Sincerely,

JONATHAN C. THOMPSON
Assistant Attorney General

JCT:klg
Enclosures
cc: Parties



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of Verizon Communications Inc. and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.

DOCKET UT-090842

COMMISSION STAFF'S
ANSWER TO PETITIONS FOR
INTERLOCUTORY REVIEW OF
IBEW AND BCAW

1 Commission Staff submits the following answer to the petitions for interlocutory review filed by the International Brotherhood of Electrical Workers (IBEW) and by the Broadband Communications Association of Washington (BCAW). The petitions seek interlocutory review of the July 28, 2009, Prehearing Conference Order denying the intervention of IBEW and limiting the scope of BCAW's participation as an intervenor.

1. IBEW's petition to intervene may be denied or limited.

2 The Commission has discretion under RCW 34.05.443 and WAC 480-07-355(3) to determine whether to allow a person to intervene in a proceeding, and may allow a person to intervene if the person's participation would contribute to the Commission's ability to make a decision in the public interest.

3 The Commission has applied the "zone of interest" test in other proceedings to determine standing, and has interpreted the "zone of interest" test to address whether the

interest sought to be protected is within the “zone of interest” protected by the statute.¹

Terms or conditions of employment are not within the Commission’s regulatory purview.

4 As IBEW indicates in its petition for interlocutory review, the Commission has in some prior merger proceedings permitted labor unions to intervene. However, even in those cases, the Commission imposed restrictions on the labor unions’ participation.² The Commission also recently denied the intervention of a labor union in the Puget Sound Energy transfer of ownership case, reasoning that the particular union had not established a nexus between itself and the issues in the case and that the interests of consumers were already sufficiently represented.³

5 A party to an adjudicative proceeding before the Commission has significant procedural rights, including the ability to conduct discovery, to put on evidence in opposition to a settlement, and to file procedural motions (just as IBEW filed an unsuccessful motion to dismiss the application in the CenturyTel/Embarq merger docket, UT-082119). In Staff’s view, those are rights that may be appropriately reserved to the regulated entities, to Staff and Public Counsel (as representatives of the interests of consumers), and to large customers or associations of customers.

6 Denial of party status does not mean that the IBEW members’ perspective on issues of importance to consumers will go unheard. The Commission can consider the IBEW’s concerns regarding service quality through the public comment process.

¹ See Order Granting in Part Motion to Strike Protest of Inlandboatmen’s Union of the Pacific; Limiting Protest of Inlandboatmen’s Union of the Pacific, In re Application of Aqua Express, LLC, 2004 WL 3421993, page 5 (2004).

² Second Supplemental Order on Prehearing Conference, *In the Matter of the Proposal by Puget Sound Power & Light Company*, Docket Nos. UE-951270, UE-960195 (May 1996) (administrative law judge’s decision granting limited intervention to several unions to address the effect of a merger of two energy companies on service reliability and safety, but not the effect of the merger on wages, benefits or job protection).

³ Prehearing Conference Order, *Puget Holdings, LLC and Puget Sound Energy, Inc.*, Docket U-072375, para. 6 (January 17, 2008). (However, it does not appear that the union claimed to represent employees of the affected companies or to have an interest in preservation of service quality.)

2. The Prehearing Conference Order properly limits the scope of BCAW's intervention to interconnection (wholesale customer) issues.

7 BCAW members are cable companies that compete with Verizon in the provision of broadband services. Additionally, to the extent that BCAW's members provide telephone services, their local exchange carrier affiliates may interconnect with Verizon.

8 Staff agrees with the Order's conclusion that the cable companies' interest as competitors in the broadband services market, which is unregulated by the Commission, is not a basis for intervention. It is therefore appropriate to limit the scope of the cable companies' intervention to matters related to their status as entities that interconnect with Verizon.

9 BCAW objects to the limitation of its participation to matters related to interconnection. The association points out that Frontier touts the expansion of its own broadband and television services as a benefit of the transaction. Although BCAW does not indicate what it might wish to argue or assert with respect this alleged public interest benefit, it does not want to be precluded from addressing it.

10 The Federal Communications Commission regards DSL as an "information service" subject to its exclusive regulatory jurisdiction.⁴ Nonetheless, the Commission has previously considered company commitments with regard to DSL build-out as a benefit that may offset harms to competition (in the Verizon/MCI merger) or as a mechanism for assuring that synergy benefits flow to the advantage of Washington consumers (in the recent CenturyTel/Embarq merger) or for other reasons (in the Qwest AFOR). However, the Commission has never purported to regulate broadband services or asserted an oversight or

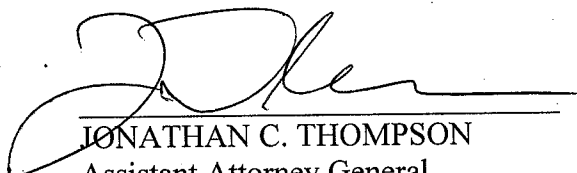
⁴ 20 FCC Rcd 14853, 14899, para. 86 (2005).

referee role over competition in the market for broadband services.⁵ By contrast, the Commission *does* perform those roles with respect to the terms of interconnection between incumbent and competitive local exchange companies (including the CLEC affiliates of cable companies such as Comcast). Therefore, the limitation imposed on BCAW's participation properly focuses the association's participation on matters within the Commission's regulatory purview in which the BCAW's members have an interest.

DATED this 17th day of August, 2009.

Respectfully submitted,

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⁵ As an illustration of this point, the Commission has never tried to subpoena the records of cable companies to determine where their plant is located and where they are able to offer broadband services. We expect that BCAW would likely object—and properly so—to a data request of this nature in this proceeding.

CERTIFICATE OF SERVICE
Docket UT-090842

I hereby certify that I have this day served the attached document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 17th day of August, 2009.



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