UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EMBARQ CORPORATION, a wholly-owned Subsidiary of CENTURYTEL, INC. d/b/a CENTURYLINK

and **Cases 28-CA-22804**
28-CA-22849
28-CA-23021

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION #396, AFL-CIO

ACTING GENERAL COUNSEL'S ANSWERING BRIEF

I. INTRODUCTION

Counsel for the Acting General Counsel, Darlene Haas Awada, respectfully submits this answering brief to Respondent's exceptions to Administrative Law Judge[1] George Carson, II's decision, which issued August 24, 2010. The ALJ correctly found, in accordance with the record evidence and well-established Board law, that Respondent violated Section 8(a)(5) of the Act by eliminating the retail cashier position without the consent of the Union and without bargaining with the Union regarding the decision. In its Exceptions, Respondent incorrectly claims that that it was not obligated to bargain over the decision, that the Union waived its right to bargain over the decision, and that the Union failed to make a timely request to bargain.

[1] "ALJ" refers to Administrative Law Judge George Carson, II. "ALJD" refers to the ALJ's decision. "Br." refers to Respondent's Brief in Support of Exceptions to the ALJD. "Tr." refers to the transcript of the administrative hearing; "JX", "GCX", and "RX" refer to joint exhibits, the General Counsel's exhibits, and Respondent's exhibits, respectively.

The elimination of the retail cashier position, which Respondent couched as a layoff, is a mandatory subject of bargaining. Under well-settled Board law, as the ALJ found, Respondent was obligated to obtain the consent of the Union and bargain over the decision to eliminate the retail cashier position. The collective-bargaining agreement and bargaining history establish that the Union did not clearly and unmistakably waive its right to bargain over the decision, as the ALJ found. Further, the record establishes that the Union made a timely demand for bargaining.

The ALJ also properly found that Respondent failed to provide relevant information. The record and case law establish that Respondent unlawfully refused to provide information relevant to the decision to eliminate the retail cashiers. In addition, the evidence adduced at trial established, and the ALJ found, that despite Respondent's claims to the Union that there were no documents responsive to some of its requests, documents, in fact, existed.

Finally, the record and relevant case law support the ALJ's finding and conclusion that Respondent violated Section 8(a)(1) by photographing and videotaping employees engaged in the picket line in front of Respondent's retail store. Respondent cites no case law, nor could it, to counter the ALJ's findings and conclusions.

II. ARGUMENT

A. The ALJ Correctly Found that Respondent Violated Sections 8(a)(1) and (5) and 8(d) by Eliminating the Retail Cashiers' Positions Without the Union's Consent, and Without Affording the Union an Opportunity to Bargain with the Respondent with Respect to this Conduct or the Effects of this Conduct. *(Exceptions 7-10, 13-36, 42-44, 46-48)*

The ALJ's conclusion and factual findings supporting his conclusion that Respondent failed and refused to bargain over the decision to eliminate the retail cashiers are supported by ample record evidence and well-established Board law. Respondent excepts to these findings

and conclusions and argues that it was not obligated to bargain over the decision, that the Union waived its right to bargain over the decision, and that the Union failed to make a timely request to bargain. All of Respondent's exceptions are without merit.

1. The ALJ Correctly Found that Respondent was Obligated to Obtain the Consent of the Union and Bargain over the Decision to Eliminate the Retail Cashier Position

It is well settled that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing the wages, hours and other terms and conditions of employment of represented employees—mandatory subjects of bargaining—without first providing their bargaining representative with notice and a meaningful opportunity to bargain about the change. *NLRB v. Katz*, 369 U.S. 736 (1962). Mandatory subjects of bargaining include those matters that are "plainly germane to the 'working environment"' and "not among those 'managerial decisions which lie at the core of entrepreneurial control."' *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979).

