

1                                   **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**  
3   **DR 26/UC 600**

4                   THE NORTHWEST PUBLIC  
5                   COMMUNICATIONS COUNCIL, et al.

6                                   Complainants,

7                                   v.

8                   QWEST CORPORATION,

9                                   Defendant.

QWEST CORPORATION'S OPPOSITION  
TO COMPLAINANTS' MOTION TO STAY

10  
11                   On February 17, 2010, Complainants filed a document requesting a prehearing  
12                   conference and moving "for a stay of the proceedings pending the filing of a Motion to  
13                   Reconsider the Commission's Order No. 10-027 entered 02/01/10" (the "Motion").  
14                   Complainants filed no memorandum in support of the Motion. Instead, they filed only a  
15                   declaration of their counsel which does not speak directly to the Motion for stay, but states only  
16                   that counsel is "compelled to pursue reconsideration of the Commission's Order and believes a  
17                   conference to review the need and timing for filings is appropriate."

18                   Complainants' Motion is plainly inadequate and unsupported and should be denied.  
19                   ORCP 14 (applicable to Commission proceedings pursuant to OAR 860-011-0000(3)) provides  
20                   that "[e]very motion . . . shall state with particularity the grounds therefor . . ." Complainants do  
21                   no such thing. Instead, Complainants leave it to Qwest and the Commission to identify and  
22                   apply the applicable rules and law.

23                   The only conceivable basis Complainants offer for their Motion is that they intend to ask  
24                   the Commission to reconsider Order No. 10-027, which held Complainants to an amended  
25                   complaint consistent with the Commission's May 2009 order (Order No. 09-155). Filing a  
26                   motion for reconsideration, however, does not operate to stay any Commission order, let alone

1 an entire proceeding. ORS 756.561(2) provides that "[n]o such application [for reconsideration  
2 or rehearing] shall excuse any party against whom an order has been made by the commission  
3 from complying therewith, nor operate in any manner to stay or postpone the enforcement  
4 thereof without the special order of the commission." Thus, if filing an application for  
5 reconsideration does not automatically stay an order, then a party seeking a stay must make a  
6 special showing why that is required. Moreover, even if a party could make a case to stay an  
7 order, that does not mean that the Commission should stay the entire proceeding.

8 Complainants make no showing whatsoever why a stay is required or why their intended  
9 application for reconsideration will be even colorable, let alone persuasive. The Commission  
10 should not reward Complainants' perfunctory Motion by staying these proceedings based on such  
11 a patently insufficient showing.

12 Ironically, practically all of Complainants' conduct *since filing their motion to lift the*  
13 *abatement of this case in January 2009* appears intent on delaying or staying this proceeding.  
14 For example, notwithstanding the Commission's May 2009 order allowing an amended  
15 complaint, Complainants have moved for multiple extensions of the date by which they need to  
16 file a compliant pleading. They are currently in violation of the Commission's latest Ruling  
17 requiring Complainants to file an amended complaint by February 17, 2010. *Ten months after*  
18 *the Commission allowed them to file an amended complaint, Complainants have yet to file one*  
19 *that complies with the Commission's clear rulings.* Moreover, they have filed two motions to  
20 stay or abate the proceedings (on January 27, 2010, which they withdrew, and the instant Motion  
21 filed on February 17, 2010). Complainants seem to have no desire to have the Commission  
22 resolve their complaint, which is now almost nine years old.

23 To add insult to injury, in November 2009, Complainants filed a case in federal court  
24 seeking precisely the same relief that they are seeking in this case. If Complainants truly do not  
25 want the Commission to decide their claims, then they should dismiss this case and let Qwest  
26 and the Commission focus on other pressing business. They should not be permitted to let this

1 case drag on while they attempt to obtain relief from what they apparently view as a more  
2 favorable forum.

3 On the other hand, Qwest would like finally to bring this proceeding to a conclusion.  
4 Qwest is confident that it has no liability to make a refund to Complainants and would like to  
5 have this case decided on the merits by the Commission so as to put an end to the expense and  
6 distraction of defending this case. Toward that end, Qwest has suggested on several occasions  
7 that the Commission establish a schedule for the parties to file dispositive motions for summary  
8 judgment, like they did in 2004-05. The ALJ appropriately suggested that counsel attempt to  
9 agree to such a schedule, but Complainants have refused to agree to any such schedule, citing  
10 now their need to ask the Commission to reconsider its most recent order. The Commission  
11 should not tolerate any further delay by Complainants.

12 For the foregoing reasons, Qwest respectfully requests that the Commission (1) deny the  
13 Motion, (2) establish a final deadline by which Complainants must file an amended complaint  
14 that complies with the Commission's orders or face dismissal of this case if they fail to comply,  
15 and (3) establish a schedule for the filing of dispositive motions for summary judgment.

16  
17 DATED: March 4, 2010

Respectfully submitted,

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19 By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 4th day of March, 2010, served the foregoing QWEST CORPORATION'S OPPOSITION TO COMPLAINANTS' MOTION TO STAY upon all parties of record in this proceeding by causing a copy to be sent by electronic mail and U.S. mail to the following addresses:

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By   
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