

1
2
3
4
5
6
7 BEFORE THE PUBLIC UTILITY COMMISSION
8 OF OREGON
9 UM 1265

10 AMERICAN CIVIL LIBERTIES UNION
11 OF OREGON, INC. and AMERICAN
12 CIVIL LIBERTIES UNION
13 FOUNDATION OF OREGON, INC.,

14 Complainants,

15 v.

16 VERIZON NORTHWEST, INC., and
17 QWEST CORPORATION,

18 Defendants.

COMPLAINANTS' OPPOSITION TO
VERIZON'S MOTION TO DISMISS

19 **INTRODUCTION**

20 Verizon Northwest, Inc.'s ("Verizon") Motion to Dismiss the First Amended
21 Complaint ("FAC") filed by the American Civil Liberties Union of Oregon, Inc. ("ACLU
22 of Oregon") and the American Civil Liberties Union Foundation of Oregon, Inc.
23 ("ACLU Foundation") (collectively "ACLU") should be denied because: (1) the ACLU
24 has standing to assert its claims against Verizon; (2) the ACLU's claims are not
25 preempted by federal law; and (3) Verizon cannot assert the state secrets privilege.

26 The ACLU alleges that Verizon disclosed the ACLU's legally protected
telecommunications content and/or data without a lawful subpoena, warrant, court

1 order or compliance with applicable federal law including, including 18 U.S.C. §
2 2510-2522, 18 U.S.C. § 2701-2712, and 50 U.S.C. § 1801-1811. Verizon does not
3 deny these allegations but instead seeks to avoid the merits of the ACLU's claim by
4 making broad arguments intended to confuse the issues and contort the FAC into
5 something it is not – an attack on national security operations conducted by the
6 United States government. To the contrary, the FAC seeks to prevent the unlawful
7 interference with the personal privacy rights of thousands of Oregonians. Verizon's
8 Motion to Dismiss completely disregards the FAC's clearly worded allegations that
9 claim Verizon has unlawfully provided persons or entities, *public or private*, with
10 information concerning Oregonians' private intrastate calls. Verizon's Motion to
11 Dismiss does not address the clearly stated scope of these allegations.

12 Verizon's Motion to Dismiss is a recycled and updated version of its July 5,
13 2006 Response in this action. Accordingly, the ACLU hereby incorporates by
14 reference its Reply to Responses of Qwest, United Telephone Company of The
15 Northwest D/B/A Embarq and Verizon Northwest, Inc. and for the convenience of
16 the Commission restates the salient points herein.

17 **I. The ACLU HAS STANDING TO ASSERT ITS CLAIMS AGAINST VERIZON.**

18 Verizon's sole argument¹ on standing is that the ACLU claims to be a Qwest
19 customer and does not allege that "any of the members it purports to represent in
20 this case are Verizon customers or otherwise subject to its privacy or record-keeping
21 policies." See Verizon Response Northwest Inc.'s Response and Motion to Dismiss
22 ("Verizon's Motion to Dismiss") at pp. 7 & 8. Contrary to Verizon's assertions, the

23 ¹ Verizon cites to two cases in support of its position. *Kellas v. Dept. of Corrections*,
24 190 Ore. App. 331 (Or. Ct. App. 2003) was overruled at 2006 ORE. LEXIS 974 on
25 the same day that Verizon filed its Motion to Dismiss. Verizon also cites to
26 *Multnomah County v. Talbot*, 56 Ore. App. 235 (Or. Ct. App. 1982) which held that a
county or its assessor *has* standing to contest a state historic preservation officer's
certification of real property as historic property. Neither of these cases supports
Verizon's position here.

1 FAC sufficiently alleges facts establishing its standing in this case. The ACLU of
2 Oregon sues on its own and on behalf of its members. As set forth in ¶ 4 of the FAC,
3 the ACLU alleges that Verizon provides telecommunication services to its members.
4 As explained below, the ACLU is entitled to the benefit of all reasonable inferences
5 that can be drawn from the facts alleged, including the inference that some ACLU
6 members are Verizon customers.

