

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UT 125**

4 In the Matter of

5 QWEST CORPORATION, fka
6 U S WEST COMMUNICATIONS, INC.,

7 Application for Increase in Revenues.

**QWEST CORPORATION’S MOTION
PURSUANT TO ORS 9.350 TO PROVE
AUTHORITY OF COUNSEL**

8 **MOTION**

9 Qwest Corporation (“Qwest”) respectfully moves the Public Utility Commission,
10 pursuant to ORS 9.350 and OAR 860-001-0420, to issue an order requiring Frank Patrick and
11 James Pikel, counsel for Northwest Public Communications Counsel (“NPCC”) and its members,
12 to prove by competent evidence that they are authorized to appear on behalf of NPCC’s
13 members—payphone service providers (“PSPs”) claiming they are owed refunds from Qwest—
14 and to stay these proceedings until Mr. Patrick and Mr. Pikel both do so. It is necessary and
15 appropriate for the Commission to determine whether counsel have irreconcilable conflicts of
16 interest and whether any PSP authorizes counsel’s actions here before these proceedings advance
17 further.

18 Mr. Patrick and Mr. Pikel must prove their authority to represent the PSPs for two reasons.
19 First, counsel appear to have conflicts of interest with the parties they purport to represent
20 because they have acquired those parties’ claims. Second, counsel appear to lack authority to
21 represent the PSPs because no attorney-client relationship could remain with the many PSPs
22 which no longer have any corporate existence or any personnel authorized to form an attorney-
23 client relationship or otherwise to participate in this proceeding. Because of the gravity of these
24 issues, counsel should be ordered to make an evidentiary showing including, but not limited to:
25 (1) a recently signed and notarized affidavit, under penalty of perjury, from each PSP for whom a
26 refund is sought authorizing counsel’s continued representation in this proceeding and certifying

1 that counsel does not possess any proprietary interest in such PSP's purported claims; (2) a
2 signed and notarized affidavit, under penalty of perjury, from each counsel attesting that they
3 have no proprietary interest, directly or indirectly, in the claim of any PSP or disclosing those
4 that do exist; and (3) appropriate supporting documentation of the matters sworn to. The
5 Commission may then evaluate counsel's authority to represent the PSPs in this proceeding.

6 MEMORANDUM IN SUPPORT

7 This proceeding involves decades-old claims purportedly brought for the benefit of a
8 number of PSPs. As the Commission is aware, payphones are a thing of the past: they have
9 overwhelmingly been replaced by mobile phones and other forms of mobile communications.
10 Necessarily, PSPs are equally a thing of the past. Indeed, many of NPCC's PSP members are
11 defunct—they forfeited charters, are devoid of assets following bankruptcy, have no remaining
12 principals or employees, and/or were dissolved. According to NPCC's latest filing, "all but two
13 of [NPCC's members are] out of business."¹

14 While the PSPs have disappeared during the 23 years their refund claims have been
15 litigated here and elsewhere, their purported counsel appear to have been systematically
16 acquiring the Oregon PSPs' claims for counsel's own personal benefit, creating irreconcilable
17 and disqualifying conflicts of interest. Nevertheless, counsel are now appearing before the
18 Commission seeking refunds ostensibly for those PSPs—but, in fact, very likely only for
19 themselves. Such a dynamic raises serious doubts about counsel's candor with the Commission
20 and whether this proceeding should continue.²

21
22 ¹ NPCC's Opening Brief at 12-13.

<https://edocs.puc.state.or.us/efdocus/HBC/ut125hbc326247054.pdf>

23 ² Counsel should not be able to pursue claims here on behalf of customers who no longer exist.
24 Since many, if not all, of the PSPs no longer exist and may not have disclosed or preserved
25 claims in bankruptcy proceedings, there are serious questions about continuing this proceeding
26 without affected customers. Additionally, where counsel have acquired their defunct clients'
claims, the Commission's jurisdiction under ORS 756.040 to represent and protect "customers"
cannot properly be invoked. Qwest intends to raise both issues at the appropriate juncture.

1 Before the Commission can address any other issue in this proceeding, Mr. Patrick and
2 Mr. Pikl must demonstrate they are authorized to represent the PSPs by answering at least three
3 questions with competent evidence: (1) does each PSP they purport to represent properly consent
4 to the attorney-client relationship?; (2) do these attorneys maintain any propriety interest, direct
5 or indirect, in any PSP’s purported claims in this matter?; and (3) does their representation of
6 each PSP otherwise comport with all applicable rules of professional conduct?

7 **I. Legal Standard.**

8 ORS 9.350 provides that “[t]he court or judge thereof may, on motion of either party and
9 on showing reasonable grounds therefor, require the attorney for an adverse party to prove the
10 authority under which the attorney appears, and until the attorney does so, may stay all
11 proceedings by the attorney on behalf of the party for whom the attorney assumes to appear.”³ In
12 addition to requiring that the attorney actually have been retained by their client, ORS 9.350 also
13 requires the attorney to prove that the representation comports with the Oregon Rules of
14 Professional Conduct. *See Order, Communication Management Services, LLC v. Harlow*, 3:12-
15 cv-01923-BR (D. Or. Oct. 31, 2017) (reviewing Mr. Patrick’s compliance with Oregon Rules of
16 Professional Conduct via an ORS 9.350 motion) (Attachment A hereto).

17 Oregon Rule of Professional Conduct (“ORPC”) 1.7 prohibits an attorney from
18 representing a client “if the representation involves a current conflict of interest.” A conflict of
19 interest exists if “there is a significant risk that the representation of one or more clients will be
20 materially limited by the lawyer's responsibilities to another client, a former client or a third
21 person or by a personal interest of the lawyer.” ORPC 1.7(a)(2). ORPC 1.8(i) prohibits an
22 attorney from acquiring “a proprietary interest in the cause of action or subject matter of
23 litigation the lawyer is conducting for a client, except that the lawyer may (1) acquire a lien
24

25 ³ ORS 9.350 governs the attorney-client relationship and applies to all “proceedings in any
26 action, suit or proceeding, in any stage thereof . . . in court, or before a judicial officer[.]”
ORS 9.310.

