BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC, and CTE	:	A-310800F0010
Telecom, LLC d/b/a Commonwealth Long	:	A-311095F0005
Distance Company for All Approvals	:	A-311225F0003
Under the Public Utility Code for the	:	
Acquisition By Citizens Communications	:	
Company of All of the Stock of the	:	
Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

ORDER DISPOSING OF THE PRELIMINARY OBJECTIONS OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC AND CTE TELECOM, LLC D/B/A COMMONWEALTH LONG DISTANCE SEEKING TO LIMIT THE PARTICIPATION OF THE COMMUNICATIONS WORKERS OF AMERICA

On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application). The Application was published in the Pennsylvania Bulletin October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.

On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband Cable Association of Pennsylvania (BCAP). A Protest and Preliminary Objections were filed by the Communications Workers of America (CWA), but the Preliminary Objections were withdrawn by letter dated November 13, 2006. A Protest and Public Statement was filed by both the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA), and a Notice of Appearance was filed on behalf of the Office of Trial Staff (OTS). Citizens Communications Company (Citizens) filed a Petition to Intervene.

On November 9, 2006, Joint Applicants filed an Answer to the Preliminary Objections of CWA.

On November 8, 2006, a Notice of Prehearing Conference was issued which set the prehearing conference for November 29, 2006 in Harrisburg.

On November 10, 2006, Joint Applicants filed Preliminary Objections to Dismiss Portions of the Protest and to Limit Participation of the CWA, and separate Preliminary Objections with Citizens which sought to dismiss the Protests and Petitions to Intervene of Blue Ridge, Sprint, BCAP and RCN.

On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

On November 20, 2006, CWA, OCA, Blue Ridge, Sprint, BCAP and RCN filed Answers to the Joint Applicants' Preliminary Objections.

On November 20, 2006, the Joint Applicants filed letters indicating that they did not oppose the participation of the OCA, OSBA and OTS.

All parties of record filed Prehearing Memos and the following were represented at the prehearing conference: for Joint Applicants, Norman J. Kennard, Esq.; for OSBA, Steven Gray, Esq., and Lauren Lepkoski, Esq.; for OCA, Shaun Sparks, Esq. and Joel Cheskis, Esq.; for OTS, Robert V. Eckenrod, Esq.; for Citizens, Lillian S. Harris, Esq.; for BCAP and Blue Ridge, Pamela Polacek, Esq.; for CWA, Scott J. Rubin, Esq.; for Sprint, Jennifer Duane, Esq., and for RCN, John F. Povilaitis, Esq., and Matthew A. Totino, Esq.

A separate Order has been issued which sets a litigation schedule for the parties to follow, and disposes of uncontested motions. Another Order disposes of the Preliminary

Objections Blue Ridge Digital Phone Company, Sprint Communications Company LP, and RCN Telecom Services, Inc. An Initial Decision disposes of the Preliminary Objections of the Joint Applicants and Citizens to Dismiss Protests and Petitions to Intervene of the Broadband Cable Association of Pennsylvania and RCN Corporation. This Order denies the Preliminary Objections of Joint Applicants to Limit the Participation of the CWA.

DISCUSSION

Joint Applicants filed Preliminary Objections seeking to limit the participation of the CWA to issues that the CWA has standing to raise, stating that the appropriate issues are limited to those which concern the CWA member employees. CWA's Protest also raises a number of issues which Joint Applicants claim are beyond the CWA ability to raise, such as benefits to consumers by increasing investment in the network, accelerated deployment of advanced services, quality of service, whether financial information submitted is sufficient to evaluate the transaction, and post-merger plans. CWA Protest.

Commission regulations provide:

> **§ 5.101. Preliminary objections.**
> (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
>
> (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
> (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
>
> (3) Insufficient specificity of a pleading.
>
> (4) Legal insufficiency of a pleading.
>
> (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n,* 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward,* 802 A.2d 705 (Pa.Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement* Board, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Joint Applicants do not claim that CWA has no standing to participate in the proceeding. Rather, Joint Applicants claim that the CWA has only *limited* standing, and that its participation should be limited to those topics for which it has standing. Joint Applicants do not seek to dismiss those portions of the CWA Protest which raise issues relating to employment levels or the continuation of the current union contract. The Preliminary Objections point out that the CWA is not vested with the rights of a consumer advocate and has no standing to raise issues before the Commission related to advanced services deployment, adequacy of service or financial fitness of the parties. POs, ¶ 10-11.