7 Indeed, when assessing the sufficiency of factual allegations on a motion to
8 dismiss, courts “are guided by ORCP 12A, which states that “[a]ll pleadings shall be
9 liberally construed with a view of substantial justice between the parties.’ In
10 construing these complaints, ‘we must assume the truth of all well-pleaded facts
11 and give the plaintiff[s] the benefit of the inferences that can properly and
12 reasonably be drawn from those facts.’” *See, Hornbuckle v. Harris*, 69 Or App 272,
13 274 (1984); *citing to and quoting Davidson v. Wyatt*, 289 Or 47, 64 (1980); *McWhorter*
14 *v. First Interstate Bank*, 67 Or App 435, 437 (1984). Moreover, “[a] pleading survives
15 a motion to dismiss if it contains even vague allegations of all material facts.”
16 *Sustina Ltd. v. Pacific First Federal*, 118 Or App 126, 128 (1993).

17 The ACLU is entitled to the reasonable inference that some of ACLU’s
18 members are Verizon customers. Should the Commission conclude that ACLU’s
19 allegations cannot be read to infer that the ACLU has members who are Verizon
20 customers, the ACLU hereby requests leave to amend because as the Declarations of
21 Jann Carson and Jossi Davidson establish, the ACLU does in fact have members
22 who are Verizon customers. Indeed, at least one ACLU employee has a Verizon
23 account and has, from time to time, utilized her Verizon phone service to conduct
24 ACLU business, including having confidential telephone conversations with ACLU
25 members and persons seeking information from the ACLU. *See*, Declaration of Jann
26 Carson.

1 The Declaration of Jossi Davidson establishes that he is an ACLU member, an
2 Oregon attorney and a member of ACLU Foundation's Lawyer Committee. See,
3 Declaration of Jossi Davidson. Mr. Davidson is a Verizon customer at both his
4 residence and his office. *Id.* In addition to personal matters, Mr. Davidson has used
5 his Verizon accounts to engage in communications covered by the attorney-client
6 privilege, including matters for the ACLU Foundation. *Id.*

7 **II. ACLU'S CLAIMS ARE NEITHER BARRED NOR PREEMPTED BY FEDERAL LAW.**

8 The Commission has jurisdiction over the ACLU's claims against Verizon
9 pursuant to ORS 756.500 and ORS 756.040(2) because Verizon is a
10 telecommunications company operating in Oregon and the Commission has the
11 "power and jurisdiction to supervise and regulate every public ***
12 telecommunications utility in this state, and to do all things necessary and
13 convenient in the exercise of such power and jurisdiction." Notwithstanding the
14 Commission's authority to regulate telecommunications carriers in this State,
15 Verizon seeks dismissal of the FAC on various federal preemption grounds which are
16 inapplicable here.

17 A. Verizon's motion to dismiss for federal preemption on national security
18 grounds should be denied.

19 Verizon attempts to avoid litigation of ACLU's claims of unlawful conduct
20 within the State of Oregon by asserting that ACLU's "state-law claims are preempted
21 because they seek to interfere with the national security activities of the federal
22 government." See Verizon's Motion to Dismiss at ¶ 8. Although it devotes much of
23 its argument on this point to the "sweeping authority of Congress and the Executive
24 in the arena of national security" Verizon eventually asserts that the National
25 Security Agency Act ("NSA Act") preempts ACLU's claims.

26 Verizon made similar arguments before the Vermont Public Service Board,

1 which rejected those arguments. In its order, the Vermont Public Service Board
2 stated the following.

3 The argument seems to be a form of 'Midas Touch' for the NSA: anything
4 it touches becomes secret. Once the USG has asserted that the activities
5 of any private person also relate to NSA activities, the USG's argument
6 seems to require that the activity as a whole becomes privileged and all
7 state inquiry about that activity must cease, regardless of the
8 consequences to petitioners, respondents, utilities and customers. This
9 goes far beyond the scope of a statute nominally aimed at keeping
10 confidential the names, salaries and activities of NSA employees.
11 Moreover, courts have made clear that a simple assertion that Section
12 6(a) applies is inadequate. For example, in *Founding Church of
13 Scientology v. NSA*, the Court of Appeals for the District of Columbia
14 rejected the District Court's reliance upon an affidavit from the NSA
15 invoking Section 6 when that affidavit made simple conclusory
16 assertions which were not substantiated. Here, Verizon has simply
17 made broad assertions, unsupported by an affidavit by the NSA.
18 Therefore, we conclude that Verizon has not presented a sufficiently
19 detailed basis for us to find that Section 6(a) bars disclosure of all
20 information that may be relevant to this proceeding.