1 authorized by law to secure the lawyer’s fee or expenses; and (2) contract with a client for a
2 reasonable contingent fee in a civil case.” Additionally, ORPC 1.16 provides that “a lawyer shall
3 not represent a client or, where representation has commenced, shall withdraw from the
4 representation of a client if . . . the representation will result in violation of the Rules of
5 Professional Conduct or other law.”⁴

6 **II. Background.**

7 **A. Mr. Patrick and Mr. Pikel purport to represent about a dozen PSPs, for 8 whom they are seeking monetary recovery in this matter.**

9 Mr. Patrick and Mr. Pikel do not merely represent the nominal moving party, NPCC. They
10 also purport to represent its PSP members, the real parties in interest for whom they have
11 brought the Motions and for whom they are seeking monetary recovery, as Mr. Patrick has
12 routinely made clear:

- 13 • Complaint, *Corporate Lawyers, P.C. v. NSC Communications Public Services Corp.*,
14 No. 17CV14749 (Or. Cir. Ct., Apr. 10, 2017) at ¶ 15 (Attachment B), alleging Patrick’s
15 law firm filed seven proceedings before the PUC and in state and federal courts, and
16 *specifically including the Motions at issue here*, on behalf of all the PSP members of
17 NPCC.
- 18 • August 8, 2023, Letter from Frank G. Patrick to Chief Administrative Law Judge (“As
19 you know, my firm and co-counsel Scheef & Stone, LLP represent the Northwest Public
20 Communications Council (NPCC), *and its members.*”) (emphasis added).⁵
- 21 • September 25, 2023, Letter from Frank G. Patrick to Commission Filing Center (“This
22 letter provides the amended service addresses for Frank Patrick the Attorney for The
23

24 ⁴ The Oregon Rules of Professional Responsibility apply to these proceedings under OAR 860-
25 001-0310(1) (“All persons appearing in proceedings in a representative capacity must conform to
26 the standards of ethical conduct required of attorneys appearing before the courts of Oregon.”).

⁵ <https://edocs.puc.state.or.us/efdocs/HAH/ut125hah141353.pdf>

1 Northwest Public Communications Council Inc. and *its Members, my clients in this*
2 *pending matter.*”) (emphasis added).⁶

- 3 • NPCC’s Amended Proposed Schedule, filed by Frank G. Patrick on November 7, 2023,
4 at 2 (“NPCC members are ... the complaining victims”) and 7 (proposing that “[t]he ALJ
5 will issue orders directing Qwest to pay refunds to NPCC, on behalf of NPCC
6 members.”) (emphasis added).⁷

7 The PSPs Mr. Patrick and Mr. Pikl have claimed to represent in this matter appear to
8 include: (1) Communication Management Services, LLC; (2) Davel Communications a/k/a
9 Phonetel Technologies, Inc. (“Davel”); (3) NSC Communications Public Services Corporation
10 (“NSC”); and (4) Pacific Northwest Payphones, Inc. (“Pacific”). *See Complaint, Communication*
11 *Management Services LLC v. Qwest*, No. 131115906 (Or. Cir. Ct. Nov. 15, 2013)
12 (Attachment C).⁸ Further, Pacific is purportedly the assignee of claims against Qwest from an
13 additional number of PSPs including (5) Central Telephone, Inc., (6) Interwest Tel. LLC,
14 (7) Interwest Telecom Services Corporation; (8) Valley Pay Phone, Inc.; (9) National Payphone
15 Services, LLC; (10) Partners in Communications; (11) T & C Management, LLC; and
16 (12) Corban Technologies, Inc. *Id.* Therefore, Mr. Patrick and Mr. Pikl purport to seek refunds in
17 this matter on behalf of approximately 12 PSPs.

18 **B. Mr. Patrick was already disqualified and disciplined for a conflict of interest**
19 **with a PSP he represents in this matter.**

20 Mr. Patrick has already been adjudged to have an irreconcilable conflict of interest with
21 at least one of these PSPs (Davel) with respect to the same claim he is pursuing here. United

22 _____
23 ⁶ <https://edocs.puc.state.or.us/efdocs/HAT/ut125hat121028.pdf>

24 ⁷ <https://edocs.puc.state.or.us/efdocs/HAH/ut125hah123238.pdf>

25 ⁸ Some of the claims asserted in that 2013 complaint are identical to those asserted in the
26 Motions and were decided adversely to NPCC and its PSP members. *Communication*
Management Services, LLC, et al. v. Qwest Corporation, 67 F. Supp. 3d 1159 (D. Or. 2014),
aff’d in part, rev’d in part, 726 Fed. Appx. 538 (9th Cir. 2018). If this matter proceeds, those
facts will be one basis for Qwest’s argument that the Motions are barred by res judicata.

1 States District Court Judge Anna Brown detailed these issues in her October 31, 2017, Order in
2 *Communication Management Services, LLC v. Harlow* (Attachment A). That case involved a
3 legal malpractice claim Mr. Patrick filed against the PSPs’ former attorney, as part of the flurry
4 of litigation Mr. Patrick has pursued since 2009. Mr. Patrick’s opposing counsel filed a motion
5 pursuant to ORS 9.350 (much like this one) seeking an order requiring Mr. Patrick to establish
6 his authority to act on behalf of Davel, because Mr. Patrick openly admitted he had “lost
7 communication” with his client, which had forfeited its state charter. *Id.* at 2-3, 6. The Court held
8 that “[a]t the time that Patrick lost contact with Davel’s representative, he should have moved to
9 withdraw from continuing to represent Davel, particularly in light of his statements in response
10 to Defendant’s discovery requests that he was unaware of the location of Davel’s records.”
11 *Id.* at 12.