Therefore, Joint Applicants claim that CWA must set forth facts establishing its standing to protest on any issues other than employment levels and continuation of the current union contract.

CWA responds by pointing out that lack of standing on one or more issues, when there is standing on other issues, is not a one of the grounds for a preliminary objection under the

applicable regulation, 52 Pa. Code § 5.101(a). Limitation of the scope of participation is not properly addressed through preliminary objections.

In addition, CWA states that the issues to which the Joint Applicants object to CWA's participation, customer service, safety and reliability, network deployment and the financial circumstances of the two Joint Applicants, are all legitimate concerns of the CWA. The CWA Answer states, in part:

> CWA has a direct interest in the impact of a proposed transaction on the financial health of its employer, so that the employer can continue to operate, maintain, repair and upgrade facilities in a safe and responsible manner; and continue to employ enough personnel to reliably and safely serve the public.
>
> CWA has a direct interest in determining if a proposed transaction will affect the safety and quality of service provided by the utility. CWA's members must operate, maintain, and repair the utility's facilities, as well as staff customer service centers. If the transaction will lead to changes in maintenance practices, operational procedures, call center staffing and location, such changes could have a direct impact on CWA and its members.
>
> CWA has a direct interest in determining if a proposed transaction will encourage or discourage the deployment of advanced network services. CWA's members are responsible for implementing many of a utility's policies on network deployment.

CWA Answer, pp. 5-6.

Finally, CWA points out that if CWA's testimony strays into areas which are outside the scope of this proceeding or outside a witness' expertise, Joint Applicants are free to file appropriate motions to limit the scope or to strike the testimony. CWA Answer, p.6.

As Joint Applicants point out, in order to have standing, a party must have an interest which is substantial, direct, and immediate:

> A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the

> statutes or the constitutional guarantee in question. *George v. Pa. Publ. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. Ct. 1999).

OCA's Answer to the Preliminary Objections of Joint Applicants to Dismiss Portions of Protest and Limit Participation of CWA points out that the OCA participation in the proceeding does not serve as a bar to the participation of other interested parties nor as a substitute for the participation of others. In addition, OCA points out that its interests are not identical to CWA's, and as such, should not be used to bar CWA's participation. OCA Answer, p. 4. OCA states that many of the public interest and consumer issues that CWA raises in its Protest are important to both consumers and CWA for varying reasons.

> Commission regulations provide:
>
> **§ 5.72. Eligibility to intervene.**
> (a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:
> (1) A right conferred by statute of the United States or of the Commonwealth.
> (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
> (3) Another interest of such nature that participation of the petitioner may be in the public interest.
>
> * * *

It is clear that the union, representing a collective bargaining unit comprised of 22,500 members in Pennsylvania, including approximately 425 members employed by Commonwealth Telephone Company, has a substantial, direct and immediate interest in the outcome of this case. The very livelihood of the 425 members rests on the management decisions made by Commonwealth, and the myriad of decisions made by that management (relating to maintenance practices operational procedures, call center staffing and location, etc.) are vital to the members. While, as Joint Applicants point out, CWA is not vested with the rights of the consumer advocate, the issues which are important to the OCA are the issues which are

interrelated with the work and responsibilities of the CWA members. Customer service, safety and reliability, network deployment and the financial health of the two Joint Applicants affect not only the customers of the Joint Applicants but the employees who provide the services.

For the purposes of the filing of a protest and intervention, CWA has the necessary standing, and the Preliminary Objections[1] of the Joint Applicants which seek to limit the participation of the CWA shall be denied.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company seeking to limit the participation of the Communications Workers of America are denied.