21 See September 18, 2006 Order State of Vermont Public Service Board in
22 *Petition of Eight Ratepayers for an investigation of possible disclosure of private
23 telephone records without customers' knowledge or consent by Verizon New England
24 Inc., d/b/a Verizon Vermont* Doc. No. 7183 a copy of which is attached as Exhibit
25 No. 1 to the Declaration of Laura Caldera Taylor in support of Complainants'
26 Request for Judicial Notice ("Taylor Dec."). This Commission should similarly reject
Verizon's attempt to avoid litigating this matter on the merits on the basis of broad
and unsupported allegations that this dispute involves national secrets.

Moreover, and most importantly, the FAC does not seek disclosure of any
information relating to any *lawful* disclosure by Verizon to any entity, including the
National Security Agency ("NSA"). Rather, the FAC seeks to redress the unlawful
disclosure of protected content and/or data to "to persons or entities, public or
private."

On its face, the FAC is not limited in the scope of its allegations to disclosures

1 to the NSA and does not address the lawful disclosure of information to any third
2 party. Accordingly, Verizon's motion to dismiss on the basis of national security
3 preemption should be dismissed.

4 B. Congress has not exclusively occupied the field of intra-state
5 telecommunication regulation and therefore this Commission has
6 authority to hear ACLU's claims.

7 Because Congress has not "occupied the field" of intra-state
8 telecommunication regulation, state law applies to the extent it does not actually
9 conflict with federal law. The leading case of *Silkwood v. Kerr-McGee Corp.*, 464 U.S.
10 238 (1984), summarizes the two types of federal preemption principles, "field
11 preemption" and "conflict preemption":

12 [S]tate law can be preempted in either of two general
13 ways. If Congress evidences an intent to occupy a given
14 field, any state law falling within that field is preempted.
15 If Congress has not entirely displaced state regulation
16 over the matter in question, state law is still preempted
17 to the extent it actually conflicts with federal law

18 *Id.* at 248 (citations omitted). No statute or case points to field preemption regarding
19 telecommunications regulation. In fact, the federal Telecommunications Act of
20 1996, cited by Verizon as a preempting statute, expressly preserves state regulatory
21 authority via its preemption provision: "Nothing in this section shall affect the
22 ability of a State to impose . . . requirements necessary to preserve and advance
23 universal service, protect the public safety and welfare, ensure the continued quality
24 of telecommunications services, and safeguard the rights of consumers." 47 U.S.C.
25 § 253(b) (2000). Moreover, the Telecommunications Act creates and empowers the
26 Federal Communications ("FCC") for the purpose of enforcing the Act, it expressly
excludes from the FCC's jurisdiction "regulations for or in connection with intrastate
communication service by wire or radio of any carrier" except in limited
circumstances not relevant here. See 47 U.S.C. §§ 151 & 152(b)(1). By including

1 these provisions, Congress has shown a clear intent not to exclusively occupy the
2 field of telecommunications regulation.

3 Therefore, state telecommunications law is only preempted to the extent that it
4 actually conflicts with federal law. Verizon, in its broad-brush approach, argues
5 somewhat disingenuously that the Foreign Intelligence Surveillance Act² (“FISA”) and
6 the Federal Wiretap Act³ preempt ACLU’s claims, although Verizon fails to identify
7 any Oregon state law that conflicts with either of these federal statutes. Verizon
8 cannot identify an Oregon law implicated by the FAC that conflicts with federal law
9 because there is no conflicting law.

10 FISA permits the United States Government to engage in electronic
11 surveillance under an order from a court having jurisdiction under FISA or under a
12 Certificate from the Attorney General. See 50 U.S.C. §§ 1802 and 1804. The
13 Federal Wiretap Act similarly permits certain electronic surveillance pursuant to
14 court order or in accordance with the requirements of FISA. See 18 U.S.C. § 2(a)(ii).
15 The ACLU does not allege that Verizon violated any Oregon laws by virtue of
16 compliance with FISA or the Federal Wire Tap Act.

17 The ACLU alleges just the opposite – that Verizon disclosed protected content
18 and/or data to “to persons or entities, public or private” in violation of the law,
19 including FISA and the Federal Wire Tap Act. Moreover, the ACLU does not raise
20 any Oregon law that makes compliance with either FISA or the Wire Tap Act
21 unlawful in Oregon. Accordingly, the ACLU’s claims are not preempted by FISA or
22 the Federal Wire Tap Act.