As the ALJ correctly found (ALJD p.10-11), the "layoff" of the retail cashiers was not a run of the mill layoff, but, rather, then elimination of an entire classification. The layoffs of the retail cashiers at issue here are akin to the layoffs in *Holmes & Narver*, 309 NLRB 146 (1992), in which the Board found an employer's decision to combine jobs, to reassign work, and to lay off employees was a mandatory subject of bargaining. Id. at 147. In *Holmes & Narver*, as in the instant case, layoffs were made in connection with a decision to continue doing the same work with essentially the same technology, but to do it with fewer employees by virtue of giving some of the employees more work. Id. See also *St. John's Hospital*, 281 NLRB 1163, 1166, 1168 (1986) (adding significant new job duties, previously performed by others, to the work of unit employees is a mandatory subject of bargaining); *Cincinnati*

Enquirer, 279 NLRB 1023, 1031-1032 (1986) (phasing out job duties by transferring these duties to others, which resulted in the elimination of unit position, is a mandatory subject of bargaining).

Thus, as the ALJ concluded (ALJD p.10-11), the decision to lay off employees for economic reasons is clearly a mandatory subject of bargaining. Absent extraordinary situations involving "compelling economic circumstances," an employer must provide notice to and bargain with the union representing its employees concerning both the layoff decision and the effects of that decision. *Lapeer Foundry & Machine, Inc.*, 289 NLRB 952, 954-955 (1988). See also *Tri-Tech Services*, 340 NLRB 894, 895 (2003); and *Pan American Grain Co.*, 351 NLRB 1412 (2007).

Respondent admits that labor costs were a factor in its decision to eliminate the retail cashiers as part of an overall cost-cutting scheme. (Tr. 165, 141, 157; RX20) Similarly, Respondent admits that the decision to eliminate the retail cashiers was made locally, rather than as a corporate-wide determination. (Tr. 180, 280) Respondent admits that it continues to offer telecommunications services to commercial and residential customers at retail stores. (Tr. 168, 169). None of Respondent's witnesses cited lack of work as a reason for eliminating the retail cashiers.[2] (Tr. 66-67, 279) In fact, despite Respondent's attempts to characterize the testimony otherwise, the uncontroverted testimony at hearing established that the work remained and the retail sales consultants and managers are performing the work. (Tr. 165, 303, 347, 383)

[2] Respondent's strained claim that, because the volume of work declined, the work was no longer being performed is without merit. The record establishes, and the ALJ correctly found, that the work performed by the retail cashiers before they were eliminated is still being performed by retail sales consultants. (ALJD p.12, lines 27-30; Tr. 58-59, 297-298)

Under these circumstances, Respondent's decision to eliminate the retail cashiers clearly does not fall within the category of decisions "involving a change in the scope and direction of the enterprise ... akin to the decision whether to be in business at all," which the Supreme Court has held to fall outside the bargaining obligation imposed by Section 8(a)(5) and Section 8(d). *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 677 (1981). Rather, as in *Holmes & Narver*, supra, Respondent did not abandon a line of business or cease a contractual relationship with a particular customer, or make any other change that significantly altered the scope and direction of its business. Accordingly, Respondent was obligated to obtain the consent of the Union and to bargain over the decision to the eliminate the retail cashiers, as the ALJ correctly found (ALJD p. 11, lines 28-29, 33-37; p. 12, lines 23-25).[3]

2. The ALJ Correctly Found that the Union did not Clearly and Unmistakably Waive its Right to Bargain over the Decision to Eliminate the Retail Cashiers

Where, as here, an employer made a material and substantial change in a term of employment without negotiating with the union, the burden is on the employer to show that such a unilateral change was in some way privileged. *Pan American Grain*, 351 NLRB at 1414, fn. 9. Respondent argues that the Union waived its right to bargain by entering into a collective-bargaining agreement with a broad management rights clause and a reduction in force provision, by failing to make a timely demand for bargaining, and by acquiescing through its conduct. Respondent's claims of waiver are unsupported by fact and law, and the ALJ correctly rejected them.

[3] The record is devoid of evidence to support Respondent's claim (Br. 26) that it did, in fact, bargain over the decision to layoff employees.

a. The Union did not Clearly and Unmistakably Waive its Right to Bargain over the Decision to Eliminate the Retail Cashiers.