Dated: December 14, 2006

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Susan D. Colwell
Administrative Law Judge

[1] A party may seek to limit the participation of another in the Answer to the Petition to Intervene. 52 Pa. Code § 5.75(c). Even without the specific limitation, Joint Applicants may challenge specific discovery requests or testimony.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2007-67

March 14, 2007

PROCEDURAL ORDER

VERIZON NEW ENGLAND INC., NORTHERN NEW ENGLAND TELEPHONE OPERATIONS INC., ENHANCED COMMUNICATIONS OF NORTHERN NEW ENGLAND INC., NORTHLAND TELEPHONE COMPANY OF MAINE, INC., SIDNEY TELEPHONE COMPANY, STANDISH TELEPHONE COMPANY, CHINA TELEPHONE COMPANY, MAINE TELEPHONE COMPANY, AND COMMUNITY SERVICE TELEPHONE CO., Re: Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc.

I. BACKGROUND

Pursuant to the Commission's February 2, 2007 Procedural Order, the Communications Workers of America ("CWA") and International Brotherhood of Electrical Workers (IBEW) Locals 2320, 2326, and 2327, and IBEW System Council T-6 (collectively Labor) filed a Petition to Intervene in this proceeding. Labor requested "full party status" in the proceeding and stated that it represents over 1,000 employees of Verizon Maine. Labor alleged that the proposed transaction would directly and substantially adversely impact its members.

At the February 27, 2007 Case Conference in this matter, the FairPoint Maine Telephone Companies (FairPoint) raised objections to Labor's request for full intervention in this proceeding. I directed FairPoint to file its objections in writing and set a schedule for the filing and replies from Labor and other parties. [1]

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[1] FairPoint also raised questions concerning the status of the Eastern Maine Council of Labor and was directed to address those issues in writing as well. However, FairPoint's March 1, 2007 filing failed to further address those issues. Given that fact, Eastern Maine's Petition to Intervene is hereby granted. However, given the limited information provided in its Petition to Intervene concerning the Council and how the proceeding will have a direct and substantial impact on it, the Council is granted only discretionary intervenor status pursuant to section 721 of Chapter 110 and may be required to coordinate its participation with Labor.

On March 1, 2007, FairPoint filed a Memorandum seeking to limit the intervention status of Labor to discretionary intervention under section 721 of Chapter 110 and to further limit Labor's participation to five specific issues:

1. The allocation of employees between Verizon and FairPoint;
2. The allocations of employees between regulated and unregulated subsidiaries of FairPoint;
3. The allocation of pension assets and post-retirement benefits and obligations between Verizon and FairPoint;
4. Any employment restrictions relating to FairPoint and Verizon personnel; and
5. FairPoint's projected creation of additional jobs.

On March 6, 2007, Labor and the Office of the Public Advocate (OPA) filed Memorandums opposing FairPoint's limitation of Labor's Participation.

II. POSITIONS OF THE PARTIES

A. FairPoint

FairPoint alleges that Labor's Petition does not claim to represent the interests of any entity other than the unions themselves and that Labor does not claim that it represents the interests of its members or consumers. FairPoint claims that Labor does not have the direct and substantial interest in the proceeding that is required of mandatory intervenors by the Administrative Procedures Act, Chapter 110 of the Commission's Rules, Commission precedent and decisions of the Law Court. FairPoint argues that Labor clearly opposes the transaction and that if it is given discretionary intervention status its participation should be limited so as to not hinder the Commission's "efficient management and resolution" of this case.

FairPoint argues that Labor should not be provided mandatory intervenor status under Section 720 because it has not alleged that any of its members are ratepayers, whom FairPoint acknowledges have an absolute right to intervene. FairPoint cites to the Commission's Order adopting Chapter 110 as well as the Part I Order in a recent electric proceeding and argues that discretionary intervention is sufficient for a party to participate on "the issues of legitimate concern to the party." *Amendments to the Rules of Practice and Procedure (Chapter 110)*, Docket No. 89-321, Order Adopting Rule and Statement of Factual and Policy Basis (March 19, 1990); Bangor Hydro-Electric Company, *Request for Exemption (Limited Exemption) from the Reorganization Approval Requirements*, Order Denying Request for Reconsideration, Docket No. 2006-543 (Jan. 5, 2007) (*Bangor Hyrdo Proceeding).* FairPoint then cites to a number of cases in which parties requested, and were granted, limited participation in proceedings. Finally, FairPoint cites to a Commission decision denying intervention to a competitor of the utility that was the subject of the proceeding. Northern Utilities, Inc., *Request for Approval of Reorganizations – Merger with NIPSO Industries*, Docket No.