23 ////

24 ////

25 _____
26 ² See 50 U.S.C. § 1801, *et seq.*
³ See 18 U.S.C. § 2510, *et seq.*

1 C. The Electronic Communications Privacy Act neither preempts any
2 Oregon law invoked by the FAC nor precludes the remedies sought
therein.

3 Verizon argues that the ACLU's claims are preempted by § 2708 of the stored
4 communications chapter of the Electronic Communications Privacy Act⁴ ("ECPA").
5 Verizon's argument must be rejected because (1) the ECPA does not preempt the
6 field of telecommunications regulation and (2) the ACLU seeks two of the three
7 remedies expressly permitted by the ECPA.

8 1. The ECPA does not preempt the field of telecommunications
9 regulations.

10 The essence of Verizon's argument is that the Oregon Public Utilities
11 Commission lacks authority to regulate the disclosure or dissemination of
12 confidential consumer information relating to Oregonians' purely intrastate
13 telephone communications. This is simply not the case.

14 Without any cited authority, Verizon seeks to expand the reach of the stored
15 communications chapter of the ECPA, to directly conflict with the carefully preserved
16 state regulatory powers under the Telecommunications Act.⁵ Among others, the
17 Telecommunications Act has specific provisions for the protection of customer
18 privacy, including but not limited to, customer proprietary network information or
19 CPNI. *See* 47 U.S.C. § 222 ("Every telecommunications carrier has a duty to protect
20 the confidentiality of proprietary information of, and relating to, *** customers.").
21 The Telecommunications Act sets out remedies for violations of its provisions. *See*,
22 47 U.S.C. §§ 205 - 209. It follows then that Congress did not intend the ECPA, or
23 any subpart thereof, to exclude any relief available under the Telecommunications
24 Act. Indeed, § 2708 was enacted in 1986. Ten years later, Congress engaged in a
25

26 ⁴ *See* 18 U.S.C. § 2701, *et seq.*

⁵ 47 U.S.C. § 151, *et seq.*

1 major overhaul of the Telecommunications Act. *See* Telecommunications Act of
2 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996). Had Congress intended the stored
3 communications chapter of the ECPA to exclusively govern the use and disclosure of
4 confidential customer information by telecommunications carriers, it would have
5 eliminated the CPNI provisions of the Telecommunications Act, which it did not.

6 Furthermore, the Telecommunications Act reserves to the states the right to
7 “impose . . . requirements necessary to preserve and advance universal service,
8 protect the public safety and welfare, ensure the continued quality of
9 telecommunications services, *and safeguard the rights of consumers.*” 47 U.S.C. §
10 253(b); *see also*, 47 U.S.C. 152 (b)(1). Verizon’s argument, taken to its illogical
11 conclusion, is that neither the Oregon legislature nor this Commission can enact
12 laws or promulgate rules to protect the privacy of and concerning Oregonians’ purely
13 intrastate telephone communications. The argument is neither logical nor
14 supported. Not only did Congress carve out the ability of the states to regulate
15 intrastate telecommunications carriers, but revisions to OAR 860-032-0510 which
16 governs the disclosure of CPNI, were adopted in 2004 to align “the state rules with
17 federal rules.” *See* Ex. 2 to Taylor Decl.

18 Verizon’s assertion that this Commission is powerless to protect the privacy
19 rights of Oregonians against the unlawful disclosure of confidential customer
20 information relating to purely intrastate telephone communications is not only
21 wrong, but is disingenuous. Indeed, Verizon participated in the rule making process
22 that resulted in the current OAR 860-032-0510 and did not object to its adoption.
23 *Id.* If Verizon seriously believed that this Commission lacked authority to regulate
24 CPNI in this state it should have then objected.

25 Nothing in the stored communications chapter of the ECPA precludes this
26 Commission from “*safeguard[ing] the rights of consumers.*” 47 U.S.C. § 253(b)

1 2. The relief ACLU seeks does not conflict with the ECPA and is
2 expressly permitted by Oregon law.

3 Finally, the ACLU does not seek in its FAC any substantive relief under
4 Oregon law that conflicts with the remedies specified in the stored communications
5 chapter of the ECPA. *See* 18 U.S.C. § 2707 (permitting declaratory and injunctive
6 relief, damages and attorneys fees).

7 **III. VERIZON’S ARGUMENT THAT THE COMMISSION DISMISS THE ACLU’S FAC BECAUSE**
8 **OF OTHER STATE AND FEDERAL PROCEEDINGS IS MISGUIDED**

9 Verizon encourages the Commission to dismiss the FAC because the Federal
10 Communications Commission (“FCC”) and a handful of state agencies have declined
11 to review telecommunications company activities in their respective jurisdictions.
12 The Commission should not be persuaded by this argument because the
13 determinations of other agencies are inappropriate bases for analyzing issues
14 involving Oregon law and regulatory claims. In addition, each of the state agency
15 determinations that Verizon cites is readily distinguishable from this matter and
16 indeed two decisions support the ACLU’s position in this proceeding.

17 First, the Nevada Public Utilities Commission and the Vermont Public Service
18 Board have initiated investigations. *See* Letters from Andie Arthurholtz, Nevada
19 Compliance Investigator to Gary Peek, Executive Director, ACLU of Nevada (May 30,
20 2006) (attached as Exhibits 3 and 4 to Taylor Decl.); Vermont Orders Opening
21 Investigation of Verizon and AT&T dated June 27, 2006 (attached as Exhibits 5 and
22 6 to Taylor Decl) and Vermont Order denying motion to dismiss (attached as Ex. 1 to
23 Taylor Decl.).

24 Second, Verizon’s notation that seven states — Pennsylvania, New York,
25 Virginia, Iowa, Delaware, Colorado and Washington have declined to conduct
26 investigations is an overstatement. The material provided by Verizon covering each

1 of those matters reveals that those states' determinations were based on different
2 conclusions. Three of the seven were based on issues specific to the laws of those
3 jurisdictions and the others have deferred pending court decisions.

- 4 • The Pennsylvania matter was dismissed without prejudice, and the
5 complainants are permitted to re-file if they obtain a federal court
6 decision on the issues of national security and discovery. *See Ex. 2 to*
7 *Verizon's Motion to Dismiss.*
- 8 • The New York Department of Public Service declined to investigate
9 because they determined that there was no New York law or
10 administrative rule that prohibited Verizon's alleged conduct. *See Ex. 3*
11 *to Verizon's Motion to Dismiss.*
- 12 • The Virginia State Corporation Commission declined to investigate
13 because the complaint did not identify any Virginia law or regulation
14 that prohibited Verizon's alleged conduct. *See Ex. 4 to Verizon's Motion*
15 *to Dismiss.*
- 16 • The Iowa Utilities Board declined to investigate because Iowa has
17 deregulated the telecommunications industry, therefore the Board
18 determined that it did not have jurisdiction to investigate under Iowa
19 Code § 476.1D(1). *See Ex. 4 to Verizon's Motion to Dismiss.*
- 20 • Delaware has not declined to investigate, but has merely decided to wait
21 six months for resolution of any federal issues before deciding whether
22 to initiate its own investigation. *See Ex. 6 to Verizon's Motion to*
23 *Dismiss.*
- 24 • The Colorado Public Utilities Commission has deferred conducting an
25 investigation until after a definitive federal court ruling regarding a
26 state's authority to investigate such matters. *See Ex. 7 to Verizon's*

1 Motion to Dismiss.

- 2 • Finally, the Washington Utilities and Transportation Commission has
3 opened and deferred an investigation pending resolution of federal
4 issues. See Ex. 8 to Verizon's Motion to Dismiss. The Washington
5 Utilities and Transportation Commission has, in the interim, ordered the
6 telecommunication companies in that matter to preserve their records.

7 *Id.*

8 As noted in the ACLU's original request to this Commission for an
9 investigation, the Oregon Public Utilities Commission has jurisdiction to investigate
10 activities of Oregon telecommunications companies under ORS Chapter 756. None
11 of the reasons given by the FCC, nor any of the state decisions referenced in
12 Verizon's response, provide a basis for this Commission to dismiss the FAC. In fact,
13 Congress expressly precluded from the FCC's jurisdiction "regulations for or in
14 connection with intrastate communication service by wire or radio of any carrier"
15 except in limited circumstances not relevant here. See 47 U.S.C. § 152(b)(1).
16 Moreover, the Vermont Commissioner's comments are more instructive, recognizing
17 that a state commission has a duty to protect the interests of its own citizens even
18 when, or especially because, the federal government or other states will not.

