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July 8, 2016

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Petition of Communications Workers of America for a Public,  
On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness  
of Service Provided by Verizon Pennsylvania LLC  
Docket No. P-2015-2509336

Dear Secretary Chiavetta:

Enclosed please find Verizon's Petition for Protective Order, being filed on behalf of Verizon Pennsylvania LLC in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

**Via E-Mail and Federal Express**  
cc: The Honorable Joel H. Cheskis, ALJ  
Attached Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served a true copy of Verizon's Petition for Protective Order, upon the parties listed below, in accordance with the requirements of §1.54 (relating to service by a party) and §1,55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 8<sup>th</sup> day of July, 2016.

**Via E-Mail and First Class Mail**

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

Elizabeth Rose Triscari, Esq.\*\*.  
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Office of Consumer Advocate  
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Harrisburg, PA 17120

\*\* Federal Express in lieu of U.S. Mail

  
\_\_\_\_\_  
Suzan D. Paiva  
Pennsylvania Bar ID No. 53853  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
215-466-4755

Attorney for Verizon

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania LLC : : Docket No. P-2015-2509336

**PETITION FOR PROTECTIVE ORDER**

In accordance with 52 Pa. Code §5.365, Verizon Pennsylvania LLC (“Verizon”) hereby files this petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record. In support of this request, Verizon avers as follows:

1. On April 21, 2016, the Commission deemed this proceeding to be a complaint by Communications Workers of America (“CWA”) against Verizon regarding the safety, adequacy, and reasonableness of Verizon’s facilities and services, rather than the investigation CWA had requested, and remanded the matter to the Office of the Administrative Law Judge for continued proceedings.

2. On May 6, 2016, Verizon filed a Motion to Hold the Proceeding in Abeyance and for a Continuance due to a strike by the CWA and the International Brotherhood of Electrical Workers (“IBEW”) against Verizon and its affiliates that required Verizon to activate its business continuity plans, resulting in the personnel necessary to defend Verizon in this proceeding being engaged in emergency work assignments. To resolve this issue the parties agreed upon a schedule (memorialized in the May 31, 2016 Scheduling Order) that has Verizon’s responses to CWA’s first set of discovery due August 12, 2016 and normal discovery periods commencing after that date.

3. Verizon anticipates that discovery in this case may require the production of proprietary and competitively sensitive information, including but not limited to information that is either specified as confidential by its terms or pertains to business practices, operations, or financial

matters that are commercially sensitive or that are ordinarily considered and treated as confidential by the producing party, as well as possible customer proprietary information.

4. Under 52 Pa. Code § 5.362 and 5.365, a protective order may be entered to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In evaluating whether to enter a protective order, the Commission must balance the potential harm to the producing party of disclosure of the information against the public's interest in free and open access to the administrative process.

5. Verizon would be substantially harmed if proprietary and confidential information about its business plans and practices were filed and/or provided to parties without restriction, because it would then become public information available for review by actual or potential competitors of Verizon. For example, if the material is not kept in a proprietary folder in the Secretary's office and, instead made public, then competitors could obtain copies of such information to the detriment of the owner of such information. Also, information not marked proprietary could be publicly released in orders or other official documents available on the Commission's website. Given the sensitive nature of certain information, Verizon seeks herein to prevent such public disclosure.

6. Adopting the protective order that is attached hereto as Exhibit A is a reasonable way to protect the confidentiality of the parties' sensitive information while still permitting the parties and the Commission to use it as appropriate for purposes of the instant case. This limitation on the disclosure of such sensitive non-public information will not prejudice the rights of the parties and will not frustrate the ability of the public to access information that is already publicly available.

7. Verizon believes the orderly disposition of this matter will be facilitated by the adoption, at the earliest possible time, of the protective order attached as Exhibit A hereto to govern

the treatment of proprietary and highly confidential materials. This Order would protect all such proprietary and highly confidential materials from disclosure to the public.

8. Pursuant to 52 Pa. Code § 5.365(e), Verizon requests provisions to strictly regulate access to Verizon's proprietary and highly confidential information by counsel for the CWA. Verizon is not seeking to prohibit CWA's counsel from viewing the material. However, he will be permitted to view the proprietary and confidential information at a mutually convenient Verizon office, and agreement of Verizon or permission of the presiding officer will be necessary before copies of the material may be taken off site. This provision is essential to the protection of Verizon's highly sensitive business information because of Verizon's prior experience with misuse of proprietary Verizon information by CWA's counsel in violation of a protective order in another regulatory proceeding.

9. In 2009 the Oregon Public Utility Commission sanctioned Mr. Rubin and his client in that case, the IBEW, for violating a provision of the Oregon PUC's protective order that stated that a signatory "may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding." The Oregon Commission found that Mr. Rubin had violated that order by using confidential information produced in Oregon in a pleading filed with this Pennsylvania Commission. As a sanction the Oregon PUC terminated IBEW's participation in its case and referred its Order to the Oregon State Bar and the Pennsylvania State Bar for possible disciplinary action. A copy of the Oregon PUC order is attached hereto as Exhibit B.

10. The Oregon disciplinary board subsequently approved a stipulation for discipline whereby Mr. Rubin was publicly reprimanded for violating RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice). A copy of the Oregon bar's notice of this action is attached hereto as Exhibit C.

11. Accordingly, Verizon is concerned that any confidential information it is required to produce to the CWA in this case should be subject to heightened protection and oversight by the presiding officer. The proposed protective order contains a paragraph providing that:

.....Proprietary Information and Highly Confidential Information shall be produced for inspection to counsel of record for the Communications Workers of America at the producing party's office or another mutually agreed location. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If the requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge.

Other parties, and in particular the public advocates and Bureau of Investigation and Enforcement, would continue to have access to proprietary and highly confidential material in the manner typically provided in Commission protective orders.

WHEREFORE, Verizon Pennsylvania LLC respectfully requests that the protective order attached as Exhibit A hereto be entered.

Respectfully submitted,

Dated: July 8, 2016



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*Counsel for Petitioners  
Verizon Pennsylvania LLC*

# **EXHIBIT A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :  
America for a Public, On-the-Record :  
Commission Investigation of the Safety, : Docket No. P-2015-2509336  
Adequacy, and Reasonableness of Service :  
Provided by Verizon Pennsylvania LLC :

**PROTECTIVE ORDER**

THEREFORE,

IT IS ORDERED:

1. This Protective Order, submitted by Verizon Pennsylvania LLC (“Verizon”) is hereby established for use in this proceeding with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all written, recorded or graphic material, whether produced or created by a party or another person or entity, including but not limited to, correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY” (hereinafter collectively referred to as “Proprietary Information”).

In addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Order pertaining to such material. Such “HIGHLY CONFIDENTIAL” information shall be only such Proprietary Information that constitutes or describes the producing party’s marketing plans, including, *inter alia*, costing and pricing aspects thereof, competitive strategies, market share projections, marketing materials that have not yet been used, network deployment, network performance, customer-identifying information, or customer prospects for services that are subject to competition.

3. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information and Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked and sealed, and accompanied by a copy of this Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures.

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel of record, including in-house counsel and outside counsel who are actively engaged in this proceeding, including partners, associates, secretaries, paralegals and employees of such counsel, may afford access to Proprietary Information made available by another party (“the producing party”) pursuant to the following procedures:

i. To the party's witness(es) or expert(s) subject to the restrictions that such witness(es) or expert(s) may not hold any of the following positions with any competitor or affiliate of a competitor of the producing party: an officer, board member, significant stockholder, partner, owner (other than owner of stock) or an employee of any competitor or affiliate of a competitor of the producing party where such witness or expert is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; provided, however, that any witness or expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at less than \$500,000 and/or constituting less than a 10 % interest in a business does not, in itself, establish a significant potential for violation.

ii. To a party's independent expert retained to render professional services in this proceeding, subject to the restriction that no expert or consultant participating in this proceeding shall use on behalf of any other client, disclose to any other client or third party, or disclose in any other proceeding, any proprietary, confidential, or highly confidential information received as a result of their participation in this proceeding.

b. Highly Confidential Information. Proprietary Information or other material designated as "Highly Confidential" shall be

produced for inspection only by a party's counsel of record at the producing party's office or another mutually agreed location. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge.

c. Notwithstanding Paragraphs 4(a) and (b) above, Proprietary Information and Highly Confidential Information shall be produced for inspection to counsel of record for the Communications Workers of America at the producing party's office or another mutually agreed location. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge.

d. No other persons may have access to the Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

5. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in numbered Paragraph 4, above, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as “Appendix A”. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

6. A producing party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten or printed designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the producing party insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.

7. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. §552(b)(4) until such time as the information is found to be non-proprietary.

8. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure pursuant to Section 102 (“Public Record”) of the Pennsylvania Right to Know Law (“RTKL”). 65 P.S. § 67.102. Additionally, it is understood that some of the Proprietary Information or Highly Confidential Information shall be deemed to constitute trade secret or confidential proprietary information within the meaning of Sections 102 and 708(b) (11). *Id.* §§ 67.102, 67.708(b) (11), and other information is exempt under Section 708(b)(6) as personal identification information.

9. Any public reference to Proprietary Information or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Parts of any record in this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross-examination, argument and responses to discovery, and including reference thereto as mentioned in number Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 11 shall be decided on motion or petition by the presiding officer or the Commission as provided by 52 Pa. Code §5.365(c)(5). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

11. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the admissibility of Proprietary Information or Highly Confidential Information; to refuse or object to the production of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary Information or Highly Confidential Information, the party claiming that the information is Proprietary Information or Highly Confidential Information retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed.

Dated: July\_\_\_\_\_, 2016

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Joel H. Cheskis  
Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :  
America for a Public, On-the-Record :  
Commission Investigation of the Safety, : Docket No. P-2015-2509336  
Adequacy, and Reasonableness of Service :  
Provided by Verizon Pennsylvania LLC :

**TO WHOM IT MAY CONCERN:**

The undersigned is the \_\_\_\_\_ of  
\_\_\_\_\_ (the retaining party) and hereby acknowledges that he/she does not hold any of the following positions with any competitor or affiliate of a competitor of the producing party (an officer, board member, significant stockholder, partner, owner or an employee) who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party.

The undersigned has read and understands the Protective Order that deals with the treatment of Proprietary Information and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order.

In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of numbered Paragraph 4 (a)(ii) of the Order prior to submitting this Acknowledgement.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

# **EXHIBIT B**

**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.

ORDER

**DISPOSITION: MOTION GRANTED; INTERVENOR PARTICIPATION  
TERMINATED; PARTY STATUS REVOKED**

In this Order, the Public Utility Commission of Oregon (Commission) terminates the participation of the International Brotherhood of Electrical Workers, Local 89 (IBEW), in this proceeding and revokes its status as a party hereto.

**BACKGROUND**

At the commencement of this proceeding, IBEW was granted party status with certain conditions. In granting IBEW's petition to intervene, the Administrative Law Judge (ALJ) noted that IBEW's improper behavior had led to its dismissal as a party in a recent proceeding before the Washington Utility and Transportation Commission (WUTC),<sup>1</sup> and stated:

I am concerned, however, about IBEW's apparent belief that its conduct in the WUTC case was proper given its role as a private litigant \* \* \*. The use of the regulatory process by one party against another to extract concessions regarding matters exogenous to a case would constitute a

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<sup>1</sup> WUTC found that IBEW used its participation in the Embarq Corporation/CenturyTel, Inc., asset transfer case to improperly extract labor concessions from the applicants via a side agreement that prompted IBEW to withdraw from the case. The WUTC rejected the agreement and dismissed IBEW from the proceeding, noting "its participation is not in the public interest." (Docket UT-082119, Order 05, Service Date May 28, 2009, par. 95.) Among other things, the WUTC called into question the credibility of counsel and representations made that "were disingenuous at best." (*Id.*, par. 69.) IBEW argued that the WUTC was in error.

serious abuse that must be guarded against. I grant IBEW's petition under OAR 860-012-0001, but throughout the course of this proceeding will entertain a motion by the Applicants to terminate IBEW's participation upon a showing that IBEW has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding \* \* \*. 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.<sup>2</sup>

On July 17, 2009, the Commission entered Order No. 09-273, a Superseding Highly Confidential Protective Order (Protective Order), setting forth the conditions under which parties could view highly sensitive information (Appendix A). IBEW executed signatory pages indicating its pledge to comply with the terms of the Protective Order, including among its signatories, acting on behalf of IBEW, Randy Barber, self-identified as an "Outside expert" and Scott Rubin, self-identified as "Outside counsel" in the instant proceeding (Appendix B).<sup>3</sup>

Among the provisions of the Protective Order are the following relevant to the matter before us:

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

\* \* \* \* \*

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under

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<sup>2</sup> ALJ Ruling, July 2, 2009, at 2-3.