98-218, Order Denying Central Maine Power Company's Petition to Intervene (June 3, 1998).

FairPoint next notes that the Law Court reviews parties' standing *de novo* on appeal and that the party must be "within the class of persons whose interests are being protected in the proceeding, and that those interests cannot be realized without their participation." *Brink's, Inc. and Purolator Courier Corp. v. Maine Armored Car and Courier Service, Inc. and Public Utilities Commission*, 423 A.2d 536, 538 (Me. 1980) *citing Central Maine Power Co., v. Maine Public Utilities Commission,* 382 A.2d 302, 312 (Me. 1978). FairPoint argues that the only interests relevant to this proceeding are "applicants, ratepayers (customers), and investors" and that Labor has not described itself as a member of any of these classes. Further, according to FairPoint, Labor should not be allowed to amend its petition to include representation of its members as consumers because such an amendment would be "suspect" and that consumers' issues are already being covered by the OPA. Thus, FairPoint contends that Labor should be given Discretionary Intervention only[2] and that it should be limited to five issues associated with employee issues.

B. <u>Labor</u>

Labor contends that it meets Section 720's "direct and substantial interest" standard because the proceeding involves a proposed restructuring of Verizon's operations that "would place its regulated and unregulated operations in separate subsidiaries," some of which would be transferred to FairPoint, some of which may remain with Verizon. Labor argues further that whatever the final specific result, Labor would have a new party to its collective bargaining agreements. Further, job functions and employees could be divided between regulated and unregulated companies.

Labor argues that the Commission will have significant discretion in whether to approve the transaction and what, if any, conditions (financial, operational, technical) will be imposed. Any and/or all of these decisions by the Commission could directly impact Labor's members. Labor also points out that the proposed transaction is not limited to 35-A M.R.S.A. § 708, and thus the interests at stake are not limited to those of the Joint Applicants', ratepayers, and investors, but more broadly includes the general public interest. Specifically, section 1104 requires the Commission to consider the impact of the transaction on the "public interest." Labor argues that "utility employees and their authorized representatives" are members of the public.

Labor cites to the Commission's decision in the *NYNEX/Bell Atlantic Merger Proceeding,* which gave the union full intervention status. *New England Telephone and Telegraph Co*., 175 PUR 4th 490 (Me. PUC 1997). Labor argues that the current proceeding is just as important, if not more important, and that Labor should

[2] FairPoint's Memorandum at p. 10 references Section 720. It appears that this was an administrative error and that FairPoint intended to reference Section 721.

be given the same treatment. Labor also points out that the Maine law provides special protection for utility employees who testify in front of the Commission, thereby acknowledging the potential importance of having employees participate in proceedings. *See* 35-A M.R.S.A. § 1316. Finally, Labor argues that Maine law requires the Commission to "consider policies … that support economic development initiatives or otherwise improve the well-being of Maine citizens," citing 35-A M.R.S.A. § 7101(2). Thus, according to Labor, the Commission must consider the impacts on all citizens of Maine and on the economy as a whole. Labor argues that it "is difficult to imagine a case that has a greater potential to affect telecommunications policy in Maine than this case."

Finally, Labor argues that regardless of the type of intervention granted, the Commission should not limit Labor's participation in the proceeding to the issues outlined by FairPoint. Labor cites to a recent Pennsylvania decision in which the utility sought to limit labor's participation in a manner similar to FairPoint's proposal in this proceeding. *Joint Application of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Co*., Docket No. A-310800F0010, Order of Administrative Law Judge Disposing of Preliminary Objections, slip op. (Pa. PUC Dec. 14, 2006). The Administrative Law Judge found that labor had a direct, substantial and immediate interest in the proceeding and that "[c]ustomer service, safety and reliability, network deployment and the financial health of the two Joint Applicants affect not only the customers of the Joint Applicants but the employees who provide the services." *Id*.