19 **IV. VERIZON CANNOT ASSERT THE STATE SECRETS PRIVILEGE.**

20 Verizon has no standing to assert the state-secrets privilege, which "is an
21 evidentiary privilege derived from the President's constitutional authority over the
22 conduct of this country's diplomatic and military affairs and therefore belongs
23 exclusively to the Executive Branch." *Khaled El-Masri v. George Tenet, et al.*, 2006
24 WL 1391390 (E.D.Va., 2006); see also *U.S. v. Reynolds*, 345 U.S. 1, 7 (1953) ("[state
25 secrets] privilege belongs to the government and must be asserted by it; it can
26 neither be claimed nor waived by a private party."). Verizon is a private

1 telecommunications company. It is impossible for Verizon to invoke the state-
2 secrets privilege, and it has no authority to speculate upon what action the
3 Executive Branch of the Federal Government may take in this proceeding or if the
4 government will take any action at all.

5 The United States has not intervened in this matter therefore it is not
6 appropriate to dismiss the FAC complaint based on any hypothetical claim of
7 privilege. The Commission should not even consider Verizon's state secrets
8 assertions. Only if the United States seeks leave to intervene under OAR 860-012-
9 001, and only if the Commission allows intervention, will the Commission need to
10 determine whether the United States can assert any claimed privileges in a state
11 administrative proceeding concerning state law and regulatory violations. Further,
12 the ACLU has asserted claims in the FAC that address the unlawful provision of or
13 access to private information to or by persons or entities, public or private. This
14 Commission cannot dismiss the FAC based upon an argument that the Executive
15 Branch has touched the subject matter of the FAC.

16 Moreover, even if the United States intervenes in this case, the Commission is
17 not precluded from testing the assertion of the privilege. As the Vermont Public
18 Services Board stated in its September 18, 2006 Order, "[b]ecause the privilege, once
19 accepted, creates an absolute bar to the consideration of evidence, the courts do not
20 lightly accept a claim of privilege." See, Order State of Vermont Public Service Board
21 in *Petition of Eight Ratepayers for an investigation of possible disclosure of private*
22 *telephone records without customers' knowledge or consent by Verizon New England*
23 *Inc., d/b/a Verizon Vermont* Doc. No. 7183 at p. 18. The Vermont Public Service
24 Board went on to state that, "[t]he privacy issue[s] raised in these dockets are of
25 great interest to Vermont ratepayers, and we are not willing to dismiss this
26 proceeding without, at a minimum, affidavits sufficient to justify that action." *Id.*

1 The Vermont Public Services Board recognized that “*in camera* proceedings
2 before this Board may present difficulties that do not arise in federal courts.
3 However, we understand the relevant federal law to require not only that the
4 privilege be claimed by the responsible official but that the trier of fact at least
5 minimally test whether ‘the occasion for invoking the privilege is appropriate.’” *Id.*
6 Just as the Vermont Public Services Board ruled, Verizon cannot invoke the state-
7 secrets privilege. Moreover, even if the United States does intervene or assert the
8 privilege, this Commission can, and should, test the claimed privilege before it is
9 accepted.

10 **CONCLUSION**

11 The ACLU has standing to assert its claims against Verizon. The ACLU’s
12 claims are not preempted by federal law. Verizon cannot assert the state secrets
13 privilege. Therefore, Verizon’s motion to dismiss should be denied.

14
15 DATED this 27th day of October, 2006.

16 Respectfully submitted,

17 GARVEY SCHUBERT BARER

18
19 By 

20 Keith S. Dubanevich, OSB #97520

E-Mail: kdubanevich@gsblaw.com

21 Mark E. Friedman, OSB #73094

E-Mail: mfriedman@gsblaw.com

22 Laura Caldera Taylor, OSB #99378

E-Mail: ltaylor@gsblaw.com

23 Telephone: (503) 228-3939

Facsimile: (503) 226-0259

24 Attorneys for Complainants American
25 Civil Liberties Union of Oregon, Inc.
26 and American Civil Liberties Union
Foundation of Oregon, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing OPPOSITION TO VERIZON'S MOTION TO
3 DISMISS was served on:

4 Alex M. Duarte
5 Corporate Counsel
6 Qwest Corporation
7 421 SW Oak Street, Ste. 810
8 Portland, OR 97204
9 E-Mail: alex.duarte@qwest.com

Jason Eisdorfer
Energy Program Director
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 308
Portland, OR 97205
E-Mail: Jason@oregoncub.org

