

Attachment A

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

In the Matter of the Joint Application of)	DOCKET UT-090842
)	
VERIZON COMMUNICATIONS)	
INC. AND FRONTIER)	
COMMUNICATIONS)	PROPOSED REPLY OF
CORPORATION)	INTERNATIONAL BROTHERHOOD
)	OF ELECTRICAL WORKERS,
For An Order Declining to Assert)	LOCAL 89, TO ANSWER OF
Jurisdiction Over, or, in the Alternative,)	FRONTIER AND VERIZON
Approving the Indirect Transfer of)	
Control of Verizon Northwest Inc.)	
)	
.....)	

Pursuant to permission granted by the Commission under WAC 480-07-370(1)(d), the International Brotherhood of Electrical Workers, Local 89 (“IBEW”), hereby files this Reply to the Answer of Frontier Communications Corporation and Verizon Communications Inc. (“Applicants”) opposing IBEW’s petition to intervene.¹

Introduction

Applicants allege that IBEW’s participation in this case “can only pertain to labor issues” and that such issues “constitute an improper broadening of the issues in this case.” Applicants are incorrect. IBEW’s petition to intervene carefully and fully describes the issues it would pursue in this case and those issues are squarely within the Commission’s jurisdiction, as more fully described below.

Further, as IBEW discusses below, while IBEW’s interest in this proceeding stems from its representation of certain Verizon employees, that does not mean that IBEW will raise labor

¹ The pleading filed by Applicants was incorrectly titled a “Response.” Under the Commission’s rules, the response to a petition is supposed to be called an “Answer.” WAC 480-07-370(1)(c)(i).

relations issues in this case. IBEW recognizes that the Commission's jurisdiction is limited and IBEW will not seek to have the Commission address issues that are outside of that jurisdiction.

IBEW recognizes that the Commission recently dismissed IBEW from another proceeding because it believed that IBEW had used the case to improperly "extract labor concessions from the Applicants." *Embarq Corp. and CenturyTel Inc.*, Docket No. UT-082119, Order 05 (May 28, 2009) (cited herein as *Embarq*). IBEW respectfully submits that the *Embarq* order, as to IBEW's intervention, was wrongly decided and was not based on any evidence that IBEW engaged in the conduct of which it was accused.

Fundamentally, however, the Commission should recognize that a utility's employees are an integral part of the public whose interest the Commission is charged with protecting. That does not mean that the Commission should enter into labor relations matters, but it does mean that the Commission should recognize that a utility's employees are likely to have a different perspective – and access to different information – concerning issues that are squarely within the Commission's jurisdiction.

The Issues in this Case

The Applicants initiated this proceeding to comply with the requirements of RCW § 80.12.010, *et seq.*, regarding the transfer of utility property or stock. This Commission has held that it can approve a merger or transfer of a public utility only if it is consistent with "the Commission's general authority and responsibility to 'regulate in the public interest.'" *Puget Sound Power & Light Co.*, Docket No. UE-951270, 1997 Wash. UTC LEXIS 6, *33; 176 PUR4th 239 (Feb. 5, 1997). Similarly, the Commission's regulations state: "If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the

same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.” WAC 480-143-170 (emphasis added).

The Commission’s decision in *Puget Sound* included the following as an important element of the “public interest”: “The transaction, with conditions required for its approval, should strike a balance between the interests of customers, shareholders, and the broader public that is fair and that preserves affordable, efficient, reliable, and available service.” 1997 Wash. UTC LEXIS 6, at *40.

IBEW Will Not Address “Labor Issues” in This Case

On page 1 of its Answer, Applicants state that “IBEW’s interest in representing its members in this docket as employees of Verizon can only pertain to labor issues.” Applicants do not explain their basis for reaching this conclusion. Having made this unsupported assertion, Applicants then argue that such issues “are not properly before the Commission and constitute an improper broadening of the issues in this case.”

Applicants would be correct that the raising of “labor issues” before the Commission would be improper. But that is not what IBEW will do. IBEW’s Petition to Intervene sets forth the following issues it plans to address:

IBEW has serious questions about the financial fitness and capabilities of Frontier to engage in a transaction of this magnitude. IBEW also has serious questions about the technical and managerial fitness and capabilities of Frontier to manage and execute transitions of the magnitude and complexity required for the proposed transaction.

IBEW Petition to Intervene, ¶ 4 (emphasis added). These issues are directly related to the impact of the proposed transaction on the efficiency and reliability of service, which the Commission has recognized is part of its mandate to consider the impact of the proposed transaction on “the broader public.”