Labor contends that it has the same types of concerns in this proceeding: customer service, safety, reliability, network deployment, and the expertise and financial health of the proposed new employer. Labor states that it outlined these issues in its Statement of Issues on February 23, 2007, and that those same issues were included on the Hearing Examiner's list of issues of concern to the Commission. Thus, Labor contends it should be given mandatory intervention status and that its participation not be limited.

C. OPA

The OPA recommends that the Commission grant mandatory intervention status to Labor on the grounds that it is well suited to participate in economic issues and its participation will benefit the Commission. Specifically, the OPA argues that Labor has proposed to introduce evidence analyzing FairPoint's financial capabilities as well as other economic issues that are central to this proceeding and within the Commission's jurisdiction. The OPA contends that given how important and complex this proceeding is, "the Commission should welcome relevant evidence from any party likely to present it."

The OPA also argues that FairPoint's attempt to limit Labor's participation to purely labor-related issues is unreasonable and counter-productive. First, the OPA points out that Labor's members have been operating Verizon's network and will

continue to operate the network if the FairPoint acquisition is successful. Thus, Labor is in "a unique position because they understand and can describe the nature of the challenges that FairPoint will face as it starts to operate that network for the first time without relying on Verizon's Massachusetts-located management, repair, and customer service centers. No other party to this proceeding can provide such direct, first-hand knowledge of the challenges that will be faced if FairPoint is to operate the Maine public switched network." The OPA contends that if the Commission limits the evidence in this manner from "a party so uniquely well-positioned to produce it, the Commission would be doing a disservice to the record." Thus, the OPA believes Commission will benefit from full participation by Labor.

Next, the OPA argues that the economic issues of concern to Labor "largely overlap with the economic issues of concern to ratepayers and the public." The OPA disagrees with FairPoint's limited view that Labor should only be concerned with issues such as allocation of workers between the surviving Verizon and FairPoint entities, as well as its suggestion that Labor is not justified in its concerns regarding the financial capability of the new entity. The OPA contends that "there is no practical or reasonable method to distinguish between proper and improper issues of concern to the Labor Intervenors" and that FairPoint's proposed demarcation is "ill-advised." Thus, the OPA suggests that Labor be given full participation rights on all issues which are "relevant and within Commission's jurisdiction."

The OPA also disagrees with FairPoint's comparison of Labor to vendors that are seeking to protect their particular financial interests. The OPA argues that the analogy is not appropriate because Labor proposes to provide "evidence relevant to the very heart of this proceeding – i.e., the financial integrity of FairPoint, and FairPoint's ability to operate the network, provide broadband, and serve its customers in a robust manner." The OPA believes the Commission should not miss the opportunity to receive Labor's perspective in this proceeding.

The OPA argues that Labor qualifies for mandatory intervention as ratepayers because many of the members of the IBEW and CWA live in Maine, are currently customers of Verizon and FairPoint, and, as a matter of law, share the economic interests of ratepayers in this proceeding. The OPA contends that if the Commission were to exclude or limit relevant economic evidence submitted by labor organizations, the practical effect might be to force the creation of new organizations for the purpose of participation in Commission proceedings.

Finally, the OPA dismisses the precedent cited by FairPoint as inapposite to the current situation. Specifically, the OPA points out that several of the cases cited by FairPoint involved competitors seeking intervention status – here Labor is not a competitor of either Verizon or FairPoint. As to the Commission's most recent decision in the *Bangor Hydro Proceeding,* the situation here is substantially different in that hundreds of Labor's members are, in fact, Verizon ratepayers – a fact that was not established in the *Bangor Hydro Proceeding* because the trade association refused to disclose the names of its members.

III. LEGAL STANDARDS

Chapter 110 of the Commission's Rules of Practice and Procedure describes two types of participation in the Commission's dockets: Section 720, Mandatory Intervention and Section 721, Discretionary Intervention. The Commission's rules are derived from the Administrative Procedures Act, 5 M.R.S.A. § 9004 and Commission actions are also governed by the Maine Rules of Civil Procedure when there is no governing rule in the Commission's Chapter 110.