<sup>3</sup> As will be discussed further below, Mr. Rubin is also counsel to the IBEW in a related proceeding before the Pennsylvania Public Utility Commission (PPUC). *Application of Verizon North Inc. for Any Approvals Required Under the Public Utility Code for Transactions Related to the Restructuring of the Company in a Pennsylvania-Only Operation and Notice of Affiliate Transaction*, Docket Nos. A-2009-2111330, A-2009-2111331, and A-2009-2111337. (Pennsylvania Dockets).

circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

\* \* \* \* \*

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

#### **MOTION TO TERMINATE PARTICIPATION**

On September 17, 2007, counsel for the Applicant Verizon Communications Inc. (Verizon) filed a motion to terminate IBEW's participation in this case (Motion). Verizon alleges two violations of Commission Orders by IBEW. First, Verizon asserts that IBEW violated the terms of the Protective Order by using discovery obtained in this proceeding to advocate its position in the Pennsylvania Dockets and, second, by seeking to use the discovery process in this case to obtain labor-related information not relevant to its role in the case. In support of its allegations with respect to the Pennsylvania Dockets, Verizon submitted copies of a transmittal letter from Scott Rubin to the PPUC, a Motion for Leave to Reply to Verizon's Opposition to Petition for Interlocutory Review (Pennsylvania Motion) and an Affidavit of Randy Barber (Barber Affidavit) (Appendix C).

Regarding the first assertion, Verizon explains that IBEW filed a pleading before the PPUC that described the contents of a document that Verizon had designated as confidential and provided to IBEW in response to a discovery request in this docket. Verizon further explains that, in its pleading before the PPUC, IBEW acknowledged that IBEW received

the document through discovery in Oregon and that the document had been designated as confidential.

Regarding the second assertion, Verizon contends that IBEW propounded discovery requests soliciting information that could be used for labor negotiations. These include inquiring about seniority levels of employees, the potential for lay-offs, and questions on collective bargaining agreement obligations.

On September 18, 2009, IBEW filed an answer opposing Verizon's motion (Answer). With respect to the first allegation, IBEW does not dispute Verizon's version of the facts, but asserts that its actions do not violate the Protective Order. First, IBEW claims that the definition of Highly Confidential information is narrow in scope, limited to trade secrets, confidential research development, or commercial information whose disclosure would present a risk of business harm and would exclude the shareholder information gleaned from the documents declared confidential. Second, IBEW claims that it didn't actually use the document. Rather, it claims that it merely identified the existence of documents supporting the statement on stockholder data submitted in the Pennsylvania Dockets by Mr. Barber, and that Mr. Barber's statement—offered to demonstrate that Verizon had the stockholder information in its possession—was in fact a summary of information publicly available from the Securities and Exchange Commission of the United States.<sup>4</sup> Nowhere in its Answer does IBEW indicate that it sought to challenge the confidential treatment of the stockholder information under the provisions of paragraph 12 of the Protective Order.

In response to allegations that IBEW attempted to use the discovery process to obtain information in ways that exceeded the scope of the docket, IBEW contends that the improper questions were included inadvertently and that e-mail correspondence from IBEW did not include the four improper data requests. "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."<sup>5</sup> IBEW also asserts that, since the Pennsylvania Dockets were initiated prior to IBEW's intervention petition in Oregon, the Pennsylvania filing was not made to influence the applicant, but in furtherance of the labor unions' efforts to have the PPUC review the proposed transaction for its effects on Frontier's operation in Pennsylvania.<sup>6</sup> Finally, IBEW argues that if there were a "technical violation," sanctions should be imposed against counsel and not the client, as the filings were made on behalf of different clients.<sup>7</sup>

On September 21, 2009, Verizon filed a Reply in Support of Motion to Enforce Commission Orders (Reply). In its Reply, Verizon asserts that IBEW provided inaccurate claims in its Answer and failed to rebut the allegations in the Motion. Specifically, Verizon states that IBEW's parsing of the word "use" in conjunction with the highly confidential information attempts to draw meaningless distinctions; IBEW told the PPUC that it had obtained "newly

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<sup>4</sup> Answer at 2-3. To support its claim that the information in the Barber affidavit is not covered by the Protective Order, IBEW notes that Verizon appended it to its pleading without redacting the contents.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 6.

provided information” through the Oregon discovery process and asked the PPUC to consider it in a ruling on a request for interlocutory review.<sup>8</sup>

Verizon also voices its skepticism, supported by documentation, at IBEW’s claim that the four labor-related discovery questions were submitted through inadvertence:

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.’<sup>9</sup>

With respect to sanctioning counsel, Verizon notes that the ALJ had already indicated the remedy that the Commission would invoke in the case of a violation of its orders by IBEW and suggests that any sanctions of counsel should be in addition to, rather than in lieu of, sanctions against IBEW directly.<sup>10</sup>

## DISCUSSION

IBEW acknowledges in its Answer that “Verizon’s basic recitation of the facts is accurate” but asserts that “those facts do not show that there has been a violation of the Order.”<sup>11</sup> The only factual question in dispute, as shown by a conflict between the Answer at 4 and the Reply at 3, is whether the four labor discovery requests, Nos. 28 through 31,<sup>12</sup> “were not listed among the matters that IBEW’s counsel wanted to pursue with Applicants” as IBEW asserts.

Based upon our review of the pleadings and the factual statements therein and the supporting documentary evidence supplied by the parties, we find that IBEW provided information designated as highly confidential to the PPUC and, in so doing, disclosed information and made it publicly available. Although not providing the PPUC with the documents themselves, IBEW, in violation of the stewardship provisions of paragraph 9 of

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<sup>8</sup> Reply at 2.

<sup>9</sup> *Id.* at 3. The e-mail from IBEW counsel, dated July 21, 2009, to which both parties have referred, states in pertinent part: “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.”

<sup>10</sup> *Id.* at 4.

<sup>11</sup> e.g., at 2: “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.”

<sup>12</sup> The four labor-related data requests deemed by both parties to fall outside of the scope of this proceeding appear on Attachment 3 at 2 of the Verizon Motion. Request 30 is, by far, the most detailed and extensive of the four.

the Protective Order, gave access to “information and any notes *reflecting their contents* \* \* \* to which only designated counsel and consultants have access.”<sup>13</sup>

Furthermore, we find that the reference to the highly confidential document *and its use in the preparation of the cited pleading and accompanying affidavit* in the Pennsylvania Dockets clearly constitutes a violation of Protective Order paragraph 16 which states that a signatory “may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding.”