12 But as importantly—and perhaps more egregiously—the Court held that Mr. Patrick had
13 a disqualifying conflict of interest with Davel when he obtained a proprietary interest in the
14 claims. Specifically, Mr. Patrick had agreed with a secured creditor to pursue Davel’s claims;
15 foreclosed on his lien for attorneys’ fees against Davel; obtained a judgment against Davel; and
16 then purchased at auction Davel’s assets, including all legal claims and specifically claims “in
17 the underlying PUC action.” *Id.* at 12-13. The Court found that Mr. Patrick’s actions created a
18 conflict of interest with Davel based upon Mr. Patrick’s personal financial interest in the action.
19 *Id.* As a result, Mr. Patrick was ordered to withdraw from representing Davel in the *Harlow* case.
20 Not surprisingly, given that Davel apparently lacked any corporate existence and was incapable
21 of hiring a lawyer (*see* Attachment A at 3-4), it did not retain new counsel, and Davel’s claims
22 were dismissed with prejudice. *Harlow*, Order, ECF 313 (Jan. 23, 2018) (Attachment D).⁹

23
24 ⁹ The District Court’s order provides a helpful roadmap for how the Commission should handle
25 this motion. The Commission should order counsel to prove their authority with affidavits and
26 supporting evidence. And if the Commission finds counsel has a conflict of interest or lacks
authority, then the Commission should order counsel to withdraw, just like Judge Brown ordered
Mr. Patrick to do.

1 Further, for similar communication shortcomings—i.e., because it had no corporate
2 existence—Mr. Patrick withdrew as counsel for NSC. *Harlow*, Mot. to Withdraw as Counsel for
3 Pl. NSC and Supporting Affidavit (Feb. 23, 2017) (Attachment E) (Mr. Patrick had a
4 “communication problem” with NSC and NSC was unable to provide discovery answers because
5 no custodian of record was ever appointed to Mr. Patrick’s knowledge.).

6 Mr. Patrick’s troubles did not end there. After he was forced to withdraw from the
7 *Harlow* case, the Oregon State Bar Disciplinary Board suspended him from the practice of law
8 for his actions in purporting to represent Davel. *See* Order Approving Stipulation for Discipline,
9 Case No. 19-46 & 19-53 (Or. May 11, 2020) (Attachment F). During that disciplinary
10 proceeding, Mr. Patrick admitted that by suing Davel to recover his attorneys fees, while at the
11 same time representing Davel in other matters—including *this one*—there was a significant risk
12 that his representation of one or more clients would be materially limited by his personal
13 interests and that he therefore “had a conflict of interest in violation of RPC 1.7(a)(2) to which
14 the persons authorized to speak for his client had not validly given informed consent.” *Id.* at
15 ¶¶ 9-10. The Disciplinary Board further found that Mr. Patrick *intentionally* violated his duty of
16 loyalty to Davel for a dishonest or selfish motive. *Id.* at ¶ 11(b) and (d)(1).

17 Notwithstanding the unequivocal decisions of the District Court and the Oregon State Bar
18 Disciplinary Board in 2017 and 2020, respectively, and his own admissions in those proceedings,
19 Mr. Patrick continued to pursue claims on behalf of Davel, NSC, and other PSPs before the
20 Commission and in court—without even informing any forum of his disqualification. Even after
21 the District Court ordered Mr. Patrick to withdraw as counsel on October 31, 2017, he continued
22 to represent the same parties before the Commission (which issued Order No. 17-473 on
23 November 16, 2017) and in the appeal before the Oregon Court of Appeals. And he continues the
24 same conduct after the Oregon State Bar Disciplinary Board’s 2020 decision and serving his 60-

1 day suspension.¹⁰ Mr. Patrick’s extraordinary lack of candor with the Commission and courts
2 likely violates other Rules of Professional Conduct, e.g., ORPC 3.3.

3 **C. Mr. Patrick and Mr. Pikel appear to have similar conflicts of interest with**
4 **other PSPs they purport to represent in this matter.**

5 Although Mr. Patrick’s history with Davel presents the most obvious obstacle to his
6 appearance in this matter, similar evidence suggests Mr. Patrick has an impermissible proprietary
7 interest in the claims of other PSPs—which Mr. Patrick has also not disclosed here.

8 Through his law firm Corporate Lawyers, P.C., Patrick sued to foreclose on an attorney
9 lien against another PSP, NSC, seeking an order either “(1) transferring [NSC’s] interest in the
10 proceeds of the Litigation” to his law firm, “to proceed with the litigation as the owner of each
11 and all of the proceedings and the ultimate proceeds of the Litigation” or (2) selling 100 percent
12 [of NSC’s] interest in the Litigation in any commercially reasonable manner, including a public
13 auction.” Complaint, *Corporate Lawyers, P.C. v. NSC Communications Public Services Corp.*, at
14 ¶ 39 and pp. 12-13 (Attachment B). NSC defaulted, but the court held that it did not have
15 “authority to allow plaintiff, as counsel for defendant, to take over the prosecution of its client’s
16 claims in the underlying litigation” or to recover the value of its services under a contingent fee
17 agreement “[i]f a client does not pursue a claim....” Judgment (Attachment I). Instead, the court
18 entered a default judgment for costs to be satisfied by a sheriff’s sale of NSC’s claims. *Id.*
19 Patrick’s law firm eventually assigned its interest in the judgment to a new entity, NPCC NSC
20 DAVEL PHONETEL LLC (Attachment J), of which Patrick is the registered agent.¹¹ That new
21 entity purchased NSC’s claims at auction in 2022. Return of Writ (Attachment K).¹²

22 _____
23 ¹⁰ It should go without saying that serving that suspension did not give Mr. Patrick carte blanche
24 to continue to violate the Rules of Professional Responsibility.

25 ¹¹ https://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=2129328&p_srce=BR_INQ&p_print=FALSE .

26 ¹² Further complicating the nefarious web of the PSPs’ attorneys’ acquiring their clients’ claims,
on August 18, 2023, Richard Gaines, Mr. Patrick’s co-counsel in this proceeding, notified the

1 **D. Many of these PSPs no longer exist.**

2 Mr. Patrick and Mr. Pikl also face another steep hurdle in this proceeding: several of their
3 purported clients have ceased to exist. Seven years ago, Mr. Patrick admitted in the *Harlow* case
4 that the PSPs he and Mr. Pikl now purport to represent were disappearing, if not already gone:

5 The work is far greater than this counsel anticipated and becoming more aware of
6 the extreme time to do the electronic discovery has been mind numbing, but there
7 have been technological issues that counsel did not anticipate. The difficulty with
8 helping the Plaintiffs now out of business and stretching to New York and Ohio,
9 and the reality that the doors of the businesses have closed, due to the lack of
10 revenues and profits as well as the refunds for overcharges actually paid to a third
11 party, has made the discovery process one of enormous cost to these mostly mom
12 and pop businesses but the large Plaintiffs have simply closed.

13 *The pressure on each of the plaintiffs to close has been impossible to overcome
14 with the exception of one.*

15 *Harlow*, Plaintiff’s Motion to Amend Scheduling Order and Respective Discovery Deadlines
16 (Feb. 28, 2017) (Attachment G) (emphasis added).

17 If that were not enough, Mr. Patrick has given additional reason here to be concerned that
18 PSPs no longer exist. According to Mr. Patrick’s August 14, 2023, letter to the Commission,
19 there is reason to believe other PSPs no longer have individuals able to direct litigation efforts
20 because “4 of the principals of members of NPCC have died in the last few years.”¹³
21 Mr. Patrick’s latest filing with the Commission states “all but two of [NPCC’s members are] out
22 of business.”¹⁴ It is unclear what single PSP was the “exception” in 2017, why that number
23 increased to two in 2023, or with which PSP(s) these four deceased principals were affiliated, but
24 it is obvious that many, if not all, of these PSPs no longer exist.

25 Commission that *he* holds an interest in NSC’s claims in this matter.
26 <https://edocs.puc.state.or.us/efdocs/HNA/ut125hna162237.pdf>. Gaines purportedly entered into a
27 settlement with the owners of the NSC claims, foreclosed on a judgment against NSC and its
28 parent company, and then purchased the NSC claims—in much the same manner as Mr. Patrick
29 acquired Davel’s and NSC’s claims. *Id.* Gaines was one of the PSPs’ attorneys of record in this
30 proceeding until August 28, 2023. <https://edocs.puc.state.or.us/efdocs/HAT/ut125hat12536.pdf>.

¹³ <https://edocs.puc.state.or.us/efdocs/HAH/ut125hah141353.pdf>.

¹⁴ NPCC’s Opening Brief at 12-13.

<https://edocs.puc.state.or.us/efdocs/HBC/ut125hbc326247054.pdf>

1 Indeed, Qwest’s preliminary research confirms as much. Searches of the Oregon
2 Corporate Division Business Name Search show that many of these PSPs are no longer active in
3 Oregon¹⁵:

- 4 • Davel (a/k/a Phonetel Technologies, Inc.) is listed as inactive, and Judge Brown’s
5 Order (Attachment A at 4) states Davel forfeited its Delaware charter in 2012;
- 6 • Central Telephone, Inc. is inactive;
- 7 • Valley Pay Phone, Inc. was dissolved in 2012;
- 8 • National Payphones Services, Inc. was dissolved in 2014; and
- 9 • Corban Technologies was dissolved in 2016.

10 **III. Argument.**

11 Mr. Patrick and Mr. Pikl should be required to prove their authority to appear on behalf
12 of each of their purported PSP clients in these proceedings, including that their representation
13 does not violate any Oregon Rule of Professional Conduct. Reasonable grounds exist to doubt
14 that such authority exists.

15 First, Mr. Patrick was already forced to withdraw as counsel for Davel because he
16 obtained an interest in Davel’s claims, which ORPC 1.8(i) prohibits, and because Davel lacked
17 any personnel capable of consenting to his purported representation. Moreover, he acquired his
18 interest in Davel’s claims by *suing* his own client, obtaining a default judgment when it did not
19 respond, and then purchasing its assets after foreclosing on his judgment—all while
20 simultaneously purporting to represent that client in other matters, *including this one*.
21 Nevertheless, and despite his disqualification by a federal court and his subsequent discipline by
22 the Oregon State Bar, Mr. Patrick continues to pursue claims for Davel and the other PSPs in this
23 matter. That representation is prohibited unless Mr. Patrick and any entity in which he has an
24

25 ¹⁵ See Attachment H (Oregon Secretary of State Corporate Division Records) (Entity Status is
26 listed as “INA” or Inactive for each).

1 interest has no interest in Davel’s claims, and unless a party authorized to consent to an attorney-
2 client relationship continues to consent to his representation of Davel.

3 Second, there is substantial evidence suggesting that both Mr. Patrick and Mr. Pikl have
4 similar conflicts of interest with the other PSPs they purport to represent in this matter. As to
5 NSC, Mr. Patrick again followed the same path as he did with Davel to acquire NSC’s claims
6 after he was forced to withdraw as counsel for NSC because NSC lacked any personnel capable
7 of consenting to his purported representation. There is thus a reasonable basis to believe this is
8 the case with the other PSPs, including those no longer in business.

9 Third, there is also a reasonable basis to question whether the other PSPs Mr. Patrick and
10 Mr. Pikl purport to represent in this matter currently consent to such representation or even
11 could. Many of these PSPs were long ago dissolved and likely have no remaining principals with
12 authority to bind the entity to an attorney-client relationship with Mr. Patrick or Mr. Pikl. As was
13 the case with Davel and NSC, it stands to reason that such defunct PSPs are being improperly
14 propped up in this matter solely so that Mr. Patrick and Mr. Pikl can pursue their purported
15 claims for counsel’s personal benefit (including former counsel Richard Gaines).

16 Although Mr. Patrick’s history with Davel, NSC, and other PSPs is the primary source of
17 ethical concern in this matter, Mr. Pikl’s actions must also be scrutinized. Mr. Pikl, an attorney
18 licensed in Texas, was admitted to practice *pro hac vice* in this matter, with Mr. Patrick as his
19 sponsor. Under Oregon Rule of Professional Conduct 8.4, “[i]t is professional misconduct for a
20 lawyer to: (1) violate the Rules of Professional Conduct, knowingly assist or induce another to
21 do so, or do so through the acts of another.” Thus, to the extent Mr. Pikl acquired an interest in
22 the PSPs’ claims or knowingly assisted in any conduct by Mr. Patrick in this matter amounting to
23 an ethical violation—whether or not Mr. Pikl himself committed such violation—he likewise
24 breached the Oregon Rules of Professional Conduct. At a minimum, Mr. Pikl should have
25 understood from the public record of District Court and Oregon State Bar Disciplinary
26 Committee proceedings that Mr. Patrick, his *pro hac vice* sponsor in this matter, has unresolved

1 conflicts of interest with Davel and NSC, two of Mr. Pikl's (and Mr. Patrick's) purported clients
2 in this matter.

3 Before Mr. Patrick and Mr. Pikl take any further action in this matter, they should
4 demonstrate their authority to proceed by competent evidence, including but not limited to:
5 (1) a recently signed and notarized affidavit, under penalty of perjury, from each PSP for whom a
6 refund is sought authorizing counsel's continued representation in this proceeding and certifying
7 that counsel does not possess any proprietary interest in such PSP's purported claims;
8 (2) a signed and notarized affidavit, under penalty of perjury, from each counsel attesting that
9 they have no proprietary interest, directly or indirectly, in the claim of any PSP or disclosing
10 those that exist; and (3) appropriate supporting documentation of the matters sworn to.

11 Finally, until such time as Mr. Patrick and Mr. Pikl prove their authority, the Commission
12 should stay these proceedings, which cannot proceed in the face of serious, unresolved doubts
13 about the authority of counsel. Because of counsel's potential conflicts of interests and absence
14 of authority, this issue should be resolved before reaching any merits issues. Allowing the
15 proceedings to continue if Mr. Patrick and Mr. Pikl do not have authority to represent their
16 clients prejudices their clients (if they exist), Commission Staff, and Qwest. Therefore, in the
17 interests of transparency, fairness, and efficiency, a stay is warranted.

18 CONCLUSION

19 Qwest respectfully requests the Commission order Mr. Patrick and Mr. Pikl prove the
20 authority under which they are appearing in this action on behalf of PSPs. Qwest further requests
21 the Commission stay these proceedings until Mr. Patrick and Mr. Pikl prove such authority.

1 DATED: January 26, 2024

2
3 **PERKINS COIE LLP**

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11 Representing Qwest Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

COMMUNICATION MANAGEMENT
SERVICES, LLC, *et al.*,

3:12-cv-01923-BR

Plaintiffs,

ORDER

v.

BROOKS L. HARLOW, Attorney
at Law,

Defendant.

BROWN, Judge.

This matter came before the Court on Defendant Brooks L. Harlow's Motion (#241) for Order to Demonstrate Authority to Act for Davel Communications, Inc., in which Defendant seeks to require Plaintiffs' counsel, Frank Patrick, to establish his authority to represent Plaintiff Davel¹ in this matter.

For the reasons that follow, the Court **DENIES** Defendant's Motion with leave to renew it following the withdrawal of Davel's counsel as directed herein and the filing by new counsel for

¹ Plaintiffs' Third Amended Complaint lists Phonetel Technologies, Inc., as an "aka" for Davel. In this Order, therefore, references to Davel include Phonetel.

Davel of a Notice of Representation.

BACKGROUND

I. Procedural History

Plaintiffs, including Davel, filed their Complaint in this Court on October 25, 2012. Plaintiffs allege Defendant was negligent in his representation of Plaintiffs before the Oregon Public Utilities Commission (PUC), the Federal Communications Commission (FCC), and the courts in Oregon and Washington concerning claims under Oregon law and the Federal Telecommunications Acts asserted by Plaintiffs in those forums.

During the course of discovery in this case Defendant sought production of documents from Davel related to its claims against Defendant. On August 1, 2017, Defendant filed a Motion (#213) to Dismiss Davel or in the Alternative to Compel Production of documents on the ground that Davel did not produce the requested documents.

On August 25, 2017, Davel filed a response to Defendant's Motion to Dismiss/Compel. Patrick, Davel's counsel of record, stated he had "lost communication" with Tammy Martin, Davel's sole officer and director; was "unable to locate" her; and did not know where Davel's files that related to its claim against Defendant were located. Patrick, however, asserted documents related to their claims had been produced by all Plaintiffs,

including Davel, and that he continued to pursue Davel's claims in order to "preserve" them on behalf of Davel and its creditor despite having lost contact with Davel.

On September 6, 2017, Defendant filed this Motion (#241) for Order to Demonstrate Authority to Act for Davel Communications, Inc., pursuant to Oregon Revised Statute § 9.350 to require Patrick to show that he had the authority to act on behalf of Davel.

On September 13, 2017, the Court denied Defendant's earlier Motion to Dismiss Davel. Order (#249). The Court concluded Davel was a Delaware corporation² and noted under Delaware law a lawsuit commenced by a corporation could be continued in the name of the corporation even after the corporation was dissolved. The Court, however, granted Defendant's request to compel Davel to produce documents.

On September 23, 2017, Davel filed a Response (#254) to Defendant's Motion for Order to Demonstrate Authority to Act. On October 10, 2017, Defendant filed his Reply (#268) in support of his Motion.

II. Factual Background

On July 26, 2012, Davel's registered agent in Delaware

² In their Third Amended Complaint Plaintiffs state Davel was "incorporated in and a [c]itizen of Ohio which maintained a business office in Ohio at all times material." Davel, however, stated in its Response to Defendant's Motion to Dismiss and to this Motion that it is a Delaware corporation.

resigned. On August 25, 2012, Davel's charter to do business in Delaware was forfeited because Davel did not appoint a new registered agent within 30 days as required by Delaware law.

As noted, Plaintiffs filed their Complaint in this Court on October 25, 2012. Although the record does not provide specific details, at some point Patrick lost contact with Davel's controlling officers. Sometime thereafter the following events occurred:

Patrick located YA Global, a secured creditor of Davel.

Patrick and YA Global agreed Patrick would continue to pursue Davel's claim in this litigation and YA Global would receive an interest in any recovery received on Davel's claim.

Patrick and YA Global agreed Patrick would foreclose his lien for attorneys' fees incurred while representing Davel.

Patrick, through his professional corporation, filed an action against Davel in state court to foreclose his lien.

Patrick's professional corporation obtained a default judgment against Davel. The Default Judgment included a declaration that Patrick's professional corporation obtained all of Davel's rights to pursue Davel's claim in this litigation and in the underlying PUC action and included a money judgment against Davel in the amount of \$375,000, which constituted Patrick's lien for attorneys' fees.

Patrick "purchased" the claims under the Default Judgment at

a public auction and transferred those claims to a limited liability company owned by Patrick and Richard Gaines, Patrick's co-counsel in this matter.³

DISCUSSION

Defendant contends there are reasonable grounds to require Patrick to show that he has the authority to appear as counsel for Davel in this litigation. Defendant asserts Davel forfeited its charter in the State of Delaware and lost its capacity to sue before bringing its claim in this action. Defendant also contends Davel cannot be Patrick's client because Patrick sued Davel in Oregon state court to recover his attorneys' fees; Patrick obtained a judgment against Davel; and now Patrick owns any claim that Davel may have in this action, thereby creating a conflict of interest that requires Patrick to withdraw as Davel's counsel.

Davel contends Defendant does not have standing to raise the issues asserted in its Motion for Order to Demonstrate Authority to Act for Davel. Davel also contends it has the capacity to bring this action against Defendant, that Patrick was required under ethical obligations to continue to pursue the claims on behalf of Davel, and that Patrick has continuously represented

³ Gaines is not listed as counsel of record on this Court's docket nor in the caption of any pleadings filed by Plaintiffs.

Davel in this matter without objection.

I. Defendant has standing to raise the issue of counsel's authority to act.

Davel argues Defendant does not have standing to challenge Patrick's authority to represent Davel.

Oregon Revised Statute § 9.350 provides:

Challenge of attorney's authority to appear for adverse party. The court or judge thereof may, on motion of either party and on showing reasonable grounds therefor, require the attorney for an adverse party to prove the authority under which the attorney appears, and until the attorney does so, may stay all proceedings by the attorney on behalf of the party for whom the attorney assumes to appear.

This statute provides the basis for Defendant to seek a determination of counsel's authority to represent Davel, and, accordingly, the Court concludes Defendant has standing to raise this issue.

II. Davel has the capacity to sue Defendant.

Defendant contends Davel lacked the capacity to bring this action because its charter was forfeited in Delaware. In response Davel asserts Delaware law allows a corporation's existence to continue with respect to any lawsuit by or against the corporation initiated within three years after the corporation expires or is dissolved.

A. The Law

Federal Rule of Civil Procedure 17(b)(2) provides the

determination of a corporation's capacity to sue or to be sued is based on the law of the state in which it was organized. As noted, Davel is a Delaware corporation, and, therefore, Delaware law controls this issue.

8 Delaware Code § 136(b) provides:

After receipt of the notice of the resignation of its registered agent, . . . the corporation for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning If such corporation, being a corporation of this State, fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall declare the charter of such corporation forfeited.

A charter may be reinstated if a new registered agent is appointed. 8 Del. C. § 312(d)(2).

8 Delaware Code § 278 provides:

All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of 3 years from such expiration or dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within 3 years after the date of its expiration or dissolution, the action shall not abate by reason of the dissolution of the corporation; the corporation shall, solely for the purpose of such

action, suit or proceeding, be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery.

B. Analysis

Defendant contends forfeiture of a corporation's charter is different than dissolution. Because Davel lost its charter, Defendant contends Davel also lost its capacity to sue.

Defendant relies on *Manney v. Intergroove Tontrager Vertiegs GMBH*, No. 10 CV 4493, 2011 WL 6026507 (E.D.N.Y., Nov. 30, 2011), to support his position that Davel is unable to bring this action. In *Manney* the district court held a Delaware corporation that had forfeited its charter could not bring an action in New York. Pursuant to New York law, the authority granted to a foreign corporation to do business in New York "shall continue so long as [the corporation] retains its authority to do such business in the jurisdiction of its incorporation" *Id.*, at *8. Even assuming the foreign corporation had applied for and was granted an application to do business in New York, the court noted it could not bring an action in New York under New York law because the corporation was not in good standing in Delaware. Here Defendant does not cite any similar requirement under Oregon law.

In *United States v. Northeastern Pharmaceutical & Chemical Co., Inc.*, the Eighth Circuit applied Delaware law and held the

defendant who had lost its charter but was not dissolved could be sued even though the government's complaint was not filed until more than three years after forfeiture. 810 F.2d 726, 747 (8th Cir. 1986). The Eighth Circuit agreed with the district court that "a corporation with a forfeited charter is not completely dead for all purposes, but merely in 'a state of coma,' during which it is still subject to suit." *Id.* at 746 (citing *Ross v. Venezuelan-American Independent Oil Producers Ass'n*, 230 F. Supp. 701 (D. Del. 1964), and *Wax v. Riverview Cemetery Co.*, 41 Del. 424 (Super. Ct. 1942)). Although the Eighth Circuit distinguished between forfeiture of a charter and dissolution, the court noted a corporation with a forfeited charter was "still subject to suit" under Delaware law because under Delaware law a corporation, "whether they expire by their own limitation or are otherwise dissolved," continues their corporate existence.

It is, nonetheless, unclear whether a corporation such as Davel has the capacity to assert claims that it may have in the Oregon courts. Defendant has not cited, and the Court has not found, any controlling authority that definitively answers that question. The Court, however, concludes it need not resolve this issue immediately because, as explained below, the Court finds a sufficient conflict of interest exists that requires Davel's current counsel to withdraw from his representation of the

corporation in this action.⁴

III. Patrick has a conflict of interest that requires his withdrawal as counsel for Davel.

Defendant contends Patrick must have "severed" the attorney-client relationship with Davel because he sued Davel to foreclose his lien for attorneys' fees and, therefore, created a personal conflict of interest that is not allowed under Oregon ethical rules.

In response Patrick appears to contend he was required to pursue Davel's claims in order to comply with his ethical obligation to continue to represent a "missing client" and to avoid any "adverse effect" on the interests of that client. Patrick also argues he was unable to "identify the appropriate entity and its management" for the purpose of obtaining direction on how to proceed, and, therefore, he took his actions with the "consent, agreement and blessings" of YA Global, Davel's secured creditor.

