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September 21, 2009

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VIA E-MAIL FILING AND FEDERAL EXPRESS

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Suite 215
Salem, OR 97301-2567

**Re: Docket No.: UM 1431; Verizon's Reply in Support of Motion to Enforce
Commission Orders**

Dear Commission:

Enclosed for filing are an original and three copies of Verizon's Reply in Support of Motion to Enforce Commission Orders. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. J. O'Connell", is written over the typed name.

Timothy J. O'Connell

TJO:jle
Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of)
)
VERIZON COMMUNICATIONS INC.,)
and FRONTIER COMMUNICATIONS)
CORPORATION)
)
Joint Application for an Order Declining to)
Assert Jurisdiction, or, in the)
Alternative, to Approve the Indirect)
Transfer of Control of)
VERIZON NORTHWEST INC.)

**VERIZON REPLY IN SUPPORT
OF MOTION TO ENFORCE
COMMISSION ORDERS**

Verizon Communications Inc. (“Verizon” or “Applicant”) offers this reply to the IBEW Answer to Verizon’s Motion to Enforce Commission Order filed by the IBEW on September 18, 2009 (“IBEW Answer”). Verizon will not reiterate points it made in its motion, except to rebut the misguided arguments in the IBEW Answer. Notwithstanding the inaccurate claims in the IBEW Answer, the IBEW improperly used highly confidential information from a protected Oregon document in Pennsylvania, and inappropriately posed and pursued labor-related discovery. We respectfully submit, therefore, that the Commission enforce its prior orders in this proceeding, which expressly put IBEW on notice that it would be dismissed from the docket in the event it failed to adhere to the Commission’s orders.

1. IBEW used the highly confidential information in the Oregon document in Pennsylvania.

IBEW asserts that it did not "use" highly confidential Oregon information in its Pennsylvania filing. IBEW Answer at 2-3. Specifically, IBEW argues that it did not “use” the highly confidential information because it claims the underlying source of the protected

information was “public data from the Securities and Exchange Commission.” IBEW Answer at 3. This is an inaccurate diversion. IBEW’s consultant who provided the Pennsylvania affidavit performed his calculations from the information designated as highly confidential in the Oregon protected document, not from any data obtained from the SEC. *See* Affidavit ¶ 8. Thus, on their face, the Pennsylvania pleading and supporting affidavit used information designated as highly confidential in an Oregon document for another purpose.

IBEW goes on to draw a meaningless distinction by arguing that it “used” the highly confidential Oregon document in Pennsylvania to explain that the “document existed,” but did not “use” the highly confidential information contained therein. *See* IBEW Answer at 2-3. This inaccurate parsing is disingenuous and ignores Commission precedent. There would be no reason to identify the Oregon document in Pennsylvania unless the IBEW was using information contained therein. Indeed, the very premise of the IBEW’s Pennsylvania pleading was that it had obtained “newly provided information” through discovery of the document at issue in Oregon, and it argued (incorrectly) that the information in the document substantiated the position it was taking in Pennsylvania. *See* Attachment 1 to Motion at 3 (“CWA and IBEW move the Commission to consider this newly provided information in ruling on the CWA/IBEW petition for interlocutory review”). As noted in Verizon’s initial motion, the Commission takes violation of its protective orders very seriously. *See In the Matter of Oregon Electric Utility Company, LLC*, UM 1121, Order No. 05-114 (March 10, 2005) (“*Oregon Electric Utility Company*”). Indeed, the Commission does not tolerate a violation of its procedures even if it may ultimately find a document or specified information not to be confidential. *See id.* IBEW engaged in the same conduct here as the Commission took issue with in *Oregon Electric Utility*

Company, as it chose to violate the protective order rather than utilize the provision in the order to challenge the highly confidential designation or otherwise reach out to Verizon.

2. IBEW inaccurately describes the labor-related discovery issues.

IBEW dismisses its improper use of discovery as an “inadvertent mistake.” IBEW Answer at 6. Specifically, IBEW claims it posed the four labor-related discovery requests cited in the original motion because its counsel “inadvertently failed to remove [the] questions” that were included in discovery utilized by IBEW in other states. IBEW Answer at 4.¹ That claim seems dubious. For example, IBEW relies heavily on its assertion that the four cited labor related discovery requests (Requests 28, 29, 30, and 31) “were not listed among the matters that IBEW’s counsel wanted to pursue with Applicants” in a July 21 email to counsel for Verizon and Frontier. IBEW Answer at 5. That is incorrect. As shown in a copy of the email from IBEW’s counsel dated July 21 attached as Attachment 1, Request No. 30 was among the listed requests that IBEW sought, and did, pursue with counsel from the Applicants on the referenced conference call. Moreover, the notion that IBEW did not violate the Limitation Ruling because it backed off pursuing discovery requests in the face of objections from the Applicants (*see* IBEW Answer at 5) is wrong. It was the original requests themselves, regardless of IBEW’s ultimate decision on whether to pursue them, that constituted the “attempt[] to use the regulatory process to influence the Applicants in areas beyond of the scope of the proceeding” (Limitation Ruling at 3).

¹ That counsel would be so nonchalant about propounding discovery requests on the next business day (July 6) after the (July 2) issuance of the ruling with the strongly worded limitation of the IBEW’s participation in the case seems surprising. That is particularly so in light of the ruling language putting IBEW on notice that the sanction for violation would be IBEW’s dismissal from the case.


3. Commission action to enforce its orders with respect to IBEW is appropriate.

IBEW argues that “any sanction should be imposed against the undersigned counsel,” not against IBEW. IBEW Answer at 6. As explained in Verizon’s motion, however, the sanction for IBEW is already set forth in the Limitation Ruling, which mandates that a “finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.” Limitation Ruling at 3. Thus, any specific sanction of IBEW’s counsel should be in addition to – not in place of – the specified sanction for IBEW.

Wherefore, Verizon respectfully requests that the Commission grant Verizon’s motion to enforce the Commission’s orders in this docket and terminate IBEW’s participation in this docket as expressly provided under the terms of the Limitation Ruling and/or take any other action it deems appropriate given IBEW’s abuse of the discovery process and violation of the Highly Confidential Protective Order.

Respectfully submitted,

By: 
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UM 1431
CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all of the following parties, as follows:

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DATED: September 21, 2009.


Jennifer Endres

ATTACHMENT 1

Romano, Gregory M.

From: Scott J. Rubin [scott.j.rubin@gmail.com]
Sent: Tuesday, July 21, 2009 8:49 AM
To: chuck@charleslbest.com; Eng, Eugene M (GENE); Romano, Gregory M.;
kevin.saville@frontiercorp.com
Subject: UM 1431: Objections to IBEW data requests

Gentlemen:

I would like to schedule a time to discuss your objections to IBEW data requests 16 (a, b, and c), 17, 23, 30, 34, and 37 in the Oregon case. I would like to better understand your basis for objecting and explain why I believe the requests are properly within the scope of discovery in this case. I am hopeful that we can reach an understanding and avoid the need for motions to compel.

My availability this week is as follows (all times are Pacific time):

Today: any time
Weds: until noon
Thurs: any time except between 11 am and noon
Fri: not available

Thank you for your cooperation.

Scott