We turn finally to the issue of IBEW’s data requests on labor-related matters. Although IBEW counsel acknowledges their impropriety but asserts that the original questions were unintentionally submitted (not having been intended for Oregon, but only other states), the written evidence referred to by both parties indicates otherwise. First, Data Request No. 30 asks for Oregon-specific information by name in four of its five subparts. Second, Data Request No. 30, with its Oregon-specific information, is pursued in the July 21, 2009, e-mail from IBEW counsel.

In his Ruling granting IBEW party status in this proceeding, the ALJ in this docket unequivocally stated “throughout the course of this proceeding [I] will entertain a motion by the Applicants to terminate IBEW’s participation upon a showing that IBEW *has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding* \* \* \*. 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.” (Emphasis added.) Success in such an attempt is not a prerequisite ground for such dismissal.

The documentary evidence supports a finding that IBEW attempted to use the regulatory process to gain information on matters outside the scope of the proceeding. The specificity of Data Request No. 30, affirmed by the July 21 e-mail from IBEW counsel, conclusively undercuts any claim that the request was one of a blanket request sent to several states and that counsel failed to remove Oregon from the list due to inadvertence.<sup>14</sup>

## CONCLUSION

Despite a clear admonition from the Commission at the outset of IBEW’s participation in this case, that IBEW comply with the scope and use requirements of the regulatory process, IBEW has violated those requirements. Consistent with the warning given by the ALJ in his Ruling of July 2, 2009, the Commission terminates IBEW’s participation in this case. A copy of this Order will be provided to the Oregon State Bar and the Pennsylvania State Bar for possible disciplinary action.

---

<sup>13</sup> Order No. 09-273 (emphasis added). See *Johnson v. Eugene Emergency Physicians, PC*, 159 Or. App 167, 169 974 P 2d 803 (1999); “At the outset, we reject plaintiff’s argument that she did not violate the protective order because she did not reveal the documents. For plaintiff to argue that the order prevented disclosure of the documents but allowed disclosure of the contents of the documents defies the clear import of the order.”

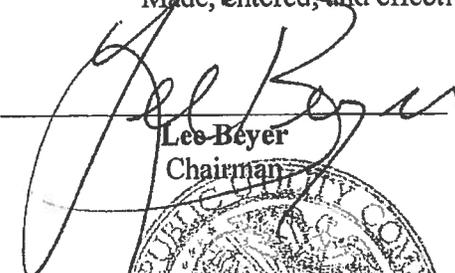
<sup>14</sup> Although we decline to make specific findings with respect to IBEW counsel’s state of mind, we find resonance in the WUTC’s comments referred to in Footnote 1, *supra*.

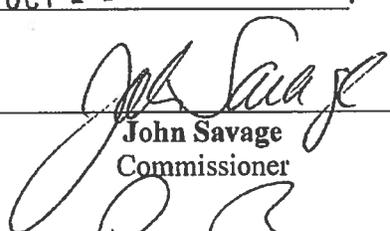
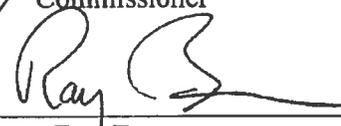
**ORDER**

IT IS ORDERED that:

1. The Motion to Enforce Commission Orders filed by Verizon Communication Inc. is GRANTED.
2. The status of the International Brotherhood of Electrical Workers, Local 89, as an intervening party in this proceeding granted pursuant to OAR 860-012-0001 is hereby REVOKED.
3. With respect to documentation and information in the possession of the International Brotherhood of Electrical Workers, Local 89, no later than ten (10) days from the date of this Order:
  - a. All non-public documentation and information obtained pursuant to its status as an intervening party in this proceeding shall be forfeited to the Public Utility Commission of Oregon, and the International Brotherhood of Electrical Workers, Local 89, shall have no rights thereto.
  - b. Any copies, notes, summaries, and digests of the non-public documentation and information in whatever form, physical or electronic, in possession of counsel, employee, executive, officer, agent, contractor, or other person associated with the party, shall be destroyed, and counsel shall file an affidavit attesting to such destruction.
  - c. The restrictions set forth in the Superseding Highly Confidential Protective Order shall remain in full force and effect.

Made, entered, and effective OCT 14 2009.

  
\_\_\_\_\_  
Lee Beyer  
Chairman  


  
\_\_\_\_\_  
John Savage  
Commissioner  
  
\_\_\_\_\_  
Ray Baum  
Commissioner

A party may appeal this Order by filing a Petition for Review with the Court of Appeals in compliance with ORS 183.480-183.484.

**SUPERSEDING HIGHLY CONFIDENTIAL PROTECTIVE ORDER**

UM 1431

**Scope of this Order-**

1. This order replaces and supersedes Order No. 09-271, in its entirety, and is hereafter referred to as the "Superseding Order." This order governs the acquisition and use of "Highly Confidential Information" in this proceeding.

**Definition-**

2. "Highly Confidential Information" is competitively-sensitive confidential information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"), the disclosure of which presents risk of business harm.

**Designation and Disclosure of Highly Confidential Information-**

3. Intervenors in this proceeding may include competitors, or potential competitors. Moreover, information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential, and such documents or information will be disclosed only in accordance with the provisions of this Superseding Order.

4. Parties must carefully scrutinize responsive documents and information and limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Superseding Order. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

HIGHLY CONFIDENTIAL – USE RESTRICTED  
PER SUPERSEDING HIGHLY CONFIDENTIAL  
PROTECTIVE ORDER NO. 09-273 IN DOCKET  
UM 1431.

5. Placing a "Highly Confidential" stamp on the first page of a document will not serve to protect the entire contents of a multi-page document. To ensure protection, each page that contains "Highly Confidential" material must be printed on green paper, marked separately as "Highly Confidential," and provided under seal. Multiple pages from a document containing "Highly Confidential" information may be sealed in the same envelope. A separate envelope must be provided for each document or filing. An original and five copies, each separately sealed, must be provided to the Commission. The redacted version of the document must be highlighted or otherwise marked to show where the "Highly Confidential" material has been redacted.