Further, in its recent *Embarq* decision, the Commission noted that the following issues were considered to be part of its public interest determination:

- Continuation of conditions approved in the Commission's order authorizing the separation of Embarq from Sprint (Separation Order) in 2006.
- Financial fitness of the merged company.
- Service guarantees.
- Merger synergies and future treatment of synergy benefits.
- Recovery of merger, branding and transaction costs.
- Customer notice.
- Transfer of long distance customers.
- Broadband service improvement.
- Affiliated interest transactions.
- One-time Lifeline notification; and,
- Milestone reporting.

Embarq, pp. 8-9.

These are precisely the types of issues IBEW is proposing to address and to which it brings special expertise: the financial fitness of the new company, whether projections of merger synergies are reasonably achievable without threatening the quality or safety of service, whether and how improvement should be made in service (including broadband service), among others. IBEW represents hundreds of employees of Verizon in Washington with first-hand knowledge of the utility's operations.

In addition to its knowledge of operations "on the ground" in Washington, IBEW also will bring substantial expertise through its witnesses who are expected to analyze the financial and operational aspects of the proposed transaction. Through those witnesses, as well as IBEW's relationship with its affiliates in other states where Verizon has engaged in similar types of

transactions, IBEW will provide the Commission with information and a perspective that might not be available otherwise.

IBEW also would emphasize, as it did in its Petition to Intervene, that it will not raise labor relations issues in this proceeding. IBEW will limit its evidence to those issues that are directly within the Commission's jurisdiction, including impacts of the proposed transaction on the Applicants' financial condition, safety and reliability of service, operations, and related issues.

Thus, IBEW is not proposing to broaden the issues in this proceeding. IBEW is proposing to review, evaluate, and offer evidence concerning issues that the Commission itself has identified as the central issues in this type of proceeding.

Utility Employees are Part of the Public Interest

Employees of a public utility are part of the public whose interest is to be protected in Commission proceedings. Recognizing that utility employees are an integral part of the public interest, this Commission has permitted labor unions to intervene in utility merger proceedings and other types of proceedings before this Commission. For example, in the *Puget Sound* merger proceeding the active intervenors included IBEW Local 77; the United Association of Plumbers and Pipefitters, Locals 32, 82, and 265; and Teamsters Local 117. Similarly in *Pacificorp and Scottish Power*, Docket No. UE-981627, 1999 Wash. UTC LEXIS 124, 192 PUR4th 143 (Mar. 16, 1999), the following labor organizations were active intervenors: Washington State Labor Council, AFL-CIO, International Union of Operating Engineers, Local 612, and IBEW Local 125.

IBEW also would note that utility commissions have rejected other attempts by Verizon and Frontier to limit the participation of the utilities' labor unions in merger proceedings. For

example, in a merger proceeding involving Frontier's acquisition of Commonwealth Telephone Co., Frontier argued that the Communications Workers of America ("CWA") did not have standing to participate in the case.² An administrative law judge for the Pennsylvania Public Utility Commission rejected that contention and held as follows:

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 [Office of Consumer Advocate] 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.

Commonwealth Telephone Co. and Citizens Communications Co., Order Disposing of Preliminary Objections, Docket No. A-310800F0010 (Dec. 14, 2006), pp. 6-7 (emphasis added), a copy of which is attached hereto as Appendix 1.

A few months later, a hearing examiner for the Maine Public Utilities Commission issued an order that again granted utility labor unions full rights to intervene in a telecommunications merger proceeding that involved the other applicant here, Verizon. In that order, the hearing examiner ruled:

Labor's members will be directly and substantially impacted by the Commission's decisions in this proceeding. 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. ... Finally, as pointed out by Labor, section

² Frontier was then known as Citizens Communications. Citizens changed its name to Frontier on July 31, 2008. Citizens Communications Company Changes Name to Frontier Communications Corporation, Business Wire (July 31, 2008), available at: < <http://www.reuters.com/article/pressRelease/idUS253256+31-Jul-2008+BW20080731> >.

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.

* * *

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.

Verizon New England Inc., Procedural Order, Docket No. 2007-67 (Mar. 14, 2007), pp. 7 and 8 (emphasis added), a copy of which is attached hereto as Appendix 2.

This Commission's Recent Decision in *Embarq* is Incorrect and Should Not Be Followed

On pages 2 and 3 of their Answer, the Applicants rely on the Commission's recent *Embarq* decision. In that case, the hearing examiner granted the labor union the right to intervene. At the end of the case, however, the commission held that the union should not have been allowed to intervene because "the union used its status as a party in the proceeding principally, if not exclusively, to extract labor concessions from the Applicants." Order p. 23.

