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January 29, 2010

VIA E-MAIL AND U.S. MAIL

Hon. Allan J. Arlow
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, OR 97308-2148

**Re: *Northwest Public Communications Council et al. v. Qwest Corporation;*
Docket Nos. DR 26/UC 600**

Dear Judge Arlow:

I am writing with respect to the filing made on January 27, 2010 by Complainants Northwest Public Communications Council and the individual Payphone Service Providers, entitled "Consolidated Motions to Enforce Orders and to Bifurcate and Partially Abate Proceedings" (the "Motions"), along with a supporting memorandum and declaration.

It is apparent to Qwest that this filing is premature, improper, and unsupported for several reasons, and that Qwest should not be required to respond to it, at least at this time. I am writing to suggest that the Commission schedule a prehearing conference to discuss this filing and suspend Qwest's time to respond to the Motions until some time after such a conference is held. Qwest also suggests that it may be most efficient to schedule such a conference for a date following the Commission's decision on Complainants' pending motion for leave to file a Second Amended Complaint. To the extent you think this request needs to be made in the form of a motion, Qwest asks that you treat this letter as such a motion.

First, the Motions are premature because they are based on a claim that the Commission has not yet allowed Complainants to assert in this case. Complainants'

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Motions seek relief based on the claim Complainants seek to assert, for the first time in this more than eight-year-old proceeding, as Count Four of Complainants' proposed Second Amended Complaint. Motions at 1. The Motions are premature because the Commission has not yet allowed Complainants even to file the Second Amended Complaint. Complainants' motion for leave to file the Second Amended Complaint is presently under advisement. Indeed, Qwest has provided the Commission with several persuasive reasons why it should not allow Complainants to file the Second Amended Complaint (including, among many other reasons, that the Second Amended Complaint – like the Motions – seeks relief with respect to CustomNet rates, which the Commission already denied Complainants leave to pursue). It is premature, even presumptuous, for Complainants to seek some form of summary relief in connection with a claim that the Commission has not even allowed Complainants to make in this case.

Notwithstanding the fact that the Commission has not yet allowed the Second Amended Complaint, Complainants assert that the Commission can provide the relief requested in the Motions even if it does not allow the Second Amended Complaint ("The second component is a claim for refund based on orders issued in dockets UT 80 and UT 125 and, although encompassed within Count Four, is independent of the Second Amended Complaint."). Motions at 2. If the Commission does not allow the Second Amended Complaint, then the only claim in this case is that Complainants are entitled to a refund of PAL rates based on the FCC's Waiver Order and 47 U.S.C. § 276, the same claim that has been pending since 2001. It is patently absurd for Complainants to argue that the Commission can consider and provide relief with respect to a claim that is so far outside the scope of the Complaint. ORS 756.500. The Commission cannot and should not entertain the Motions unless and until it allows the Second Amended Complaint (which it should not do for the reasons previously argued by Qwest).

Second, the Motions are improperly made in this proceeding. Complainants' Motions ask the Commission to enforce orders issued in other, long-closed proceedings: principally, Docket UT 125 but also Docket UT 80. Motions at 1-2. They do not ask the Commission to enforce any order issued in this docket. (To the contrary, Complainants seem to think they are actually *immune* from orders the Commission issued in this docket, as they continue to seek refunds for CustomNet service after the Commission clearly denied them leave to pursue such a claim in this proceeding. *See, e.g.*, Memorandum in Support of Motions at 10-11, 17.) Any motion to enforce an order issued in another proceeding needs to be made in that other proceeding, and all parties to that other proceeding have the right to be heard on the propriety of the Commission's

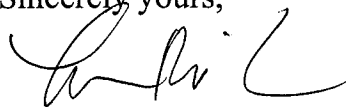
granting the requested relief. Indeed, because the Commission closed both of those dockets a long time ago (UT 125 has had no activity for over two years and UT 80 has had no activity for almost eight years), Complainants should be required first to move the Commission to reopen these proceedings and to make a sufficient showing supporting such a request.

Third, Complainants' request for relief is unsupportable, because it is based on a complete misstatement of the nature of the rate case refund obligation which they seek to enforce, with which Qwest fully complied many years ago. Qwest discussed these reasons in general terms in its Response to Complainants' motion to allow the Second Amended Complaint, filed December 8, 2009, at 9-12, and will not repeat those points here. Suffice it to say that Complainants should be required to make a prima facie case that they have even a colorable claim that Qwest has not fully complied with those historic rate case refund orders, and that they may be entitled to further relief under those orders, before the Commission undertakes to reopen those other proceedings. Qwest respectfully suggests that obtaining Staff's views on that issue would also be helpful to the Commission, given Staff's active participation in the rate case proceedings.

Based on the foregoing, Qwest respectfully requests that the Commission: (1) schedule a prehearing conference to discuss how to proceed with respect to the Motions, which we suggest take place after the date on which the Commission issues its decision on Complainants' pending motion for leave to file Second Amended Complaint and Qwest's motion to strike the Second Amended Complaint, and (2) suspend Qwest's time to respond to the Motions, if that will be required, until a date following such conference.

Thank you for your attention to this matter.

Sincerely yours,



Lawrence H. Reichman

LHR:dma

cc: Frank G. Patrick
Jason W. Jones
Alex M. Duarte