6. For each person for whom access to Highly Confidential Information is sought, parties must submit to the party who designated the material as Highly Confidential and file with the Commission a Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, certifying that the person requesting access to Highly Confidential Information:

Has a need to know for the purpose of presenting its party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and

Has read and understands, and agrees to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

7. The restrictions in paragraph 6 do not apply to Commission Staff employees or attorneys in the Office of the Attorney General representing Commission Staff. However, Commission Staff must submit the Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, for any external experts or consultants they wish to have review the Highly Confidential Information.

8. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. The objection must be filed within 10 days of the filing of the Superseding Highly Confidential Information Agreement. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after filing of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

10. Staff of designated counsel and staff of designated consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Superseding Order.

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

13. Highly Confidential documents and information will be provided to Commission Staff and the Commission under the same terms and conditions of this Superseding Order and as otherwise provided by the terms of the General Protective Order filed in this proceeding.

#### Appeal/Subsequent Proceedings-

14. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the Federal Communications Commission (FCC), but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded

to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

**Summary of Record-**

15. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Superseding Order to be placed on the public record.

**Preservation of Confidentiality-**

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

**Duration of Protection-**

17. The Commission shall preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Highly Confidential Information. This Superseding Order shall continue in force and effect after docket UM 1431 is closed, as set out in this paragraph.

**Destruction After Proceeding-**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Highly Confidential Information or documents containing such Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

**Additional Protection-**

19. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;  
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, may not be disclosed pending the Commission's ruling on the motion.

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT  
DOCKET NO. UM 1431**

I, \_\_\_\_\_, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for \_\_\_\_\_ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City/State where this Agreement was signed

\_\_\_\_\_  
Employer

\_\_\_\_\_

\_\_\_\_\_  
Position and Responsibilities

\_\_\_\_\_  
Permanent Address

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT  
DOCKET NO. UM 1431**

I, Scott J. Rubin, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Scott J. Rubin  
Full Name (Printed)

Scott J. Rubin  
Signature

7/17/09  
Date

Bloomsburg, PA  
City/State where this Agreement was signed

self-employed  
Employer

333 Oak Lane

Attorney  
Position and Responsibilities

Bloomsburg PA 17815  
Permanent Address

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT  
DOCKET NO. UM 1431**

I, Randy Barber, #8

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Randy Barber  
Full Name (Printed)

  
Signature

July 18, 2009  
Date

Takoma Park, MD  
City/State where this Agreement was signed

Center for Economic Organizing  
Employer

6935 Laurel Ave., # 204

President  
Position and Responsibilities

Takoma Park, MD 20712  
Permanent Address

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any :  
Approvals Required Under the Public : Docket No. A-2009-2111330  
Utility Code for Transactions Related to : Docket No. A-2009-2111331  
the Restructuring of the Company to a : Docket No. A-2009-2111337  
Pennsylvania-Only Operation and Notice :  
of Affiliate Transaction :

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MOTION OF  
COMMUNICATIONS WORKERS OF AMERICA AND  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCALS 1451, 1635, AND 1637  
FOR LEAVE TO REPLY TO  
VERIZON'S OPPOSITION  
TO PETITION FOR INTERLOCUTORY REVIEW

---

Pursuant to 52 Pa. Code §§ 5.103 and 5.302(d), the Communications Workers of America ("CWA") and International Brotherhood of Electrical Workers, Locals 1451, 1635, and 1637 ("IBEW") hereby move for leave to reply to Verizon North's Opposition to the CWA/IBEW Petition for Interlocutory Review. In support of this motion, CWA and IBEW state as follows:

1. On September 8, 2009, Verizon North Inc. ("Verizon North") filed its brief in opposition to CWA's and IBEW's Petition for Interlocutory Review.

2. In its brief, Verizon North states:

Verizon is a publicly held company with a myriad of shareholders who change daily as shares are traded, and none of whom holds more than 10% of Verizon's stock, let alone the approximately 30% that would be needed to end up with 20% of Frontier's stock. Indeed, the Unions do not claim that any one person or group will hold more than 20% of Frontier stock.

Verizon North brief, p. 5 (footnote omitted).

3. On the next day, September 9, 2009, in a related proceeding in Oregon, Verizon Communications Corp. ("Verizon") (the ultimate parent company of Verizon North) provided for the first time to the undersigned counsel and the unions' financial consultant a series of allegedly confidential documents that were filed by Verizon with the Federal Trade Commission on August 21, 2009, under the provisions of the Hart-Scott-Rodino Act.

4. Among the documents provided was a document from Verizon's financial advisors to Verizon, dated April 20, 2009, which contains a page showing the largest shareholders in both Verizon and Frontier Communications Inc. ("Frontier"), along with the number of shares owned by each shareholder in each company. Affidavit of Randy Barber, attached hereto as Appendix A, ¶ 7.

5. Straight forward calculations using these data show that a group of ten Verizon stockholders collectively would own more than 20% of Frontier's common stock if the proposed transaction between Verizon and Frontier is consummated. Id., ¶ 11.

6. Thus, at least as early as April 20, 2009 – and certainly by August 21, 2009, when the information was filed with the Federal Trade Commission – Verizon had information showing that its actions on behalf of its stockholders would result in a small group of shareholders owning a controlling interest (20% of the common stock, as defined by this Commission's policy statement at 52 Pa. Code § 69.901) in Frontier.

7. This is directly contrary to Verizon's statement in its brief that no group would own more than 20% of Frontier's common stock as a result of the proposed transaction.

8. CWA and IBEW, therefore, seek leave to have the Commission consider this newly provided information when the Commission rules on the CWA/IBEW petition for interlocutory review.

ORDER NO. 09-409

WHEREFORE, CWA and IBEW move the Commission to consider this newly provided information in ruling on the CWA/IBEW petition for interlocutory review and answer to a material question.

Respectfully submitted,



Scott J. Rubin (PA Sup. Ct. Id. 34536)  
333 Oak Lane  
Bloomsburg, PA 17815  
(570) 387-1893  
scott.j.rubin@gmail.com

Counsel for CWA and IBEW

Dated: September 11, 2009

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CERTIFICATE OF SERVICE

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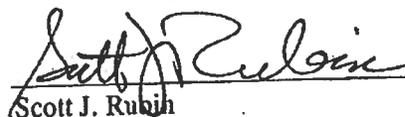
I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail and electronic mail.