Respondent asserts that the Union waived its right to bargain over the decision to eliminate the retail cashiers. In *Provena St. Joseph Medical Center*, the Board reaffirmed its application of the "clear and unmistakable" waiver standard to evaluate an employer's claim that it has the right to unilaterally change bargaining unit employees' terms and conditions of employment based on contract language. 350 NLRB 808, 810 (2007). A waiver of bargaining rights by a union is not to be lightly inferred, but must by demonstrated by the union's clear and explicit expression. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983). See also *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 636 (2001); *Rockford Manor Care Facility*, 279 NLRB 1170, 1172 (1986). It is axiomatic that in order to waive a statutory right, silence does not give consent, and neither does ambiguity. The waiver must be clear and unequivocal. The person granting the waiver must do so knowingly. *Burrows Paper Corp.*, 332 NLRB 82, 94 (2000).

In interpreting the parties' agreement in order to determine whether a union has waived its right to bargain, the factors considered include: (1) the wording of the proffered sections of the agreement(s) at issue; (2) the parties' past practice; (3) the relevant bargaining history; and (4) any other provisions of the collective-bargaining agreement that may shed light on the parties' intent concerning bargaining over the change at issue. *Provena*, supra at 815. Further, in determining waiver, the Board is "not restricted to the contract provisions themselves but may properly evaluate them against the elucidating background of their bargaining history." *New York Mirror*, 151 NLRB 834, 840 (1965).

Here, examination of the contract language along with the bargaining history establishes that that the Union did not waive its right to bargain over the elimination of the retail cashiers. Cooper, who was at the bargaining table when the most recent bargaining took place regarding Respondent's right to layoff employees during bargaining of the 2004 contract, provided unrebutted testimony that Respondent proposed language allowing it full discretion to reduce the workforce and layoff employees, to move classifications, to do away with classifications, and to combine duties at will. (Tr. 194) The uncontroverted evidence establishes that the Union adamantly opposed the proposal, and Respondent withdrew it. Thus, the existing language remained in effect—the management rights clause providing Respondent with the right to layoff, with the reduction in force clause outlining the procedure for laying off employees for lack of work. Thus, the bargaining history clearly establishes that the Union adamantly opposed allowing Respondent to do precisely what Respondent has done in this case.

Further, as discussed above and as found by the ALJ (ALJD p. 10, lines 32-37), Respondent's actions in eliminating the retail cashiers went well beyond a run-of-the-mill layoff for lack of work. Here, similar to the facts in *Holmes & Narver*, supra, layoffs were made in connection with a decision to continue doing the same work with essentially the same technology, but to do it with fewer employees by virtue of giving retail sales consultants more work. The contract language does not allow Respondent to eliminate an entire classification, as occurred here. Nor does the contract language allow Respondent to change the work duties of the retail sales consultants.[4] Cooper's unrebutted testimony is that the Union "absolutely [did] not" agree during its negotiations regarding the contractual layoff language to allow

[4] Respondent's argument (Br., p. 13) that the management rights clause gives Respondent the right to "reassign" work also fails. The contract provision does not contemplate reassigning work as the result of the elimination of a classification.

Respondent to eliminate an entire classification by layoff, as occurred here. (Tr. 196) Thus, as the ALJ correctly found (ALJD p. 10, lines 45-52), the Union did not "clearly and unmistakably" waive its statutory right to bargain over the elimination of the retail cashiers by virtue of the contract language.

Respondent's claim that the Union waived its right to bargain through acquiescence similarly fails, and the ALJ properly rejected it. (ALJD p. 11, lines 39-52; p.12, 1-16) Respondent attempts to couch as significant brief off-table discussion in which Newman, after a tentative agreement on the clerical unit agreement had been reached, asked Basile if they could speed up the notification to the employees before the contract was taken out to the members to be voted on, because it would not look good to have the vote, then announce it. (Tr. 257-258, 340-341) Newman's request is within the context of Respondent asking the Union on about August 27, to keep mention of the potential layoff confidential from the membership. (Tr. 245-246, 371)

The record does not show that Respondent ever told the Union that it no longer wished it to keep the potential layoff confidential prior to Newman making that brief statement to Basile. The fact that the Union was asking Respondent to be open and honest with the membership about its intentions to eliminate the retail cashiers so that the membership could vote on the contract with full disclosure is of no legal significance, and it certainly does not amount to a "clear and unmistakable" waiver of the Union's statutory right to bargain over the decision to eliminate the retail cashiers. As the ALJ noted (ALJD p. 12, lines 5-10), there is no precedent holding that cooperation regarding procedural matters constitutes waiver of substantive and statutory rights. See also *St. Vincent Hospital*, 320 NLRB 42, 50 (1995), cited by the ALJ.

b. The Union made a Timely Demand for Bargaining over the Decision to Eliminate the Retail Cashiers.

