

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

In the Matter of the Joint Application of)	DOCKET UT-082119
)	
EMBARQ CORPORATION AND)	
CENTURYTEL, INC.)	
)	ORDER 06
For Approval of Transfer of Control of)	
United Telephone Company of the)	
Northwest d/b/a Embarq and Embarq)	DENYING MOTION FOR
Communications, Inc.)	CLARIFICATION OF ORDER 05
.....)	

MEMORANDUM

- 1 The Commission entered Order 05 in this proceeding on May 28, 2009, approving and adopting, subject to conditions, a Settlement Agreement filed by Applicants, Public Counsel and Staff. In Order 05, the Commission approved the 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., subject to the conditions set forth in the Settlement Agreement and additional conditions stated in the order.

- 2 On June 5, 2009, Public Counsel filed its Motion for Clarification of Order 05. Public Counsel nominally requests clarification of a 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 companies that offer similar or identical services.”¹ Public Counsel states that this does not accurately reflect its position and asks that we clarify Order 05 by stating 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

¹ Final Order at ¶45.

request changes or alternatives to the proposed plan, or oppose it as filed, as the evidence may dictate.²

- 3 Although Public Counsel has now made a public record detailing its position concerning the AFOR provision of the Settlement Agreement, it is inappropriate that it has done so by filing a motion for clarification. It is not the purpose of the rule allowing motions for clarification to provide an opportunity for a party to elaborate on, or make clear, its position on one issue or another. Indeed, WAC 480-07-835 states:

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. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875.

None of these stated purposes is apparent in Public Counsel's motion.

- 4 As Public Counsel points out in its motion, two of the four witnesses on the panel presented by all parties in support of their settlement, Mr. Weinman for Staff and Ms. Bailey for the applicants, testified concerning the AFOR.³ The language from Order 05 that Public Counsel wishes to have "clarified" accurately captures the essence of this testimony. Because this testimony was offered by panel witnesses on behalf of all the settling parties, Order 05 was accurate in that it "appeared" that all parties supported "the idea" of transition to an AFOR.
- 5 Though Public Counsel now wishes to protect its future options regarding such consideration of an AFOR, its motion is unnecessary. Order 05, including the Settlement Agreement that it adopts by reference, speaks clearly for itself in terms of the parties' agreement concerning the future filing of an AFOR. There is absolutely nothing in Order 05 that suggests any party has waived its right to participate in the future AFOR proceeding, to request changes or alternatives to the proposed plan, or to oppose it as filed.

² Public Counsel Motion ¶ 4.

³ *Id.* ¶ 2 (citing TR 85:19-86:7 (Weinman) and TR 90:1-18 (Bailey)).

6 We conclude for these reasons that Public Counsel's motion for clarification should be denied.

ORDER

7 **THE COMMISSION ORDERS** That Public Counsel's Motion for Clarification of Order 05 is denied.

Dated at Olympia, Washington, and effective July 13, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner