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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

COMPLAINANTS' CONSOLIDATED MOTIONS

TO RECONSIDER AND VACATE THE COMMISSION'S ORDER NO. 10-027 DENYING THE COMPLAINANTS' AMENDED COMPLAINTS

AND TO STAY PROCEEDINGS PENDING DIRECTION FROM THE UNITED STATES DISTRICT COURT IN PORTLAND OREGON

TO: Oregon Public Utility Commission

AND TO: All Parties

MOTION

Complainants, MOVE the Commission to:

1. RECONSIDER its Order No. 10-027 striking parts and all of Complainants' First and Second Amended Complaint and to vacate those parts of the Commission's Order denying the Complainants' right to file an Amended complaint consistent with the Claims of the

1 Complainants and the Commission's files in DR 26/UC 600, UT 125 and in accordance with the
2 Court of Appeals Remand dated November 10, 2004.¹ The action of the Commission in Order
3 No.10-027 is not consistent with the Court of Appeals Remand, Oregon Law and the clear record
4 in this and its companion case UT 125. Second, the action of the Commission by its Order is in
5 violation of 47 USC 201 et seq and 276, the Wisconsin Order and other orders of the FCC.
6

7 2. To STAY further proceedings as set forth below.

8 STATUS AND HISTORY

9 At the US District Court of Oregon, Portland Division there is pending a nearly
10 identical Complaint as filed at the PUC, and under which there is pending a Motion to Dismiss
11 filed by Qwest and a Motion for Summary Judgment filed by the NPPC et al. It is the position of
12 the Movant that the PUC has no jurisdiction to act except to either grant the Request to
13 Reconsider its Order to accept the Second Amended Complaint and then Stay this matter or to
14 simply Stay it until the Federal Court provides the necessary direction as to the Federal Law.
15 That Authority is found below.

16 This case was filed in May 2001 as a precautionary matter, pending the proceedings of
17 PUC Docket UT 125 (the Rate Case). Those proceedings extended from late 1995 until
18 concluded in November 2007. During that time, and as a precaution to maintain its right to
19 claim refunds when that claim should become ripe, this case was filed by the NPCC in 2001.
20 The "ripeness" of the claims arose finally in November 2007, when the UT 125 proceedings
21 were concluded to result in "effective" rates under the regulation of the Commission with its
22 Order No. 07-497, that were compliant with the Telecommunications Act of 1996 (the Act).
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¹ Northwest Public Communications Council v. Oregon Public Utilities Commission, 196 Or. App. 94, 100 P.3d
776 (2004) (the "Court of Appeals Decision"), hereinafter the Remand Order.
Page 2 CONSOLIDATED MOTIONS TO RECONSIDER AND VACATE AND TO STAY ORDER 10-027

1 The Commission's Order 07-497 and its companion Orders No. 00-190, 00-191, 01-
2 810, 02-009 and 06-515 make clear that Qwest currently has not complied with the Orders of the
3 Commission to calculate and pay refunds of overcharges as established by the Commission
4 proceedings in UT 125 and the related proceedings.

5 This motion is supported by the Supporting Memorandum of Law and Fact and the
6 Declaration of Frank G. Patrick and the record hereby incorporated in UT-125 and DR26/UC
7 600 and the Complaint in US District Court Case No. CV 09-1351BR; filed herewith and therein
8 pending Motion for Summary Judgment, Concise Statement of Fact, Memorandum and
9 Declarations and exhibits on file in support of the Motion for Summary Judgment all as
10 referenced in the Memorandum and filed herewith.

11 The Oregon Public Utilities Commission's Orders are subject to the provisions of ORS
12 756.561 et seq and OAR 860-014-0095 et seq.

13
14 A. In an application for reconsideration (rehearing) under OAR 860-014-0095(2):

15 (2) The application shall specify:

- 16 (a) The portion of the challenged order which the applicant contends is erroneous
or incomplete;
17 (b) The portion of the record, laws, rules, or policy of the Commission relied upon
to support the application;
18 (c) The change in the order which the Commission is requested to make;
19 (d) How the applicant's requested changes in the order will alter the outcome; and
20 (e) One or more of the grounds for rehearing or reconsideration set forth under
section (3) of this rule.

21 B. The standard of review in this matter rests on OAR 860-014-0095(3)(c) and (d) which
22 in relevant parts provide:

23 (3) The Commission may grant an application for rehearing or reconsideration if
the applicant shows that there is:

- 24 (c) An error of law or fact in the order which is essential to the decision; or
25 (d) Good cause for further examination of a matter essential to the decision.

1
2 Movant respectfully submits that the referenced portion of the Order in error is that
3 Motion should be granted to Reconsider and Stay further proceedings.

4 DATED this April 2nd, 2010

5
6 /S/
7 Frank G. Patrick, OSB 76022

1 CERTIFICATE OF SERVICE

2 I, the undersigned below, hereby certify that I served the foregoing
3 CONSOLIDATED MOTIONS FOR RECONSIDERATION, SUPPORTING MEMORANDUM
4 AND REFERENCED ATTACHMENTS and DECLARATION OF FRANK G. PATRICK on:

5 Lawrence Reichman
6 Perkins Coie
7 1120 N.W. Couch Street, 10th Floor
8 Portland, Oregon 97209-4128
9 reicl@perkinscoie.com

10 Jason W. Jones
11 Department of Justice
12 1162 Court Street NE
13 Salem, Oregon 97301
14 Jason.w.jones@state.or.us

15 Alex M. Duarte
16 Qwest Corporation
17 421 SW Oak St., Suite 810
18 Portland, Oregon 97204
19 alex.duarte@qwest.com

20 by the following indicated method or methods:

21 X by **mailing & emailing** (if indicated above) a full, true, and correct copy thereof in
22 a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-
23 known office address of the attorney, and deposited with the United States Postal Service at
24 Portland, Oregon, and by electronic mail on the date set forth below;

25 _____ by sending full, true and correct copies thereof via **overnight courier** in sealed,
26 prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of
the attorneys, on the date set forth below;

_____ by handing/delivering true and correct copies thereof to the attorney or one of the
clerks at the above address, on the date set forth below;

And Certify that I did electronically file same with the PUC Filing Center, with a hard copy to
PUC, Filing Center, 550 Capitol Street NE, Ste 215, PO Box 2148, Salem, OR 97308-2148.

DATED this April 2st, 2010

25 /S/ _____
Frank G. Patrick, OSB 76022