Mandatory intervention is defined in Section 720:

> Upon the filing of a timely petition to intervene according to section 722, (a) any person that is or may be, or that is a member of a class which is or may be substantially and directly affected by the proceeding and (b) any agency of federal, state or local government, shall be allowed to intervene as a party to the proceeding. A person joined as a necessary party pursuant to the provisions of Maine Rule of Civil Procedure 19 shall be treated as an intervenor pursuant to this section.

Discretionary intervention is defined in Section 721:

> Any interested person not entitled to intervene pursuant to section 720 may in the discretion of the Commission be allowed to intervene and participate as a full or limited party to the proceeding. This provision shall not be construed to limit public participation in the proceeding in any other capacity.

Section 723 sets forth the Commission's authority to grant, deny, or limit a particular party's intervention:

> (a) The Commission may deny intervention of any person filing a timely petition for intervention under section 720 on the grounds that the petitioner failed to show a direct and substantial interest in the proceeding. The Commission may deny or limit intervention of any person filing an untimely petition for intervention under section 720. The Commission may deny or limit intervention of any person petitioning for intervention under section 721 for any reason, including, but not limited to, considerations of the petitioner's likely contribution to the development of relevant issues, the petitioner's participation in previous cases, and the timeliness of the petition.

> (b) The Commission may limit the participation of any person petitioning for intervention under section 720 when a petitioner for intervention is found by the Commission to have a right to intervene only with respect to a portion of the subject matter of a case.
>
> (c) When participation of any person is limited or denied the Commission shall include in the record an entry to that effect and the reasons therefore.

IV. DECISION

For the reasons discussed below, FairPoint's objections will be overruled and Labor will be granted mandatory intervention status pursuant to section 720 of Chapter 110. Moreover, its participation will not be limited to particular employee-related issues.

A. Mandatory or Discretionary Intervention

Section 720 requires that a party have a direct and substantial interest in the proceeding before it can be granted mandatory intervention status. A review of Labor's Petition to Intervene, the memos submitted by Labor and the OPA, and the relevant legal authority, reveals that Labor meets section 720's standard for mandatory intervention. First, as stated in its Petition to Intervene and its February 23rd List of Issues, Labor's members will be directly and substantially impacted by the Commission's decisions in this proceeding.[3] In addition to discussing possible impacts on its members' employment status, Labor identified issues such as FairPoint's service quality problems in Maine, FairPoint's financial condition and the impact it will have on FairPoint's ability to manage operations in Maine, to maintain existing plant, and deploy advanced services. *See* Labor Petition to Intervene at ¶ 5. Labor also raises issues concerning how Verizon's operations will be divided between regulated and deregulated companies and whether such a division is in the public interest. *Id.* at ¶ 6. Finally, as pointed out by Labor, section 708 is not the only statutory provision at issue in this proceeding; the broader public interest must be considered under section 1104. Clearly, Labor's Maine members are members of the public entitled to voice their opinion concerning the proposed transaction.

As the OPA pointed out, this proceeding will be large and complex and contain a myriad of issues involving financial, technical, operational, and managerial issues, the resolution of which will impact whether and/or how the proposed transaction

[3] While Labor did not specifically state that any of its members were Maine ratepayers, it did state that it represented 1,000 Verizon Maine employees – presumably most of whom live in Maine. We take judicial notice of this fact in light of the numerous letters the Commission has received from Verizon Maine employees who are union members living in Maine.

will occur – which will directly impact Labor's members. Specifically, assuming the transaction is approved, the final structure could impact the types of work performed by Labor's members or where the work is performed.

As the OPA also noted, Labor's members have been operating Verizon's network and are very familiar with the state of the current plant and current technical/operational processes. Labor, because of its direct, first-hand knowledge of the network and the challenges FairPoint will face if it assumes ownership of the network, could provide the Commission with important information and insights concerning the sufficiency of FairPoint's due diligence as well as provide a reality check regarding FairPoint's proposed future commitments for the network.

