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February 1, 2010

Public Utility Commission of Oregon

Attn: Filing Center

550 Capitol St. NE, Ste. 215

PO Box 2148

Salem, OR 97308-2148

To: Hon. Allan Arlow

Public Utility Commission of Oregon

**RE:    NORTHWEST PUBLIC COMMUNICATIONS COUNCIL V. QWEST CORP.  
       Docket DR 26/UC600  
       Reply to Qwest Letter January 29, 2010 Response to Consolidated  
       Motions to Enforce Orders**

Dear Judge Arlow,

Please find enclosed my Reply to Mr. Reichman's letter of January 29, 2010. I am out of my office and may not be available until tomorrow morning but would want to engage in a telephone conference as suggested in my Reply.

Sincerely,

/s/

Frank G. Patrick

Attorney at Law

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

THE NORTHWEST PUBLIC COMMUNICATIONS COUNCIL, on behalf of PSPs A to Z, and NPCC MEMBERS: Central Telephone, Inc; Communication Management Services, LLC; Davel Communications a/k/a Phonetel Technologies, Inc., Interwest Tel, LLC; Interwest Telecom Services Corporation; NSC Communications Public Services Corporation; National Payphone Services, LLC; Pacific Northwest Payphones; Partners in Communication; T & C Management, LLC; Corban Technologies, Inc.; and Valley Pay Phones, Inc

Complainants,

v.

QWEST CORPORATION,

Defendant.

DOCKET NO. DR 26/UC 600  
REPLY TO QWEST LETTER RESPONSE TO CONSOLIDATED MOTIONS TO ENFORCE ORDERS AND TO BIFURCATE AND PARTIALLY ABATE PROCEEDINGS

TO: Oregon Public Utility Commission

AND TO: All Parties

STATUS OF CASE

There has been approximately eight years of pleadings and long periods of delay since the original Complaint was filed in this case. Since that time, the parties ultimately joined in the proposed action of the Administrative Law Judge in abating the matter until action at the FCC resolved what at that time were issues of law with respect to the “liability” of Qwest to pay

1 refunds under various orders of the FCC implementing the Telecommunications Act of 1996 and  
2 various orders denominated collectively as the “Payphone Orders”. Since the action to reopen  
3 this matter DR 26, prior counsel acting on behalf of an association of Payphone Service  
4 Providers (PSPs) moved the Commission to Amend the Complaint to include all the named  
5 individual Claimants which were the only entities, not then parties, that Oregon law would allow  
6 to recover in that refund action. In addition, prior counsel apparently believed that it had to ask  
7 the Commission for an Order allowing the filing of the First Amended Complaint which named  
8 the individual Claimants and included a claim for refunds of not just the overcharges of Qwest  
9 for the Payphone Access Line (PAL) overcharges but also for the overcharges of a Qwest service  
10 denominated variously as CustomNet or Fraud Protection. Neither the PAL refund claim nor the  
11 CustomNet refund claim came into existence until November 2007 when the PUC established  
12 final rates for such payphone services in Order No. 07-497 that were lower than the prior interim  
13 rates.  
14

15           The separate entities appeared by new counsel, herein, which filed the proposed First  
16 Amended Complaint, that had been attached to the Motion. That First Amended Complaint was  
17 the first appearance by the “real parties in interest” which then filed a Second Amended  
18 Complaint under the Oregon Rules of Civil Procedure within the time allowed to do so without  
19 the necessity of a motion or leave of opposing counsel or the PUC. Qwest, filed a Motion to  
20 Strike both the First and Second Amended Complaint reciting that the Commission had already  
21 limited the Complaint. While the separately named Complainants were not yet parties, the  
22 Commission ruled, without the benefit of their appearance, by limiting the Claims in the First  
23 Amended Complaint, in effect, to Dismiss the Claims of those newly appearing parties prior to  
24 the Complaint being properly before the Commission. Those parties at that time filed the Second  
25 Amended Complaint as a matter of right.  
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1           After briefing by the opposing parties on the Motions of Qwest to Strike,  
2 Complainants saw that the Commission could more efficiently act, if it so chose, by bifurcating  
3 the case to enforce its then outstanding orders all of which were the culmination of the actions of  
4 the parties and the PUC in UT 125 and proceedings related thereto, the resulting appeals,  
5 stipulations and final order in UT 125 which has been anticipated with great patience since 1996.

