

ISSUED: May 5, 2010

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 26/UC 600

THE NORTHWEST PUBLIC
COMMUNICATIONS COUNCIL, on behalf
of PSPs A to Z, and NPCC MEMBERS:
Central Telephone, Inc.; *et al.*,

Complainants,

v.

QWEST CORPORATION,

Defendant.

RULING

DISPOSITION: MOTION DENIED

On April 27, 2010, the Northwest Public Communications Council, *et al.* (NPCC), filed a procedural motion requesting several changes to the schedule in these proceedings (the April 27 Motion). NPCC states that it has brought an action against Qwest Corporation (Qwest) in United States District Court raising the same issues that are being addressed in this docket. NPCC states that Qwest filed a motion to dismiss in the district court, which the court may rule upon during a May 14, 2010 hearing. NPCC states that it has also filed a motion for summary judgment in the district court, which the court will consider if Qwest's motion to dismiss is denied. In its April 27 Motion, NPCC argues that the Public Utility Commission of Oregon (Commission) should suspend the schedule in this docket pending the outcome of the motions in district court because the district court, and not this Commission, has jurisdiction over the issues.

In the April 27 Motion, NPCC first requests that the Commission extend the deadline for NPCC to reply to Qwest Corporation's response to NPCC's motion for reconsideration until after the district court rules on the motions to dismiss and for summary judgment. NPCC filed the motion for reconsideration with the Commission on April 2, 2010. Qwest replied to the motion on April 19, 2010. NPCC believes that it has the opportunity to reply to Qwest's response under OAR 860-013-0050. That rule, however, merely establishes applicable timelines for certain pleadings, including replies to a responsive pleading. The rule does not give parties requesting reconsideration the opportunity to file a reply in support of the application for reconsideration. The rule governing applications for reconsideration—OAR 860-014-0095—allows filing of the

application and gives other parties the opportunity to respond to the application. The rule does not provide the opportunity to file a reply to other parties' responses. If NPCC's April 27 Motion had included an explanation of why a reply is necessary, then we could treat it as a motion to file a reply. Unfortunately, the motion did not include that explanation. NPCC's request for an extension of time to file a reply to Qwest's response to the motion for reconsideration is denied.

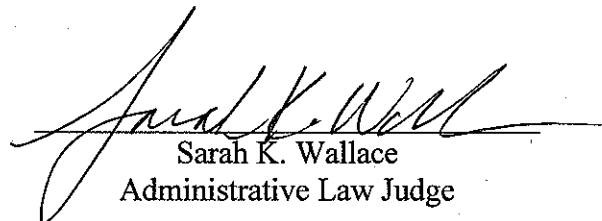
In the April 27 Motion, NPCC also requests that the Commission "strike" the briefing schedule established on March 11, 2010, and wait for the district court to rule before setting a new schedule. The briefing schedule includes only two deadlines: an April 30 deadline for filing motions for summary judgment; and a May 28 deadline for filing responses to the motions for summary judgment. Qwest filed its motion for summary judgment on April 30.

NPCC's April 27 Motion is more than a request to change the briefing schedule; it is, in fact, a request to stay these proceedings pending the outcome of the district court case and is duplicative of the motion for a stay that NPCC included with its motion for reconsideration on April 2, 2010. NPCC states that there "is no question that the Communications Act as amended by the 1996 Telecommunications Act * * * and related enforcement sections * * * clearly confer concurrent jurisdiction" over NPCC's claims "on the FCC and the US District Court." In other words, NPCC states that this Commission has the authority to set payphone rates for Qwest, but does not have jurisdiction to enforce its rate orders. NPCC admits that this is a change in its original position.

If NPCC believes that this Commission does not have jurisdiction to address NPCC's claims, then NPCC should withdraw its complaint. These proceedings have been pending with the Commission for nine years. NPCC now wants to indefinitely suspend these proceedings, even though NPCC no longer believes that the Commission has jurisdiction to resolve its claims. This approach is untenable, and NPCC's request to strike the briefing schedule is denied. NPCC may request an extension of time to respond to Qwest's motion for summary judgment if NPCC believes that the outcome of the motion for reconsideration will affect its arguments, but NPCC must propose an alternate deadline.

This ruling addresses only NPCC's April 27 Motion and does not resolve the motion for a stay of proceedings that was filed with NPCC's motion for reconsideration on April 2, 2010.

Dated this 5th day of May, 2010, at Salem, Oregon.


Sarah K. Wallace
Administrative Law Judge