Suzan D. Paiva  
Verizon Pennsylvania Inc.  
1717 Arch Street, 17N  
Philadelphia, PA 19103  
suzan.d.paiva@verizon.com

Steven C. Gray  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17102  
sgray@state.pa.us

Joel Cheskis  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
jcheskis@paoca.org

Johnnie E. Simms  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
josimms@state.pa.us

  
\_\_\_\_\_  
Scott J. Rubin

Dated: September 11, 2009

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any :  
Approvals Required Under the Public : Docket No. A-2009-2111330  
Utility Code for Transactions Related to : Docket No. A-2009-2111331  
the Restructuring of the Company to a : Docket No. A-2009-2111337  
Pennsylvania-Only Operation and Notice :  
of Affiliate Transaction :

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AFFIDAVIT

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1. My name is Randy Barber. I am a financial consultant who has been retained by the International Brotherhood of Electrical Workers ("IBEW") and the Communications Workers of America ("CWA").
2. I am employed by the Center for Economic Organizing and serve as its President. My office address is Suite 204, 6935 Laurel Avenue, Takoma Park, Maryland 20912.
3. I have worked as a financial consultant for more than 25 years. I specialize in complex financial and operational analyses of companies and industries, sometimes in the context of collective bargaining, other times in support of clients' strategic or policy interests. Among the companies that I have analyzed in great depth are Alcatel, Avaya, AT&T, Boeing, Celestica, Columbia/HCA, Eastern Air Lines, Edison Schools, FairPoint Communications, Lucent Technologies, MCI, Oregon Steel, Sylvan Learning Systems, Texas Air Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, and Wal-Mart. More broadly, I have provided clients with various analyses of such industries as aerospace manufacturing, air transport, for-profit education, newspaper publishing, off-road vehicle manufacturers, and telecommunications and internet access and content providers.
4. I have testified as an expert witness (either at trial or by deposition) in several regulatory proceedings, judicial proceedings, and arbitrations. These have included, for example, a class action law suit involving BTT, National Mediation Board Single Carrier proceeding, the Big Sky Airlines Bankruptcy, an Examiner's Investigation into the Bankruptcy of Eastern Air Lines, and the state regulatory proceedings involving FairPoint Communications' purchase of Verizon's landline businesses in Northern New England. In addition, I have served as an expert financial consultant in various proceedings where it was not necessary for me to testify, such as an airline fitness investigation involving ATX, a cross-border airline merger investigation (American Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

5. I am the financial consultant for CWA and IBEW in state regulatory proceedings involving Frontier Communications' proposed acquisition of Verizon's landline operations in 14 states. To date, I have been assisting CWA and IBEW in conducting discovery in the regulatory proceedings in Illinois, Ohio, Oregon, and West Virginia.

6. On September 9, 2009, I received in discovery in the Oregon proceeding a document dated April 20, 2009, that was prepared for Verizon by its financial advisors, Barclay's and J.P. Morgan. The document also was provided by Verizon to the United States Federal Trade Commission on August 21, 2009, as part of Verizon's Hart-Scott-Rodino filing (identified therein as document 4(c)(41)). Verizon claims that the entire document is confidential, so I cannot attach the specific page of the document or disclose specific information contained therein.

7. Page 9 of the document provides a list of the largest shareholders in both Verizon and Frontier, along with the precise number of shares owned by each shareholder in each company. The page states that the source of the document is a database comprised of the latest available public information filed with the United States Securities and Exchange Commission.

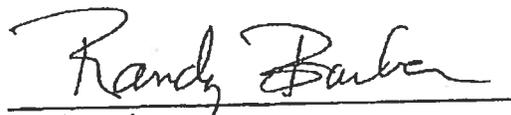
8. For each of the Verizon shareholders listed in this document, I have calculated the number of shares that the shareholder would receive in Frontier if this transaction is completed under the terms of the Agreement and Plan of Merger between Verizon and Frontier (dated as of May 13, 2009).

9. In performing this calculation, I used the lowest Frontier stock price (\$7.00 per share) under which Verizon's shareholders' interests in Frontier would be determined. I used this amount because it reflects the current value of Frontier's stock, which closed on September 10, 2009, at \$6.99 per share.

10. For those shareholders who also are listed as being among the largest holders of Frontier's stock, I added the current Frontier holdings to the Frontier stock the shareholder would receive from the proposed transaction.

11. The result of this calculation is that if the transaction is consummated at a price of \$7.00 per share, ten (10) Verizon shareholders collectively would own more than 20% of Frontier's common stock.

I have signed this Affidavit this 11<sup>th</sup> day of September, 2009, understanding that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
Randy Barber

ORDER NO. 09-412

ENTERED 10/19/09

**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.

ERRATA ORDER

**DISPOSITION: ORDER NO. 09-409 CORRECTED**

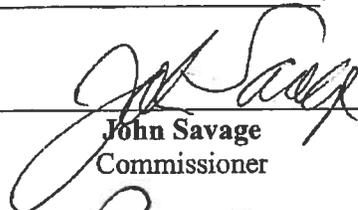
In Order No. 09-409, the Public Utility Commission of Oregon (Commission) granted Verizon Communication Inc.'s Motion to Enforce Commission Orders; terminated the participation of intervener International Brotherhood of Electrical Workers, Local 89 (IBEW); and revoked the party status of IBEW in this proceeding. *See* Order No. 09-409. After the issuance of Order No. 09-409, the Commission discovered a typographical error on page 3 of the order. The first sentence under the heading MOTION TO TERMINATE PARTICIPATION currently states "On September 17, 2007, counsel for the Applicant Verizon Communications Inc. (Verizon) filed a motion to terminate IBEW's participation in this case (Motion)." (Emphasis added.) The date should have been September 17, 2009. The order needs to be corrected to reflect the correct date, and the above referenced sentence should read, "On September 17, 2009, counsel for the Applicant Verizon Communications Inc. (Verizon) filed a motion to terminate IBEW's participation in this case (Motion)."

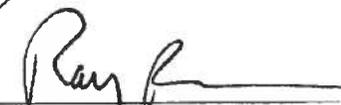
**ORDER**

IT IS ORDERED that Order No. 09-409, page 3, is corrected as set forth above.  
The remainder of the order is unchanged.

Made, entered, and effective OCT 19 2009

  
\_\_\_\_\_  
**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum**  
Commissioner



# **EXHIBIT C**

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Bar Number:

City:

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Oregon State Bar Bulletin — MAY 2011

▾

**Bar Actions**

**Discipline**

*Note: More than 14,000 persons are eligible to practice law in Oregon. Some of them share the same name or similar names. All discipline reports should be read carefully for names, addresses and bar numbers.*

**A.E. BUD BAILEY**  
**OSB #871577**  
**Vancouver, Wash.**  
**Public reprimand**

Effective Feb. 16, 2011, the disciplinary board approved a stipulation for discipline reprimanding Vancouver, Wash., lawyer Bud Bailey for violations of RPC 1.2(a) (failure to abide by a client’s decision whether to settle a matter) and RPC 1.4 (failure to keep a client reasonably informed and to communicate sufficiently to allow the client to make informed decisions).

