

[Service Date April 23, 2009]

April 23, 2009

**NOTICE OF COMMISSION CHALLENGE TO ASSERTIONS OF
CONFIDENTIALITY AND DETERMINATION THAT CONFIDENTIAL
DESIGNATIONS ARE NOT WARRANTED**

**NOTICE OF INTENT TO MAKE DOCUMENTS PUBLIC
(Effective May 4, 2009)**

RE: In the Matter of the Joint Application of EMBARQ CORPORATION AND CENTURYTEL, INC. For Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc., Docket UT-082119

TO ALL PARTIES:

In addition to the principal matter set for hearing in this docket, there are pending two requests from intervenors for leave to withdraw; one from Comcast Phone of Washington, LLC (Comcast) and one from the International Brotherhood of Electrical Workers Local 89 (IBEW). Previously, the Commission granted in Order 03 a similar request from the only other intervenor in this proceeding, Level 3 Communications (Level 3).

These requests for leave to withdraw were filed as a result of written side-agreements between Embarq Corporation and CenturyTel, Inc. (Applicants) and each of the intervenors. The written side-agreements were not filed as part of the individual requests to withdraw. Staff filed the Applicants' agreement with Level 3, which Staff obtained during discovery, as part of Staff's response to Comcast's request for leave to withdraw. The agreement was designated by the Applicants as "Confidential Information" under the provisions of Order 02, a protective order entered in this proceeding to facilitate discovery.

The Commission issued Bench Request No. 1 on March 3, 2009, requiring Applicants to provide any such agreements with any of the intervenors. In the meantime, on February 27, 2009, Comcast supplemented its request for leave to withdraw, providing a copy of its settlement agreement with Applicants under a claim of confidentiality.

Applicants provided in response to Bench Request No. 1 copies of side-agreements they entered into with Level 3, Comcast and IBEW¹ as *quid pro quo* for the agreement by each of these intervenors to withdraw from this proceeding. These were all designated as “Confidential Information” under the protective order. In addition, Applicants designated their narrative response to Bench Request No. 1, describing each of the three agreements, as “Confidential Information.”

Applicants later supplemented their response to Bench Request No. 1 to the extent of re-filing their agreements with Level 3 and Comcast, no longer designating them or their narrative descriptions as confidential. The entire IBEW Letter Agreement with Applicants, dated February 25, 2009, and the associated narrative, remains subject to the Applicants’ designation as “Confidential Information” under Order 02.

Order 02 provides in relevant parts:

The Commission expects Confidential Information to include only numbers, customer names, and planning details.

* * *

Parties must scrutinize potentially confidential material, and strictly limit what they designate "Confidential Information" to only information that truly might compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order.

* * *

The presiding officer may challenge a party's assertion of confidentiality by notice to all parties.

If the presiding officer determines the challenged information is not entitled to protection under this Order, the information continues to be protected under this Order for ten days thereafter to enable the producing party to seek Commission or judicial review of the determination, including a stay of the decision's effect pending further review.²

¹ Applicants’ side-agreement with IBEW involves the companies making labor-related concessions to IBEW in exchange for IBEW’s agreement to withdraw. IBEW acknowledged at prehearing its understanding that labor relations issues have no place in this proceeding. IBEW committed to limit its participation in this proceeding to issues appropriate to it and within the Commission’s jurisdiction to determine.

² *In the Matter of the Joint Application of EMBARQ CORPORATION AND CENTURYTEL, INC., For Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc.*, Order 02—Protective Order with “Highly Confidential” Provisions, ¶¶ 3, 4, 29, 30, Docket UT-082119 (January 9, 2009).

The Commission has reviewed the terms of the side-agreement between Applicants and IBEW and determines there is no matter included in the agreement that qualifies for the designation “Confidential Information” under the terms of Order 02. The Commission also determines there is nothing in the agreement that constitutes “valuable commercial information” within the meaning of RCW 80.04.095, which provides for the confidential filing and treatment of such information if its disclosure “would result in private loss, including an unfair competitive disadvantage.”

THE COMMISSION GIVES NOTICE that it intends to treat the Letter Agreement dated February 25, 2009, between Applicants and IBEW as a public document no longer subject to the designation “Confidential Information” under Order 02 as of May 4, 2009. In addition, on that same date, the Commission will treat the Applicants’ response to Bench Request No. 01 as a public document, complete with the currently redacted section describing the agreement between Embarq/CenturyTel and IBEW.

Sincerely,

DENNIS J. MOSS
SENIOR REVIEW JUDGE
PRESIDING OFFICER