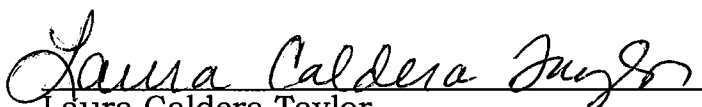
8 Gregory Romano
9 General Counsel
10 Verizon Corporate Services
11 MC WA0105RA
12 1800 41st Street
13 Everett, WA 98201
14 E-mail: Gregory.m.romano@verizon.com

Renee Willer
Manager Regulatory &
Government Affairs
Verizon Corporate Services
MC: OR030156
20575 NW Von Neumann Dr., Ste 150
Hillsboro, OR 97006-4771
E-mail: renee.willer@verizon.com

13 Citizens' Utility Board of Oregon
14 OPUC Dockets
15 610 SW Broadway, Ste. 308
16 Portland, OR 97205
17 E-Mail: dockets@oregoncub.org

Heather Zachary
Wilmer Cutler Pickering
Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20009
E-Mail: heather.zachary@wilmerhale.com

18 by mailing to them a copy of the original thereof, contained in sealed envelopes,
19 addressed as above set forth, with postage prepaid, and deposited in the mail in
20 Portland, Oregon, on October 27, 2006.

21
22 
23 Laura Caldera Taylor
24 Of Attorneys for Complainants

25 PDX_DOCS:381407.4 [30186-00114]
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1265

AMERICAN CIVIL LIBERTIES UNION
OF OREGON, INC. and AMERICAN
CIVIL LIBERTIES UNION
FOUNDATION OF OREGON, INC.,

Complainants,

v.

VERIZON NORTHWEST, INC., and
QWEST CORPORATION,

Defendants.

DECLARATION OF JOSSI DAVIDSON
IN SUPPORT OF COMPLAINANTS'
OPPOSITION TO VERIZON'S MOTION
TO DISMISS

I, Jossi Davidson, do hereby declare:

1. I am an attorney licensed to practice in the State of Oregon. I am a partner in the law firm of Gracey & Davidson. My law firm is located in Silverton, Oregon.

2. I have been a member of the American Civil Liberties Union of Oregon, Inc. ("ACLU") for approximately fifteen years.

3. For most of the time I have been a member of the ACLU I have served on the American Civil Liberties Union Foundation of Oregon, Inc.'s ("ACLU Foundation")

1 Lawyers Committee. The ACLU Foundation Lawyers Committee screens new legal
2 cases presented to the ACLU Foundation.

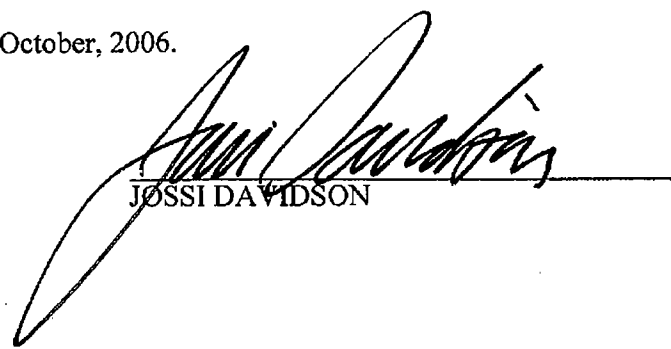
3 4. On occasion I have also volunteered to undertake legal representation of
4 ACLU Foundation clients.

5 5. My firm has been a Verizon land line business telephone customer for
6 more than six years. I also live in Silverton, Oregon and have been a residential
7 Verizon land line telephone customer for more than six years.

8 6. I have had numerous attorney-client communications using my home
9 and office telephones, including conversations with the ACLU Foundation's Lawyers
10 Committee.