In its Exceptions, Respondent misguidedly focused on whether the Union made a demand to bargain over the decision to eliminate the retail cashiers during the August 26 and September 15 bargaining sessions. However, for a union's obligation to demand bargaining over the decision to be triggered, Respondent needs to have given effective notice. The salient question, then, is **when did Respondent provide effective notice to the Union that it would be laying off the retail cashiers?** The record establishes that Respondent gave effective notice on October 1.

It is well-established that, in order to be effective, notice of a change by an employer must be "clear and unambiguous." *United Parcel Service*, 323 NLRB 593, 595 (1997); *Fountain Valley Regional Hospital,* 297 NLRB 549, 551 (1990); *Mercy Hospital of Buffalo,* 311 NLRB 869 (1993). As the ALJ correctly noted (ALJD p. 11, lines 41-44), an employer's "inchoate and imprecise" statements regarding "future plans about which the timing and circumstances are unclear" are insufficient notice. *Sierra International Trucks, Inc.*, 319 NLRB 948, 950 (1995); *Oklahoma Fixture Co.*, 314 NLRB 958, 960-961 (1994). See also *San Juan Teachers Association*, 355 NLRB No. 28 at 9 (2010).

The record establishes that during the August 26 contract bargaining session, Basile stated to Newman that Respondent was "moving in the direction" of eliminating the retail cashiers. (Tr. 158, 233, 368, 369) The record also establishes that Basile stated to the Union on August 26, that the elimination had not been 100% decided yet. (Tr. 236, 353; GCX 21; RX 3, RX 21) In fact, decision-maker Oberschelp admitted that he did not communicate to Respondent's bargaining team that the elimination had been 100% decided until some

unidentified time after the August 26 bargaining session. (Tr. 170-171) Respondent's witnesses consistently testified that, during the August 26 and September 15 contract bargaining sessions, it did not have a timetable for implementing the elimination. (Tr. 235, 330, 369; RX 3, RX 21) Under these circumstances, Respondent's communications to the Union about the potential elimination did not constitute "clear and unambiguous" notice sufficient to trigger the Union's obligation to demand bargaining in order to preserve the Union's statutory rights.

Likewise, Respondent's communications to the Union on September 15, did not amount to "clear and unambiguous" notice. To begin, it was the Union, not Respondent, who brought up the issue of the potential elimination of the retail cashiers at the September 15 bargaining session. The only record evidence of any statement regarding the timing of the potential elimination is Gray's notes which reflect that Basile stated "maybe at the end of November" and Martin's notes which reflect that Basile said "looking at November."[5] (Tr. 246-247; RX 3, RX 21) The rest of the discussion on September 15 constituted the Union's attempting to elicit information from Respondent about its reasons and plans for the elimination by asking questions.

The record is devoid of evidence that at anytime between August 26 and October 1, including during any discussions on September 15, Respondent informed the Union that the uncertain potential of eliminating the retail cashier position became a certainty. The first "clear and unambiguous" notice to the Union of the circumstances and timing of the elimination of the retail cashiers was Basile's October 1 email to Randall and Newman with

[5] Notably, the record persuasively suggests that the bargaining team itself did not know the timing of the implementation on September 15, since on September 16, Oberschelp sent an email to his bargaining team stating: "I am planning on their last day to be in the end of November, Christy will have to provide specific date to coincide with pay date." (RX 4)

the attached letter setting forth the details of the elimination. (GCX 4) The Union then made a timely demand for bargaining over the decision and effects on October 13. (GCX 5)

