

333 OAK LANE  
BLOOMSBURG, PA 17815  
SCOTT.J.RUBIN@GMAIL.COM

SCOTT J. RUBIN  
ATTORNEY • CONSULTANT

TEL: (570) 387-1893  
FAX: (570) 387-1894  
CELL: (570) 850-9317

September 18, 2009

ATTN: Filing Center  
Public Utilities Commission of Oregon  
550 Capitol Street, N.E., Suite 215  
Salem, OR 97301-2551

Re: Joint Application of Verizon Communications  
Inc. and Frontier Communications Corp.  
**UM 1431**

Dear Sir or Madam:

Enclosed for filing please find the original and one copy of the Answer to Verizon's Motion to Enforce Commission Orders, filed on behalf of International Brotherhood of Electrical Workers, Local 89, in the above-referenced proceeding.

The document has been served on all parties as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rubin". The signature is written in a cursive style with a large, stylized "S" and "R".

Enclosure

cc: per Certificate of Service  
Paul C. Hays  
Ray Egelhoff

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1431**

In the Matter of	)	
	)	
Verizon Communications, Inc., and Frontier Communications Corporation	)	IBEW ANSWER TO VERIZON'S MOTION TO ENFORCE COMMISSION ORDERS
	)	
Joint Application for an Order Declining to Assert Jurisdiction, or, in the Alternative, to Approve the Indirect Transfer of Control of Verizon Northwest, Inc.	)	
	)	

The International Brotherhood of Electrical Workers, Local 89 (“IBEW”), files this Answer to the Motion to Enforce Commission Orders filed by Verizon Communications Inc. on September 17, 2009.

Verizon seeks to expel IBEW from this proceeding for alleged violations of two orders: (1) the Superseding Highly Confidential Protective Order issued on July 17, 2009 (“Order”), and (2) the Ruling that permitted IBEW to intervene in this case issued on July 2, 2009 (“Ruling”). As IBEW explains below, IBEW has not violated either order and Verizon’s motion should be denied. In the alternative, as further discussed below, even if there were a technical violation of either order (which is not the case), any sanction should be imposed against IBEW’s undersigned counsel, not against IBEW itself.

1. IBEW has not violated the Superseding Highly Confidential Protective Order

Verizon’s first claim is that IBEW violated the Superseding Highly Confidential Protective Order (“Order”). While Verizon’s basic recitation of the facts is accurate, those facts do not show that there has been a violation of the Order.

It is true that the undersigned counsel filed a motion and affidavit on behalf of the Communications Workers of America and the International Brotherhood of Electrical Workers Locals 1451, 1635, and 1637 in a Pennsylvania proceeding involving the same underlying transaction. Contrary to Verizon's assertion, however, those documents do not disclose any highly confidential information. Indeed, Verizon implicitly acknowledges this fact by attaching a copy of the entire motion and affidavit to its Motion in this case, without any redaction or claim of confidentiality.

Moreover, as explained in the Pennsylvania pleading, the information relied upon in Pennsylvania was obtained by Verizon's financial advisors from public filings with the Securities and Exchange Commission (and the footnote in the original document so states). Pennsylvania Affidavit, ¶ 7. Thus, even if there had been a disclosure of any information in that document – which there was not – the information was public, as the document itself states.

Thus, Verizon incorrectly relies on *Johnson v. Eugene Emergency Physicians PC*, 159 Or. App. 167, 974 P.2d 803 (1999), and *In the Matter of Oregon Electric Utility Co. LLC*, UM 1121, Order No. 05-114 (Mar. 10, 2005). In both of those cases, confidential information was disclosed. That simply is not the case here.

Apparently recognizing that it cannot support a claim that IBEW or its counsel released confidential information, Verizon also asserts that IBEW violated the Order by “using” the document in another proceeding. This claim also must fail.

Of course, IBEW acknowledges that its counsel (and its consultant, on advice of counsel) referred to the document (without disclosing its contents) in the Pennsylvania proceeding. The purpose of the Pennsylvania motion was to show that Verizon had this information in its possession. Importantly, the Order does not prevent the use of information about documents, it

directs parties not to “use or disclose the Highly Confidential Information” in other proceedings. Order ¶ 16. The Order strictly defines Highly Confidential Information to be “a trade secret or other confidential research, development, or commercial information ... the disclosure of which presents risk of business harm.” Order ¶ 2.