It appears that the main reason FairPoint argues that Labor should be given discretionary intervenor status is its belief that it such a designation will make it easier for the Commission to limit the scope of Labor's participation in the proceeding, thereby allowing the Commission to more efficiently manage and resolve the case. However, when read together, the Commission's Rules concerning intervention make clear that the Commission has the authority under section 723, whether intervention is granted under Section 720 or 721, to limit or deny a party's participation in a proceeding as to specific issues. In situations where a party is seeking intervention, and not where the Commission is in the position of imposing mandatory intervention status in order to ensure that all the necessary parties participate in a proceeding, there is little legal or practical distinction between mandatory and discretionary intervention. A party's right to appeal a Commission decision does not depend upon its intervention status. *See* 35-A M.R.S.A. § 1320(2) ("Any person who has participated in commission proceedings, and who is adversely affected by the final decision of the commission is deemed a party for purposes of taking an appeal.") Further, as noted by FairPoint, the Law Court will conduct a *de novo* review of an appellant's standing and its determination does not hinge on whether the party was granted mandatory or discretionary intervenor status before the Commission. *Natural Res. Council v. P.U.C.*, 567 A.2d 71, 73 (Me. 1989).

Thus, so long as Labor meets the requirements of section 720, it should be granted mandatory intervention status. As discussed in detail above, it is clear that Labor meets the requirements for mandatory intervention: it and its members are persons that are substantially and directly affected by the proceeding. Accordingly, Labor is hereby granted mandatory intervenor status.

In the alternative, and in the event FairPoint appeals this decision to the Commission and it finds that Labor does not qualify for mandatory intervention, I also find, based upon the same facts discussed above, that Labor qualifies for discretionary intervention status under Section 721. Specifically, I find that Labor's participation in this proceeding will help ensure that the Commission has access to first-hand knowledge concerning Verizon's operations in Maine as well as the benefit of Labor's perspective on the complex financial, technical, operational, and managerial issues that will need to be addressed in this proceeding.

B. Limitations on Participation

FairPoint proposes to limit Labor's participation to five issues specifically associated with employment matters. FairPoint argues that only by limiting Labor to these issues, will the Commission be provided information on matters within Labor's expertise while not allowing Labor to hamper the Commission's efficient processing of this proceeding. As explained above, Labor has interests and expertise other than the limited employment matters listed by FairPoint. FairPoint has provided no reason why Labor should not also be heard on these other issues. Further, as the OPA noted, it will be very difficult to precisely delineate the boundaries of the issues suggested by FairPoint. It would be a significant waste of both the Commission's and the parties' resources to require the Commission to resolve the inevitable disputes that will arise regarding whether a particular data request, piece of testimony, or question on cross-examination falls within Labor's permitted topic areas.

As for FairPoint's argument that, to the extent Labor's interests are similar to those of consumers, Labor should be consolidated with the OPA, the OPA correctly notes that Labor has retained experienced counsel of its own, obviating one of the usual reasons for consolidation. Further, the OPA argues that it cannot predict that its positions will coincide with Labor's positions. I find, at this time, that it appears that Labor and the OPA's interests are sufficiently distinct that there is no need to consolidate their participation. I do not foreclose, however, the possibility that such consolidation may not be appropriate at some future time as to particular issues.

Accordingly, FairPoint's request to limit the scope of Labor's participation in this proceeding is denied. This ruling shall apply regardless of whether Labor is a mandatory intervenor or discretionary intervenor. Labor, along with every other party, will be subject to the usual relevance limitations associated with all proceedings. FairPoint, as well as any other party, is free to raise relevance objections at any point in this proceeding. Any such objections will be addressed at that time and on a case-by-case basis.

BY ORDER OF THE HEARING EXAMINER

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April 13, 2009

Dennis J. Moss, Senior Review Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250
By Overnight Delivery (FedEx)

Re: 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

Dear Judge Moss:

I am in receipt of the Notice Concerning Agenda for Hearing dated April 8, 2009, in the above-referenced proceeding. The Notice addresses questions you and the Commission may have concerning the request of International Brotherhood of Electrical Workers ("IBEW"), Local 89 ("Local 89") to withdraw from this proceeding. I am responding as counsel for Local 89.