A. The Law

Oregon Rules of Professional Conduct (RPC) 1.7 prohibits a lawyer from representing a client "if the representation involves a current conflict of interest." RPC 1.7 provides a conflict of interest exists if:

⁴ If new counsel appears on behalf of Davel, Defendant may renew this issue and supplement its existing arguments with any additional definitive authorities or analysis.

(1) the representation of one client will be directly adverse to another client; [or]

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

RPC 1.8 prohibits a lawyer from acquiring "a proprietary interest in the cause of action or subject matter of litigation [that] the lawyer is conducting" except the lawyer may acquire "a lien authorized by law to secure the lawyer's fee or expenses."

RPC 1.16 provides:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

* * *

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

* * *

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

* * *

or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

B. Analysis

Although RPC 1.8 authorizes a statutory lien for attorneys' fees, Defendant contends it prohibits foreclosing on the lien to acquire a proprietary interest in the action that the lawyer is conducting for the client. Defendant relies on the holdings of courts in New Jersey and Nevada and ethics opinions from Arizona and Los Angeles to support his position. Defendant, however, does not cite, and this Court has not found, any such authority in Oregon.

Patrick relies on RPC 1.16 to support his assertion that he was required to continue his representation of Davel and not to "abandon the case" in order to avoid any adverse effect on Davel's interests. Patrick also argues "efforts to withdraw would have appropriately been denied had [he] been candid with the [C]ourt about what he had discovered after being unable to contact [Davel's] prior representative." The Court disagrees.

At the time that Patrick lost contact with Davel's representative, he should have moved to withdraw from continuing to represent Davel, particularly in light of his statements in response to Defendant's discovery requests that he was unaware of the location of Davel's records. By continuing his

representation, agreeing with a secured creditor of Davel to pursue Davel's claims, foreclosing his lien for attorneys' fees, obtaining a judgment against Davel, and purchasing Davel's claims at auction, Patrick created, at the least, a potential conflict of interest between himself and Davel because of "his personal [financial] interest" in this action.

On this record, therefore, the Court concludes Patrick is required to withdraw from his representation of Davel. To the extent that Patrick or any entity owned by him asserts ownership of Davel's interests in this matter, the Court also concludes Patrick⁵ has a conflict of interest prohibiting his representation of such entity.

Accordingly, the Court concludes Patrick does not have authority to continue his representation of Davel in this matter and, therefore, he must withdraw from representing Davel.

CONCLUSION

For these reasons, the Court **DENIES** Defendant's Motion (#241) for Order to Demonstrate Authority to Act for Davel Communications, Inc., with leave to renew it following the

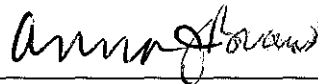
⁵ As noted, Gaines is not reflected as counsel of record for Davel in this matter. He is, however, an owner/partner in the limited liability company formed by Patrick to "hold" the claims under the Default Judgment that Patrick "purchased" at a public auction. The Court, therefore, concludes Gaines also would have a conflict of interest in representing Davel in this matter.

withdrawal of Davel's Counsel and the filing by new counsel for Davel of a Notice of Representation. Accordingly, the Court concludes Patrick does not have the authority to act for Davel, and Patrick is required to withdraw from representation of Davel.

The Court **DIRECTS** Patrick to give notice of his withdrawal to Davel Communications, Inc., and to any other entity associated with or that may assert an interest in Davel or its claim in this matter. The Court also **DIRECTS** Patrick to advise Davel that it may not continue to prosecute this action without counsel pursuant to LR 83-9(b), that it is required to obtain new counsel, and that such new counsel must file an appearance in this matter **no later than November 13, 2017**. If new counsel does not file an appearance by the date indicated, the Court will dismiss Davel as a party to this action. If new counsel does appear and Defendant wishes to renew its Motion for Order to Demonstrate Authority to Act for Davel, Defendant may file that renewed Motion after full conferral with new counsel.

IT IS SO ORDERED.

DATED this 31st day of October, 2017.



ANNA J. BROWN
United States Senior District Judge

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH**

Corporate Lawyers, P.C.;

Plaintiff,

vs.

NSC Communications Public Services
Corporation, John Does 1-10

Defendants.

Case No.

COMPLAINT

DECLARATORY RELIEF AND
FORECLOSURE OF
ATTORNEY CHARGING LIEN
PURSUANT TO ORS 87.445

QUANTUM MERUIT

CLAIM FOR ATTORNEY'S FEE

NOT SUBJECT TO
MANDATORY ARBITRATION

\$917,000 Prayer ORS 21.160(1)(c)

The plaintiffs, by their attorney, Frank G. Patrick, Esq., for their complaint, allege as follows.

PARTIES

1. Plaintiff is an Oregon professional corporation engaged in the business of the practice of law in the State of Oregon. Plaintiff has associated counsel, Richard D. Gaines, Esq. 'Gaines'), who has worked extensively with Plaintiff on the litigations that are the subject of this action.

2. Upon information and belief, Defendant, NSC Communications Public Services

1 Corporation, is a dissolved (effective 2012) Delaware corporation whose last known address
2 was c/o Lynn Tilton, Patriarch Partners, 1 Liberty St, 35th Floor, New York, NY 10006.
3 NSC Communications Public Services Corporation owned, operated and/or managed, third
4 party payphones under its own name as well as those operated under the names of the
5 following affiliated entities, Advance Payphone, Pacific Coin and Golden Tel. NSC
6 Communications Public Services Corporation, Advance Payphone, Pacific Coin and
7 Golden Tel are collectively referred to herein as ‘NSC’. NSC was registered in Oregon as a
8 foreign corporation doing business in Oregon at the time that it engaged Plaintiff to
9 represent its interests.

10 3. Upon information and belief NSC may also have been known as ‘NSC
11 Communications’ and “NSC Communications Services, Inc.”

12 4. Upon information and belief, NSC may have been or is a subsidiary of Intera Group,
13 Inc., a dissolved Delaware corporation, or some other entity unknown to the Plaintiff.
14 Upon information and belief, the officers and directors of the two companies were the same
15 or were shared.