Bailey and his firm undertook to represent current and former employees in a class action employment wage case against a bank that was subsequently decertified. After decertification, Bailey processed more than 200 individual claims against the bank. In so doing, Bailey spoke with a potential client by telephone who had previously filed a claim in the class action. Bailey then sent this client a fee agreement and engagement letter for his individual claim. Although the client never returned this agreement, Bailey understood from his conversation that the client had authorized Bailey to proceed with the client’s claim for damages.

Without confirming that a signed fee agreement was returned, and without further confirming with the client that he wanted Bailey to represent him, Bailey filed a complaint against the bank and made an offer of judgment that sought the full recovery of the client's claim.

The defendant made a lump sum counteroffer for less than a full settlement of all of the client's claims. Bailey attempted to contact the client in response to this counteroffer, but the client did not return the call. Shortly before the counteroffer's expiration, Bailey rejected the counteroffer because he had no authority from the client to accept it.

Thereafter, the defendant made a second counteroffer which included full recovery for the client on his claim. Despite the fact that he did not consult with the client or obtain his permission to do so, Bailey accepted this second offer.

The stipulation recited that Bailey had previously been reprimanded for a personal-interest conflict and entering into business with a client. However, his conduct was mitigated by the absence of a dishonest motive and remorse.

**SCOTT J. RUBIN**  
**Bloomsburg, PA.**  
**Admitted *pro hac vice* in Oregon**  
**Public reprimand**

By order dated Feb. 16, 2011, the disciplinary board approved a stipulation for discipline whereby Pennsylvania attorney Scott J. Rubin was publicly reprimanded for violating RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice). Rubin, a Pennsylvania lawyer, was admitted to appear *pro hac vice* before the Oregon Public Utilities Commission ("PUC") and was thus subject to Oregon's disciplinary authority with respect to his conduct while admitted here. RPC 8.5 (a); UTCR 3.170(1)(d).

Rubin represented a labor union that was an intervening party in a matter pending before the PUC. The PUC entered a protective order that permitted parties responding to discovery requests to designate and label documents produced to the other parties as "confidential." The protective order allowed a party to challenge by motion the designation of any document as confidential. The order prohibited all persons who obtained information designated as confidential from using or disclosing it for any purpose other than to conduct the PUC matter. Rubin and an outside expert hired by the union both agreed to be bound by the protective order.

Pursuant to the protective order, a party provided the union a document designated as confidential that named the party's largest shareholders and the number of shares each held. The document identified public filings with the SEC as the source of the shareholder information. Rubin concluded that the shareholder information was not confidential, but he did not challenge the designation of the document as confidential or otherwise seek relief under the protective order. Two days after receiving it, Rubin described the document and the shareholder information it contained in a motion he filed with the Pennsylvania Public Utilities Commission. He also filed an affidavit of the union's outside expert further describing the shareholder information contained in the document.

Based on these disclosures, the PUC found that the union violated the protective order. The PUC revoked the union's status as an intervening party in the matter.

The stipulation cited Rubin's cooperative attitude toward the disciplinary proceedings and his lack of prior discipline as mitigating factors.

**MARSHA M. MORASCH**  
**OSB #900920**  
**Portland**  
**1-year suspension, 6 months stayed, with conditions, 2-year probation**

Effective Feb. 17, 2011, the Oregon Supreme court accepted a stipulation for discipline from Portland attorney Marsha M. Morasch. Pursuant to the stipulation, Morasch was suspended for a period of one year with six months stayed pending the completion of a two-year probation, and conditioned upon Morasch taking certain remedial actions during the imposed period of suspension.

Morasch stipulated that in 2008 she was referred to the State Lawyers Assistance Committee (SLAC), which determined her to be appropriately within its jurisdiction. Thereafter, Morasch failed to comply with certain treatment and reporting requirements required by SLAC. When SLAC reported Morasch's noncompliance to the disciplinary counsel's office, Morasch failed to respond to disciplinary counsel's office's inquiries.

Morasch stipulated that her conduct violated RPC 8.1(a)(2) (knowingly failing to respond to a lawful demand for information from a disciplinary authority) and RPC 8.1(c) (failure to cooperate with SLAC). The sanction was determined in consideration of Morasch's substantial experience in the practice of law, that she committed multiple offenses and engaged in a pattern of misconduct. The stipulation also considered that Morasch had no prior disciplinary record, did not act with a dishonest or selfish motive and had personal or emotional problems.

**JACK LEVY**  
**OSB # 933420**  
**Portland**  
**Public reprimand**

By order dated Feb. 24, 2011, the disciplinary board approved a stipulation for discipline whereby Portland attorney Jack Levy was publicly reprimanded for violating ORS 9.527(2) (conviction of a misdemeanor involving moral turpitude). The stipulation followed Levy's plea of guilty to and conviction in circuit court of one count of class A misdemeanor harassment (intentionally harassing or annoying another by subjecting that

person to offensive physical contact that consists of touching the sexual or other intimate parts of the person). ORS 166.065(1)(a)(A), (4). The conviction stemmed from Levy's conduct toward another lawyer at a law firm office party.

Levy's substantial experience in the practice of law was cited as an aggravating factor. His cooperative attitude in the bar proceedings, remorse, lack of prior discipline and the imposition of other penalties (including a 24-month bench probation) were cited as mitigating factors.

**ANTONIO PORRAS JR.**

**OSB #924274**

**Portland**

**Disbarment**

Effective March 8, 2011, a trial panel of the disciplinary board disbarred lawyer Antonio Porras, Jr., formerly of St. Helens, for violations of RPC 8.4(a)(2) (engaging in criminal conduct reflecting on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(a)(3) (dishonesty and misrepresentation). Porras did not respond to the bar's formal complaint, and therefore an order of default was entered against him.

The misconduct for which Porras was disbarred occurred while he was the executive director of the Columbia County Indigent Defense Corporation (CCC). The panel found that while Porras was the executive director, he knowingly and intentionally misappropriated funds of the CCC. The panel found that Porras overpaid himself \$39,169.48 belonging to the CCC while apparently underpaying other contract attorneys with the corporation. The panel also found that Porras made intentional misrepresentations in an attempt to actively cover up his misappropriation of CCC money.