6           This Reply is directed at what purports to be a request by letter dated January 29, 2010  
7 from Larry Reichman to Judge Arlo, the Administrative Law Judge currently considering the  
8 Motions to Strike. While the letter of Counsel for Qwest may not be in the usual form of a  
9 Response, the Rules of the PUC only allow, in this instance, either a Motion, Response or a  
10 Reply to the Complainants' Consolidated Motions. Accordingly, to the extent that the letter is  
11 being treated as an informal inquiry, this Reply should be afforded further leave to amend.  
12 However the Letter of Request can be summarized as follows:

13 However the Letter of Request can be summarized as follows:

14 1. First Qwest makes Arguments:

15       a. "It is apparent to Qwest that this filing is premature, improper and unsupported for several  
16 reasons...."

17       b. "...Qwest should not be required to respond to it, at least [not] at this time."

18 2. The letter then "suggests that it may be most efficient to schedule a prehearing conference to  
19 discuss this filing...."

20 3. "and suspend Qwest's time to respond to the motions until some time after such a conference  
21 is held"

22 4. Finally it asks the Judge, if he deems it appropriate, "...Qwest asks that you treat this letter as  
23 such a motion."  
24

25           Complainants reply as follows:  
26

1           That the arguments of Qwest are without merit, but that they should be considered as  
2 the Response to the Consolidated Motions. The ALJ is fully empowered to treat the letter as the  
3 Response to the Consolidated motions, but he may believe that Qwest is actually asking for only  
4 a scheduling conference. To that the Complainants would stipulate since that had already been  
5 suggested at the time of the transmittal to the PUC of the Consolidated Motions.

6           Second, the letter may be merely a motion for more time to respond. Had Mr.  
7 Reichman asked, Complainants would have agreed to more time for a response.

8           Third, the comments of Qwest's counsel should not be given any weight. Qwest has  
9 been very successful at keeping the PUC from addressing the real issues in this matter which the  
10 Motion to Enforce its Orders has raised. To the extent that Qwest can show the Commission  
11 where it has paid refunds calculated based on the final, NST compliant payphone tariffs issued in  
12 Order No. 07-497, then the pending motion to enforce the Orders would be satisfied. Otherwise  
13 the arguments of Qwest are simply insufficient. To suggest that the Commission does not have  
14 the authority to enforce its own Orders EXCEPT to re-open cases is simply ludicrous. Counsel's  
15 arguments are ill timed and improperly raised. Qwest needs to show that it in fact has complied  
16 with the Orders of the PUC and the Oregon Court of Appeals and the constant manner of  
17 avoiding the authority of the Commission is simply disingenuous, especially when claiming that  
18 the Complainants are somehow ignoring the Order of the Commission. Qwest piously ignores  
19 thirteen years of flagrant disregard of the FCC and Qwest's duty to this Commission and the  
20 Complainants by refusing to establish effective PSP rates in compliance with first the FCC and  
21 now this Commission and the Oregon Court of Appeals. Simply put the position is outrageous.

22           To quote the Bard, "Me thinks he doth protest too much." It would be a simple matter  
23 for Qwest to show this Commission that it complied with its Orders than the course which Qwest  
24 is suggesting. The simple fact is that Qwest has not complied, nor could it do so until the final

1 rates became effective on November 15, 2007. Complainants were procedurally unable to force  
2 the calculation of the overcharges until the establishment of the Qwest rates. Qwest would be  
3 loathe to pay any sum prematurely. It was first to join with the PUC in the position that no  
4 customer could claim a refund before the final effective rates were established. However if  
5 Qwest has complied the Commissions Orders, the Complainants Reply simply; PROVE IT.  
6 Qwest should stop wasting the Commission's time and resources and accruing attorney's fees for  
7 its client and the Complainants and damages by way of interest and the other claims to which the  
8 Complainants are entitled.

9  
10 Counsel is out of the office until late Monday or Tuesday morning. If the Judge is  
11 inclined to schedule a conference call then I would like to participate. If the Judge is inclined to  
12 provide additional time for Qwest to respond to the Motions that would be reasonable. In either  
13 event this Reply is offered under the same characterization as the Judge shall view the letter of  
14 Mr. Reichman, to allow the Complainants to fully respond without prejudice.

15  
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17 Dated: February 1, 2010

/S/

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18 FRANK G. PATRICK, OSB 76022  
19 Attorney for Complainants