Respondent's behavior and internal communications support the conclusion that it did not deem that it gave effective notice to the Union prior to October 1. Thus, on September 24, Gray sent an email to Martin, stating, "Make sure Joe Basile has the Union notified and the get these [packets to distribute to the retail cashiers] to [Gates] to distribute tomorrow." (RX 2, RX 5) Martin responded on September 25, by email: "Joe Basile said they plan on having the communications done and the letters distributed by Friday of next week." That same day, Gray then forwarded the email chain to Oberschelp and Scott stating that, "We have received the packets, so we just need to finish up the communication with the Union. Based on the email exchange below, I think Joe Basil[]e plans to talk with them about this further next week."[6] (RX 2, RX 5) On September 29, Gray sent an email to Gates, Oberschelp, Martin, and Basile along with proposed language regarding the layoffs for Oberschelp and Gates to send to store managers. In her email, Gray stated, "we'll simply wait for the green light from Joe Basil[]e letting us know that the Union has been notified." (RX 2) It was only after Basile sent the notification to the Union on October 1, informing it of the elimination that Respondent went ahead and notified the affected employees on October 2.

Further, even though Respondent did not give the Union effective notice of the elimination until October 1, the record amply supports a finding that the Union demanded bargaining over the decision to eliminate the retail cashiers when Respondent first mentioned it as a possibility. Newman and Randall credibly testified that when Basile first mentioned the potential elimination of the retail cashiers on August 26, Newman stated that when Basile

[6] When asked whether the Union had been informed prior to her sending these emails that the layoff was a certainty, Gray responded that she did not know. (Tr. 274, 277)

knew more information, the Union would send a letter requesting bargaining over both the decision and effects. Consistently, Randall's detailed bargaining notes reflect that Newman stated he would be requesting bargaining over the decision and effects. While Martin's and Gray's notes do not mention the Newman's statement that the Union would be requesting bargaining over the decision, both Gray and Basile testified that Newman may have stated that he would request decisional bargaining. Notably, after the contract negotiation session ended on August 26, Basile sent the email to Oberschelp, Gray, Martin, Mitchell, Gates and others, reporting that Newman, when told about the company moving in the direction of eliminating the retail cashiers, stated that "he would require 'bargaining over the decision and effects.'" (Tr. 65; GCX 17) In addition, Randall's bargaining notes reflect that on September 15, Newman again told Respondent that, at such time Respondent notified the Union that if there would be any changes, they would send him a letter to bargain the decision and effects. (GCX 40)

Finally, even without considering the Union's demands for bargaining at the August 26 and September 15 bargaining sessions, the Union's October 13 letter (GCX 5) was, in and of itself, a timely demand for bargaining over the decision to eliminate the retail cashiers. While the decision had already been announced to the retail cashiers, it was not to go into effect until December 4-more than seven weeks after the Union's demand for bargaining. The Union's demand for bargaining on October 13, left ample time for the parties to bargain prior to the implementation of Respondent's decision to eliminate the retail cashiers, had Respondent been willing to do so.

B. The ALJ Correctly Found that Respondent Violated Section 8(a)(1) and (5) of the Act by Failing to Provide Information to the Union Relevant to the Decision and the Effects of the Elimination of the Retail Cashiers. *(Exceptions 11, 12, 37-43, 45-48)*

The ALJ properly found (ALJD 13, lines 33-34) that Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide requested relevant information to the Union. An employer is obligated upon request to furnish the union with information which is potentially relevant and which would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-36 (1967); *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Pennsylvania Power & Light,* 301 NLRB at 1105. An employer "must furnish information that is of even probable or potential relevance to the union's statutory duties." *Conrock Co.*, 263 NLRB 1293, 1294 (1982). Indeed, the union is entitled to request and receive information that substantiates, undercuts, or in any way informs its good faith efforts at contract administration. The Board need only decide whether the information sought has some "bearing" on these issues, or would be of use to the union. *Dodger Theatricals Holdings*, 347 NLRB 953, 970 (2006). Here, the requested information was relevant to the Union's ability to evaluate Respondent's decision to eliminate the retail cashiers—a mandatory subject of bargaining— and to bargain effectively over the decision and effects of the elimination. It is well-settled that Respondent is obligated to provide such information. See, e.g., *Columbia University*, 298 NLRB 941 (employer obligated to provide information

relevant to mandatory subjects of bargaining); *Authentic Furniture Products*, 272 NLRB 552, 557-58 (1984) (employer obligated to provide information relevant to effects bargaining).[7]

Respondent represented to the Union that the much of the information was "not available" or did not exist. (GCX14) The Board has held that Respondent bears the burden of showing that requested relevant information does not exist. *House of Good Samaritan*, 319 NLRB 392, 398 (1995). See also *Harmon Auto Glass***,** 352 NLRB 152, 153 (2008) A bare assertion is insufficient. *Hanson Aggregates BMC, Inc.*, 353 NLRB No. 28 (2008).