In disbaring Porras, the trial panel considered the following aggravating factors: Porras's dishonest or selfish motive; his pattern of misconduct; his multiple offenses; and his substantial experience in the practice of law since his admission in 1992. The trial panel also considered the following mitigating factors: Porras had no prior record of discipline; he disclosed his defalcations in a letter to the CCC treasurer; and he agreed to make restitution by entering into an unsecured promissory note in favor of CCC.

**LYNN E. ASHCROFT**

**OSB #791504**

**Portland**

**60-day suspension**

Effective March 17, 2011, Lynn E. Ashcroft of Portland was suspended from the practice of law for 60 days pursuant to a stipulation for discipline that described conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

In 2008, Ashcroft was a circuit court judge in Marion County. He presided over initial appearances in a criminal case in which the defendant was charged with drug offenses. Subsequent to those appearances but before trial, Ashcroft was in a public eating establishment and purchased food and drink for a group of patrons that included the defendant and her acquaintances. Ashcroft did not recall the criminal case when he paid the restaurant tab, but the defendant reminded him of it before he left the restaurant.

Thereafter, Ashcroft directed that the defendant's criminal case be assigned to Ashcroft for trial. Some months later, the defendant waived a jury and the case came to trial before Ashcroft who failed to disclose to the parties or their counsel that he had purchased food and drink for the defendant while her case was pending. Ashcroft found the defendant not guilty of all charges and asserts that his decision was based solely on factors related to the prosecution. However, the state presented evidence and authority that supported a guilty finding on at least one charge.

Some weeks thereafter, the defendant initiated contact with Ashcroft, who then engaged in a personal relationship with her. Ultimately, the Oregon Department of Justice investigated Ashcroft and his relationship with the defendant. Without admitting guilt or fault in any respect, Ashcroft resigned his judicial position.

The stipulation recited that Ashcroft had no prior disciplinary record, fully cooperated with the bar including initiating his own report of the matter to the bar, and was remorseful for his conduct.

**DAVID E. GROOM**

**OSB #782310**

**Portland**

**Dismissed**

On March 25, 2011, the Oregon Supreme Court dismissed a complaint against David Groom that alleged he violated RPC 1.4(a) and (b) (failure to adequately communicate with a client).

Groom represented a client on the appeal of a habeas corpus matter. At the time, the client had already served 8 months of a 13 month sentence, and Groom warned the client that the appeal would likely be dismissed as moot if he was released from custody before the appeal was decided.

Meanwhile, the client had hired another attorney to pursue a civil action seeking money damages for unlawful imprisonment. The civil attorney worried that if the habeas appeal was dismissed leaving the underlying habeas judgment intact, that judgment would have a preclusive effect on the client's civil action. The civil attorney thus contacted Groom and asked him — in connection with the state's motion to dismiss the habeas appeal — to ask the Court of Appeals to vacate the underlying habeas judgment. The civil attorney provided Groom with legal authority to support such a request. Groom agreed to consider the request.

At some point, however, Groom decided that he would *not* move to vacate. He did not notify the civil attorney of that decision until after the habeas appeal had been dismissed for mootness. Because the deadline for asking for reconsideration had passed, the civil attorney believed that it was now too late to request vacatur and complained to the bar.

The trial panel found that Groom had failed to adequately communicate his decision not to pursue vacatur and thereby violated RPC 1.4(a) and (b). The Oregon Supreme Court reversed and analyzed Groom's conduct in light of three factors relevant to RPC 1.4: the length of time between his decision and his communication of that decision to the client; whether he had failed to respond promptly to the client's reasonable requests for information; and whether his delay in communicating was likely to prejudice the client.

The court agreed that because Groom had agreed to consider the possibility of asking for vacatur, he was required to inform the civil attorney (and therefore the client) when he decided not to do so. However, the bar failed to prove that Groom's delay in communicating that decision was unreasonable, particularly since it was unclear that the time period for requesting vacatur had expired when the communication was finally made.

#### Applications

*The following have applied for admission under the reciprocity, house counsel or law teacher rules. The Board of Bar Examiners requests that members examine this list and bring to the board's attention in a signed letter any information that might influence the board in considering the moral character of any applicant for admission. Send correspondence to Admissions Director, Oregon State Board of Bar Examiners, P.O. Box 231935, Tigard, OR 97281.*

**Reciprocity:** Abram Nathaniel Bowman, Kaci Young Bowman, Jeffery David Bradley, Anthony Stephen Broadman, Teresa Lynn Campbell, Dennis Michael Charney, Colin Jeffrey Folawn, Steve Curtis Franklin, Bruce Frederick Howell, Steven Jerome Jager, John A Kesler III, Claudia Lyn Kilbreath, Brian Alan Knutsen, Thomas Arthur Lenz, Bruce Wallace Lorber, John Stewart Poulos, John McLean Riley III, Lillian Louise Salminen, Robert Craig Salminen, Mark Dana Schedler, Kiera Monique Silva, Marnie Hillary Bergman Silver, Dalynne Rene Singleton, Caroline Jane Swindell, Devon Marie Thurtle Anderson and Marianna Valasek-Clark.

**House Counsel:** Peter Alfred Brandt.

#### Notice of Reinstatement Application

The following attorneys have filed an application for reinstatement as an active member of the Oregon State Bar pursuant to Rule of Procedure (BR) 8.1:

**Maureen Flanagan** of Lake Oswego, #990488. Maureen Flanagan transferred her Oregon membership to inactive status in 2005 because she was living and practicing law in Illinois. She was admitted to the Illinois bar in 2004, and from November 2006 to October 2010, she was in-house counsel for AMCO Bank, N.A., of Rockford, Ill. Flanagan recently returned to Oregon and has accepted a position as house counsel for West Coat Bank.

*The Rules of Procedure require the Board of Governors to conduct an investigation of BR 8.1 reinstatement applications to determine whether applicants possess the good moral character and general fitness to practice law and whether the resumption of the practice of law in this state by the applicants will not be detrimental to the administration of justice or the public interest. Any person with information relevant to these applications is asked to contact promptly the OSB Regulatory Services Division, P.O. Box 231935, Tigard, OR 97281; phone: (503) 620-0222, or toll-free in Oregon, (800) 452-8260, ext. 343.*

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