At the beginning of this case, Local 89 decided to intervene to protect the interests of its members who are employed by the Applicants. Local 89 had two primary concerns: (1) the impact of the proposed transaction on the financial condition of its employer; and (2) the impact of the proposed transaction on employment levels, wages, benefits, and other collective bargaining matters. Local 89 recognized that the first issue was one that was uniquely within the jurisdiction of this Commission. Local 89 also recognized that the second issue was outside the scope of issues that the Commission would consider in a merger proceeding. IBEW committed from the outset of this case to restrict its participation to matters that are within the Commission's jurisdiction.

With the assistance of an independent financial expert, Local 89 conducted extensive discovery concerning financial issues. Through that discovery process, Local 89's expert received numerous documents, including the Applicants' confidential financial models and projections. The expert's review of that information, as well as his review of numerous documents filed by Applicants with the Securities and Exchange Commission, led Local 89 to believe that, while it had some concerns about the financial impact of the transaction, those concerns did not rise to level where Local 89 would need to oppose the transaction solely on financial grounds.

Separately from this proceeding, IBEW and the Communications Workers of America ("CWA") (which represents some of Applicants' employees in other states) engaged in negotiations on a national level with the Applicants. Those negotiations were designed to

address collective bargaining issues and to ensure that the Applicants would view their employees as a valuable resource in trying to achieve the goals of the merger.

As the Commission can see from the agreement that was reached between the Applicants and labor unions, the parties have achieved such an agreement. Rather than being contrary to the public interest, as the Commission's Notice implies, the agreement is fully consistent with the public interest. The agreement recognizes some of the challenges the Applicants will face and establishes a process for represented employees to work with the Applicants to enhance the level of service to the public and achieve their other goals. The agreement specifically recognizes the opportunities for new investment and enhanced efficiency, and it establishes a goal of achieving these objectives while minimizing any adverse impacts on existing employees.

In these difficult economic times, nothing could be more consistent with the public interest than having employers and labor unions work together to improve service to the public, make increased investment in critical infrastructure, and do so while preserving well-paying jobs in the communities they serve. Local 89 believes that the national agreement appropriately works toward those objectives and is wholly consistent with the public interest.

As the Notice recognizes, part of the agreement between the Applicants and labor unions is that the labor unions would withdraw from this proceeding and the other proceedings reviewing the proposed transaction. That aspect of the agreement reflects the parties' intention to work together to provide enhanced services to the public. It would not be consistent with the overall intention of the agreement, which recognizes the important role in the future of the companies that is played by the Applicants' skilled workforce, for the unions to continue to oppose the transaction. Rather than being a *quid pro quo* for some monetary benefit or advantage, as the Notice implies, withdrawing from this proceeding is a recognition that the unions and Applicants will be working together to build the new company and enhance service to the public.

Local 89 also takes issue with the implication in the Notice that Local 89 had an obligation to provide a copy of the agreement to the Commission as an attachment to its request to withdraw from this proceeding. As discussed above, the agreement relates primarily to labor relations and collective bargaining issues. Local 89 was cautioned at the outset of this case, and readily agreed, that it should not raise any matters related to collective bargaining or labor relations in this proceeding. Local 89 was not trying to hide something from the Commission; it was simply complying with the procedures set forth at the beginning of this case to keep labor relations matters completely separate from this proceeding.

Finally, Local 89 would note that the Notice errs in equating the interests of a labor union with those of a private, competitive business. As several state utility commissions have recognized, a labor union is not a competitor to its employer and is not subject to the same restrictions that might be applied to competitors in regulatory proceedings. *Application of*

Washington Gas Light Co., 2007 D.C. PUC LEXIS 246 ("OPEIU argues persuasively ... that a labor union such as OPEIU, representing a utility's own employees, should not be viewed as a 'competitor' of the utility for purposes of discovery"), citing with approval *New England Gas Co.*, 2002 R.I. PUC LEXIS 15 and *Application of Sprint Nextel for Approval of Transfer of Control*, 2006 Mo. PSC LEXIS 218 ("Obviously, CWA is not a competitor of Sprint Nextel.")

I will be unable to attend the hearing on April 15, 2009, but I hope that this letter has responded to the Commission's concerns set forth in the Notice.

Electronic copies were filed with the WUTC Records Department on this date.

Sincerely,

Scott J. Rubin

cc: David S. Danner, Secretary and Executive Director (FedEx and email)
All parties (first class mail and email)