Verizon erroneously attempts to expand the scope of the Order. For example, on page 4 of its motion, Verizon states: “IBEW clearly used a document designated as highly confidential for a purpose other than preparation for and conduct of this proceeding ...” (emphasis added). But the Order does not prohibit parties from identifying the existence of documents; it prevents the use or disclosure of the Highly Confidential Information in the document. IBEW neither used nor disclosed any such information.

As already explained, IBEW’s counsel and consultant did not disclose anything from the document in the Pennsylvania proceeding, other than the fact that the document existed, who prepared it, the document’s date, and that it was in Verizon’s possession. None of this is Highly Confidential Information.

The only other “use” that IBEW’s counsel and consultant made of the document in Pennsylvania was to summarize the public data from the Securities and Exchange Commission that is shown on one page of the document. The summary does not use any highly confidential information; it uses only public information. Out of an abundance of caution, the summary does not even disclose the names of specific shareholders or their individual holdings, even though such information is publicly filed with the Securities and Exchange Commission.

In summary, there is no doubt that the undersigned counsel did not disclose any highly confidential information. While the existence of the document was disclosed in the Pennsylvania

proceeding, there was no use of any highly confidential information from that document in the Pennsylvania case. Thus, Verizon's first claim must be denied.

2. IBEW has not violated the Ruling that permitted it to intervene

Verizon attempts to bootstrap its incorrect allegation of a violation of the Order into a "pattern of abusive discovery practices" allegedly intended by IBEW to "utilize obtained information in ways that exceed the scope of this docket." Verizon Motion, p. 5. The only alleged violation of the discovery process is the submission of four data requests by IBEW on July 6, 2009, that concern the Employee Matters Agreement entered into by Verizon and Frontier on May 13, 2009.

Those data requests were part of an initial set of data requests prepared by IBEW's consultant and counsel. The Employee Matters Agreement was signed by Verizon and Frontier at the same time as the Agreement and Plan of Merger, and is an integral part of the transaction. In fact, the Agreement and Plan of Merger is replete with references to the Employee Matters Agreement and refers to the Employee Matters Agreement as one of the "Transaction Documents" that make up the entire transaction. Agreement and Plan of Merger, ¶ 1.202.

The same data requests were submitted at approximately the same time in four states where labor unions are actively involved in regulatory proceedings (Illinois, Ohio, Oregon, and West Virginia). The other states have not placed the same restriction on the unions' participation, and in fact recognize the need to evaluate the effects of a proposed transaction on a utility's workforce: IBEW's counsel inadvertently failed to remove questions about the Employee Matters Agreement from the initial data requests submitted in Oregon.

On July 20, 2009, Verizon and Frontier objected to these four data requests as being beyond the scope of issues that IBEW was permitted to pursue in this case. On July 21, 2009, counsel for IBEW sent an email to counsel for Verizon and Frontier asking to discuss various objections to data requests. These four questions were not listed among the matters that IBEW's counsel wanted to pursue with Applicants. On July 29, 2009, counsel for IBEW, Verizon, and Frontier had an extensive conference call regarding the Applicants' objections to various IBEW data requests. During that call, counsel for IBEW stated that he would not be seeking answers to these four questions in Oregon.

Since that initial oversight, counsel has been more vigilant in attempting to ensure that questions about employee matters are not asked in discovery in Oregon. In the intervening two months, counsel for IBEW, Verizon, and Frontier have had numerous communications about discovery matters. To the best of counsel's recollection, Verizon and Frontier have not complained about any other employee-related discovery questions and any objections relating to the scope of discovery have been amicably resolved between the parties.

Verizon's final claim is that the alleged violation of the protective order "was an attempt to influence the Applicant in the Pennsylvania docket." Verizon Motion, p. 4. This is not correct. First, as explained above, there was no violation of the Order. Second, the Pennsylvania filing was not made to "influence the Applicant"; it was made in furtherance of labor unions' efforts to have the Pennsylvania commission review the proposed transaction for its effects on Frontier's operations in Pennsylvania. Moreover, the Pennsylvania dispute was initiated by the labor unions on June 13, 2009 – well before this Commission even granted IBEW's petition to intervene.


3. Even if there were a technical violation of either order, any sanction should be imposed against the undersigned counsel

If the Commission finds that there has been a technical violation of either the Order or Ruling – which as explained above is not the case – any sanction should be imposed against the undersigned counsel. The Pennsylvania filing was made by counsel on behalf of different clients. IBEW’s consultant, Mr. Barber, submitted the Pennsylvania affidavit after receiving advice from the undersigned counsel that it would not violate the Oregon Order. Further, no officer or member of IBEW Local 89 has access to any confidential or highly confidential information produced in this case (the only individuals who have signed the protective order acknowledgements and who receive such information are outside counsel and outside consultants). Thus, it is not possible for IBEW Local 89 to have violated the Order and no sanction should be imposed against IBEW Local 89.