While this is not the appropriate forum to challenge the accuracy of the Commission's characterization of the union's conduct in that case, the Commission's statement was not supported by any citation to the record. Moreover, with all due respect to the Commission, the Commission's reasoning does not fully appreciate the role of a private litigant in a proceeding before a utility commission. Neither a labor union nor any other private party can represent the entire "public interest" or to try to achieve the best result for the public as a whole. The very nature of our adversary system of justice is premised on each party approaching the case from its particular point of view and trying to protect its own interest. If those litigants represent a sufficiently broad cross-section of the interested public – as they do when utility employees are

allowed to participate along with residential and business customers, competitors, inter-connecting carriers, and the utilities themselves – then the coalescing of those interests can be found to represent the broad public interest. That is precisely what happened in the *Embarq* case, where those various interests were represented and each, acting in its own self-interest, reached a settlement with the applicants.

It is true that the labor union’s settlement in that case involved some issues that were outside the scope of issues that could be adjudicated before the Commission. That is neither unusual nor pernicious. Indeed, in that case, the labor union was able to satisfy its concerns with the financial impact of the proposed transaction on the utilities and obtain commitments from the new owner to try to alleviate any adverse impacts of the transaction on the utility employees represented by the union.

The Commission tried to characterize this as some type of misuse of the regulatory process, stating – with no record support – that the union used the regulatory proceeding as a “bargaining chip.” In fact, once the union satisfied itself that the new owner would be financially viable and that there would not be an adverse impact on the union’s members, then there was no purpose in remaining a party in the case before the commission. This was explained at length in a letter sent by counsel for the labor union to the Commission (a copy of which is attached hereto as Appendix 3), but the Commission chose to discount counsel’s representations and unjustly impugn the integrity of counsel – all with no evidentiary record.

It also is important to note that in the *Embarq* proceeding, neither the labor union nor the applicants asked the Commission to approve the agreement reached on labor relations issues. The parties recognized that such issues were outside the scope of the Commission’s jurisdiction and the union simply asked for permission to withdraw from the case.

IBEW submits that the *Embarq* decision is an anomaly that is at odds with nearly every public utility commission in the United States, and with the Commission's own history of allowing labor unions to be active participants in merger proceedings. In fact, labor unions participated in proceedings involving the Embarq-CenturyTel transaction in three other states, reached the same national settlement, and no other commission raised any concern about the conduct of the labor unions.³

Parties before a commission are expected to vigorously represent their own particular aspect of the public interest. If all of those interests can come together and achieve a settlement, then the public interest has been served. If those interests cannot agree, or if some part of the public is not represented by the parties, then the Commission must decide among the competing interests – using the evidentiary record on issues within the Commission's jurisdiction – to determine how to best protect the public interest.

Indeed, last year the New Hampshire Public Service Commission found that the participation of a utility's labor union in a telecommunications merger proceeding was invaluable, even though the unions did not agree to a settlement. That commission stated:

Among the key participants in this protracted proceeding have been the two labor unions that represent Verizon's highly experienced workforce in the three states. Their skepticism, and the evidence they produced, raised important questions about the economics of the transaction. Although they did not endorse the settlement agreement, in our judgment the Labor Intervenors' participation was key to the improved outcome.

Verizon New England, Inc., 2008 N.H. PUC LEXIS 8, *148-49, 264 PUR4th 185 (Feb. 25, 2008).

³ See *CenturyTel Inc.*, Docket No. 08-0645 (Ill. CC, Mar. 25, 2009) < <http://www.icc.illinois.gov/downloads/public/edocket/240413.pdf> >; *United Telephone Co. of Pa. LLC d/b/a Embarq Pa.*, Docket No. A-2008-2076038 (Pa. PUC, May 28, 2009) < <http://www.puc.state.pa.us/pcdocs/1043345.doc> >; *Embarq Corporation*, Case No. PUC-2008-00104 (Va. SCC, May 19, 2009) < http://docket.scc.state.va.us/CyberDocs/quickstart.asp?SHOW=view:88485&guest=Y&library=CASEWEBP_LIB&noframes >

WHEREFORE, for the reasons set forth above and in its Petition to Intervene, IBEW respectfully requests the right to intervene as a party to this proceeding.

A handwritten signature in black ink, appearing to read "Scott J. Rubin", is written over a horizontal line.

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815-2036

Phone: (570) 387-1893
Fax: (570) 387-1894
Email: scott.j.rubin@gmail.com

Counsel for IBEW

Dated: July 2, 2009