11 **I hereby declare that the above statement is true to the best of my knowledge and belief, and that**
12 **I understand it is made for use as evidence in court and is subject to penalty for perjury.**

13 DATED this 27th day of October, 2006.

14
15 
16 JOSSI DAVIDSON

17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that the foregoing DECLARATION OF JOSSI DAVIDSON IN SUPPORT OF COMPLAINANTS' OPPOSITION TO VERIZON'S MOTION TO DISMISS was served on:

Alex M. Duarte
Corporate Counsel
Qwest Corporation
421 SW Oak Street, Ste. 810
Portland, OR 97204
E-Mail: alex.duarte@qwest.com

Jason Eisdorfer
Energy Program Director
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 308
Portland, OR 97205
E-Mail: Jason@oregoncub.org

Gregory Romano
General Counsel
Verizon Corporate Services
MC WA0105RA
1800 41st Street
Everett, WA 98201
E-mail: Gregory.m.romano@verizon.com

Renee Willer
Manager Regulatory &
Government Affairs
Verizon Corporate Services
MC: OR030156
20575 NW Von Neumann Dr., Ste 150
Hillsboro, OR 97006-4771
E-mail: renee.willer@verizon.com

Citizens' Utility Board of Oregon
OPUC Dockets
610 SW Broadway, Ste. 308
Portland, OR 97205
E-Mail: dockets@oregoncub.org

Heather Zachary
Wilmer Cutler Pickering
Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20009
E-Mail: heather.zachary@wilmerhale.com

by mailing to them a copy of the original thereof, contained in sealed envelopes, addressed as above set forth, with postage prepaid, and deposited in the mail in Portland, Oregon, on October 27, 2006.


Laura Caldera Taylor
Of Attorneys for Complainants

PDX_DOCS:381612.1 [30186-00114]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1265

AMERICAN CIVIL LIBERTIES UNION
OF OREGON, INC. and AMERICAN
CIVIL LIBERTIES UNION
FOUNDATION OF OREGON, INC.,

Complainants,

v.

VERIZON NORTHWEST, INC., and
QWEST CORPORATION,

Defendants.

DECLARATION OF JANN CARSON IN
SUPPORT OF COMPLAINANTS'
OPPOSITION TO VERIZON'S MOTION
TO DISMISS

I, Jann Carson, do hereby declare:

1. I am the Associate Director of the ACLU of Oregon, Inc. ("ACLU") and the
ACLU Foundation of Oregon, Inc. I have worked for both organizations for 20 years.
I am a member of the ACLU.

2. I have been a Verizon land line customer since April 2006. This phone
service is at a vacation home in Port Orford, Oregon that my family and I use often.

3. Using my Verizon land line telephone account, I have called the ACLU
offices or have been called by ACLU staff at that number approximately a dozen

1 times. During those telephone conversations, I have discussed particular ACLU
2 Foundation of Oregon, Inc. clients and cases.

3 4. On at least one occasion, an individual located my number through
4 directory assistance and left a message detailing her request for legal representation
5 from the ACLU Foundation of Oregon, Inc.

6 5. In my position as Associate Director of the ACLU, I have personal
7 knowledge that other ACLU members are also Verizon customers.

8 I hereby declare that the above statement is true to the best of my knowledge and belief, and that
9 I understand it is made for use as evidence in court and is subject to penalty for perjury.

10 DATED this 26th day of October, 2006.

11
12 

13 JANN CARSON

CERTIFICATE OF SERVICE

I hereby certify that the foregoing DECLARATION OF JANN CARSON IN SUPPORT OF COMPLAINANTS' OPPOSITION TO VERIZON'S MOTION TO DISMISS was served on:

Alex M. Duarte
Corporate Counsel
Qwest Corporation
421 SW Oak Street, Ste. 810
Portland, OR 97204
E-Mail: alex.duarte@qwest.com

Jason Eisdorfer
Energy Program Director
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 308
Portland, OR 97205
E-Mail: Jason@oregoncub.org

Gregory Romano
General Counsel
Verizon Corporate Services
MC WA0105RA
1800 41st Street
Everett, WA 98201
E-mail: Gregory.m.romano@verizon.com

Renee Willer
Manager Regulatory &
Government Affairs
Verizon Corporate Services
MC: OR030156
20575 NW Von Neumann Dr., Ste 150
Hillsboro, OR 97006-4771
E-mail: renee.willer@verizon.com

Citizens' Utility Board of Oregon
OPUC Dockets
610 SW Broadway, Ste. 308
Portland, OR 97205
E-Mail: dockets@oregoncub.org

Heather Zachary
Wilmer Cutler Pickering
Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20009
E-Mail: heather.zachary@wilmerhale.com

by mailing to them a copy of the original thereof, contained in sealed envelopes, addressed as above set forth, with postage prepaid, and deposited in the mail in Portland, Oregon, on October 27, 2006.


Laura Caldera Taylor
Of Attorneys for Complainants

PDX_DOCS:381602.2 [30186-00114]