Similarly, as explained above, any concerns with the initial set of discovery questions issued by IBEW lie with counsel and do not justify the expulsion of IBEW from this case. The inclusion of those four questions was an inadvertent mistake. When it was called to counsel’s attention two months ago, counsel acknowledged that those questions exceeded the permissible scope of IBEW’s intervention in this case and the matter was not pursued. So, again, if there was a technical violation of the Ruling, the fault lies solely with the undersigned counsel.

WHEREFORE, for the reasons set forth above IBEW respectfully requests that the Commission deny Verizon's Motion to Enforce Commission Orders. In the alternative, if the Commission finds that there has been a technical violation of the Order or Ruling, any sanction should be imposed against the undersigned counsel and not against IBEW.

Respectfully submitted,



Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815  
(570) 387-1893  
scott.j.rubin@gmail.com

Counsel for IBEW Local 89, *pro hac vice*

Dated: September 18, 2009



**UM 1431**  
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all of the following parties by electronic mail.

Public Utilities Commission of Oregon  
Attn: Filing Center  
550 Capitol Street N.E., Suite 215  
Salem, OR 97301-2551  
PUC.FilingCenter@state.or.us  
(also by overnight delivery)

Michael Dougherty  
Public Utilities Commission of Oregon  
P.O. Box 2148  
Salem, OR 97308-2148  
Michael.dougherty@state.or.us

Charles L. Best  
1631 N.E. Broadway, Suite 538  
Portland, OR 97232-1425  
chuck@charlesbest.com

Kevin L. Saville  
Frontier Communications  
2378 Wilshire Blvd.  
Mound, MN 55364  
Kevin.saville@frontiercorp.com

Michael T. Weirich  
Department of Justice  
1162 Court Street N.E.  
Salem, OR 97301-4096  
Michael.wierich@state.or.us

G. Catriona McCracken, Staff Attorney  
Citizens' Utility Board of Oregon  
610 S.W. Broadway, Suite 308  
Portland, OR 97205  
catriona@oregoncub.org

Bob Jenks, Executive Director  
Citizens' Utility Board of Oregon  
610 S.W. Broadway, Suite 308  
Portland, OR 97205  
bob@oregoncub.org

Gordon Feighner, Utility Analyst  
Citizens' Utility Board  
610 S.W. Broadway, Suite 308  
Portland, OR 97205  
gordon@oregoncub.org

Mark P. Trincherro  
Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue, Suite 2300  
Portland, OR 97201  
marktrincherro@dwt.com

Gregory J. Kopta  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-1688  
gregkopta@dwt.com

Andrew Fisher  
Comcast Cable Communications LLC  
One Comcast Center, 50<sup>th</sup> Floor  
Philadelphia, PA 19103  
andrew\_fisher@comcast.com

Gregory M. Romano  
Verizon Northwest  
1800 41<sup>st</sup> Street, MC WA0105GC  
Everett, WA 98201  
gregory.m.romano@verizon.com

Eugene M. Eng  
Verizon Northwest Inc.  
Suite 150 MC OR030156  
20575 N.W. Von Neumann Drive  
Hillsboro, OR 97006  
eugene.eng@verizon.com

Lisa F. Rackner / Wendy McIndoo / Adam Lowney  
McDowell & Rackner PC  
520 SW 6<sup>th</sup> St., Suite 830  
Portland, OR 97204  
lisa@mcd-law.com  
wendy@mcd-law.com

Michel Singer-Nelson  
360Networks (USA) Inc.  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027  
mnelson@360.net

William A. Haas  
PAETEC Communications Inc.  
1 Martha's Way  
Cedar Rapids, IA 52233  
bill.haas@paetec.com

Rex M. Knowles  
XO Communications Services Inc.  
111 E. Broadway, # 1000  
Salt Lake City, UT 84111  
rex.knowles@xo.com

Greg Rogers  
Level 3 Communications LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
greg.rogers@level3.com

Lyndall Nipps  
tw telecom of oregon llc  
845 Camino Sur  
Palm Springs, CA 92262-6275  
lyndall.nipps@twtelecom.com

Dennis Ahlers  
Integra Telecom Inc.  
6160 Golden Hills Drive  
Golden Valley, MN 55416-1020  
ddahlers@integratelecom.com

  
Scott J. Rubin

Dated: September 18, 2009