

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

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 NO. UT-082119

PUBLIC COUNSEL MOTION
FOR CLARIFICATION OF
ORDER 05

I. MOTION

1. The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully requests clarification of one item in Order 05 (Final Order) in this case. This motion is filed pursuant to WAC 480-07-835.¹ Specifically, Public Counsel requests clarification of the statement in the Final Order that: "[a]ll of the parties appear to support the idea of transitioning the merged companies to an AFOR, arguing that it would provide New CenturyTel with more flexibility to compete effectively in the future with cable and wireless

¹ WAC 480-07-835 provides in part:

Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and without delaying post-order compliance. . . . If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC 480-07-850.

companies that offer similar or identical services.”² This statement does not accurately reflect Public Counsel’s position.

II. MEMORANDUM

2. By its terms, the Settlement Agreement (approved and adopted in the Final Order) states only that: “CenturyTel and Embarq agree that the Merged Company ILECs will petition for an AFOR(s) pursuant to RCW 80.36.135, or the then current AFOR law or rule, no later than five (5) years from the close date of the merger.”³ The express language of the Settlement Agreement is limited to the stated filing requirement.⁴ While both Staff and the Companies expressed support for the transition to an AFOR at the settlement hearing,⁵ Public Counsel did not make any statement at the hearing or in settlement documents indicating that transition to an AFOR was needed to provide flexibility to the Merged Company to compete effectively with cable and wireless companies.
3. Public Counsel has agreed to the timing requirement for the AFOR filing but has made no judgment at this time as to the merits of that future filing. Once the petition is filed, Public Counsel and other parties will evaluate the request and the supporting evidence in light of the requirements of RCW 80.36.135, as well as the state of the telecommunications market at that time. Public Counsel does not understand the Settlement Agreement to constrain the Merged

² Final Order at ¶45.

³ Settlement Agreement at ¶8 (item 4(a)) (attached to the Final Order as Appendix 1).

⁴ The Settlement Agreement further states that: “CenturyTel and Embarq acknowledge that Staff and Public Counsel may seek, and the Merged Company will not oppose, an earnings review to the extent consistent with the then prevailing legal requirements applicable to AFORs.” Settlement Agreement at ¶8 (item 12). However, the earnings review issue is separate and does not directly impact the AFOR *filing* requirement.

⁵ See TR 85:19-86:7 (Weinman) and TR 90:1-18 (Bailey). Commission Staff also indicated at the hearing that the AFOR filing requirement was requested by Staff, not Public Counsel. See TR 85:19-20 (Weinman) and TR 86:14-16 (Weinman).

Company's obligations as petitioner or the other parties' rights during the statutory AFOR proceeding.

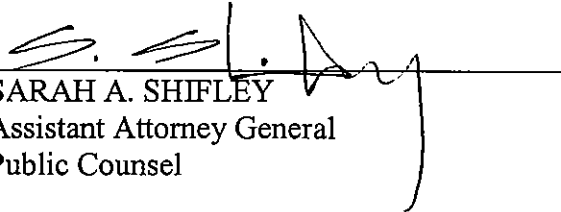
III. CONCLUSION

4. For the foregoing reasons, Public Counsel respectfully requests that the Commission issue an order clarifying that Public Counsel has not taken a position on the transition of the Merged Company to an AFOR, that the Settlement Agreement and the Final Order provide only that Public Counsel and the other signatories agree to timing of the *filing and consideration* of an AFOR, and that no party has waived its right to participate in the future AFOR proceeding and to request changes or alternatives to the proposed plan, or oppose it as filed, as the evidence may dictate.

DATED this 5th day of June, 2009.

Respectfully submitted,

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