Here, several documents which fell within the Union's request and which, in response to the request, Respondent represented were "not available" or did not exist, were actually introduced by Respondent at trial, so they clearly existed. (RX 6, RX 7, RX 20) Additionally, Basile, who responded to the Union's information request, admitted he had no personal knowledge as to whether there were any documents responsive to the request when he represented such to the Union, and no agents of Respondent with personal knowledge testified regarding the existence of the documents.

The record establishes that Respondent provided some, but not all of the requested information. An employer does not satisfy its obligation to furnish all relevant information by providing only some. *Teleprompter Corp.*, 227 NLRB 705, 706 (1977), enfd 570 F.2d 4 (1st Cir. 1977)*; International Telephone & Telegraph Corp. v. NLRB*, 382 F.2d 366, 371 (3d Cir. 1967).

[7] Even if the elimination of the retail cashiers were not a mandatory subject of bargaining, Respondent would be obligated to provide the information since the Union has shown that it has relevance beyond negotiating over the decision to eliminate the retail cashiers. See, e.g., *Finch Pruyn & Company, Inc.*, 349 NLRB 270 (2007) (employer obligated to provide information relevant to lawful subcontracting).

C. The ALJ Properly Found that Respondent Violated Section 8(a)(1) by Photographing and Videotaping Employees Engaged in the Picket in Front of Respondent's Retail Store. *(Exceptions 1-4, 42, 43, 46-48)*

The record and relevant case law support the ALJ's finding and conclusion that Respondent violated Section 8(a)(1) by photographing and videotaping employees engaged in the picket line in front of Respondent's retail store. The Board has held that, while an employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance, photographing and videotaping constitute more than mere observation. *Washington Fruit and Produce Co.*, 343 NLRB 1215, 1215 (2004); *National Steel & Shipbuilding Co.*, 324 NLRB 499 (1997). As the Board reasoned in *National Steel*, supra, "[p]hotographing and videotaping such activity clearly constitute more than mere observation...because such pictorial record keeping tends to create fear among employees of future reprisals." Id. at 499. Thus, the Board requires an employer engaging in photographing or videotaping employees engaged in union activities to demonstrate it had a reasonable basis to have anticipated misconduct by the employees. Id.

Here, Respondent stipulated that security guard and Respondent agent Shauna Slayback took photos of the picket line and videotaped employees engaged in picketing. (Tr. 10, 222, 304) Kevin Hazy provided unrebutted testimony that the photographs taken by Slayback depicted approximately six employees of Respondent. (Tr. 223-225) Newman's and Randall's unrebutted testimony establishes that Anthony Gates took photographs of the picket line, which included employees. (Tr. 91, 116)

The record contains no evidence regarding Respondent's reasons for taking the photographs and video of the employees on the picket line. Respondent cites no case law supporting its position that its photographing and videotaping of the employees were lawful.

Thus, the record clearly establishes that Respondent engaged in unlawful surveillance in violation of Section 8(a)(1) by photographing and videotaping the employees.

III. CONCLUSION

Based upon the entire record in this case and upon the arguments recited above, it is respectfully requested that the Board reject Respondent's exceptions in their entirety. It is further requested that the Board affirm the ALJ's findings of facts, conclusions of law, and Recommended Remedy and Order as discussed herein.

Respectfully submitted this 19th day of October 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S ANSWERING BRIEF in EMBARQ CORPORATION, a wholly-owned Subsidiary of CENTURYTEL, INC. d/b/a CENTURYLINK, Cases 28-CA-22804, was served by E-Gov, E-Filing, E-Mail and Overnight Delivery via United Parcel Service, on this 19th day of October 2010, on the following:

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