16 5. NSCs assets included the claims reflected in the litigations that are the subject of this
17 lawsuit. Upon information and belief all such claims have devolved and/or been transferred
18 to unknown shareholders, successors in interest and/or creditors of NSC subject to the lien
19 of the prosecuting attorney Plaintiff herein.

20 6. John Does 1-10 are unknown shareholders, successor(s) in interest and or creditors
21 of NSC who may own or have a claim to the NSC claims being pursued in the litigations the
22 subject of the lien of this lawsuit. NSC and the John Does 1-10 defendants are collectively
23 referred to herein as ‘Defendant’.

24 **ALLEGATIONS COMMON TO ALL CLAIMS**

25 7. At relevant times, NSC was in the business of a Payphone Service Provider (PSP)
26 to the public in Oregon and in other states.

1 8. NSC along with ten other payphone service providers (CO-PSPs) were members of
2 a regional trade association.

3 9. In 2009, Plaintiff assumed representation of NSC, the regional trade association,
4 Northwest Public Payphone Council, and the ten other PSPs, collectively CO-PSPs for each
5 of their respective claims against Qwest, the Local Exchange Carrier (LEC, the 'Utility')
6 that provided telecommunications services to NSC's and the CO-PSPs= payphones in
7 Oregon. As to NSC, its claims sought refunds of overcharges, and other damages arising
8 from Utility payphone rates that were charged NSC for payphones it owned and/or managed
9 in violation of federal law and were unjust and unreasonable under Oregon law.

10 10. NSC, along with the CO-PSPs and the regional trade association were party
11 plaintiffs to a proceeding pending in the Oregon Public Utilities Commission (the 'PUC')
12 under PUC Docket No. DR 26/UC 600 (the 'Refund Case'). NSC and the other CO-PSP
13 clients sought refunds from the Utility from which they purchased payphone services if the
14 final permanent payphone rates established by the PUC in a then pending rate setting
15 proceeding were less than the interim payphone rates then in effect. Plaintiff was
16 substituted as counsel for NSC, the CO-PSPs and the regional trade association in the
17 Refund Case.

18 11. NSC management represented to Plaintiff that management had full right, power and
19 authority to exercise dominion and control over all the payphones NSC owned, managed
20 and/or operated in Oregon and all claims arising from their use.

21 Pursuant to a written retainer agreement dated June 19, 2009 (the 'Retainer Agreement'),
22 Plaintiff assumed representation of NSC, the regional trade association and the ten other
23 PSPs in the Refund Case. The Retainer Agreement specifically provided that NSC and the
24 other PSP clients were required to (1) cooperate with plaintiff in prosecuting their claims,
25 including, but not limited to, production of documents and appearance at depositions, and
26 (2) promptly pay the costs of the litigation. The costs of the litigation are allocated among

1 the clients based upon a schedule established in a separate agreement among the clients, on
2 which Plaintiff relied, that governed management in the Refund Case. This agreement was
3 modified to reflect changes to the Retainer Agreement and as modified is referred to herein
4 as the ‘Coalition Agreement’. Under the Coalition Agreement, NSC has 29.7% of the total
5 voting power based on the number of telephone lines it owned and its allocable share of the
6 costs is 29.7% of the total costs.

7 13. Finally, the Retainer Agreement made clear that some or a significant portion of the
8 damages the clients were entitled to recover might require separate litigation in the U. S.
9 District Court, District of Oregon (the “USDC”). The Retainer Agreement provided that
10 additional separate litigation would result in a modified fee agreement that was negotiated
11 and accepted by the parties as an Addendum.

12 12. Plaintiffs accepted a contingent fee arrangement for its fees for each matter and
13 reimbursement for costs it advanced. There will only be one recovery allowed for all of the
14 litigations to prevent a double recovery which made handling of all the cases economic.

15 13. Because of the complex and novel substantive and procedural issues that arose in the
16 Refund Case, which led to the filing of other related cases and the potential need to file
17 additional cases, the Retainer Agreement was modified by an addendum to which NSC and
18 all other CO- PSP clients agreed (the ‘Addendum’). The Coalition Agreement was modified
19 to reflect the changed terms of the representation based on the Addendum.

20 14. Under the Addendum, the contingent fee increased to 50% of any recovery and the
21 fee applied to any recovery in any pending, to be filed case, as well as any other proceeding
22 in which Plaintiff acted to represent NSC and the other PSP clients that was related to
23 recovering any damages the clients had suffered at the hands of the Utility that were or
24 would become, the subject of pending litigation including appeals. The fee applied to any
25 proceeding whether those proceedings were in the Oregon State courts, the USDC, before
26 the Ninth Circuit Court of Appeals, the PUC, the Federal Communications Commission or

1 in any other forum.

2 15. At the time of the Addendum, the following litigation was extant or contemplated:
3 (1) the Refund Case; (2) a case in which NSC was a plaintiff under USDC docket number
4 CV 09 -1351 BR that was then on appeal to the Ninth Circuit Court of Appeals; (3) a case
5 in which NSC was a plaintiff under USDC Docket Number 10 CV-685 BR, and (4) a case
6 filed by a regional trade association of which NSC was a member that was removed to the
7 USDC under docket number CV 12-00121 BR. After the Addendum was agreed upon, in
8 addition to the litigation described above, Plaintiff filed the following litigation on behalf of
9 NSC and the other clients: (5) a case in which NSC is a plaintiff in the Oregon State Circuit
10 Court that was removed to the USDC under docket number 3:14-cv-00249; (6) a case in
11 which NSC is a plaintiff filed in the USDC under docket number 3:12-cv-01923; and (7) a
12 motion before the PUC in a proceeding under PUC Docket Number UT 125. In total the
13 seven proceedings described in this paragraph and in paragraph 17, above, as well as any
14 other related proceeding that may be filed in the future as described in paragraph 16, above,
15 and any appeals thereof, collectively referred to herein as the “Litigation” are all governed
16 by the Retainer Agreement as modified by the Addendum, and the Coalition Agreement,
17 and are subject to Plaintiff’s rights under ORS 9.330, authority, and charging lien pursuant to
18 ORS 87.445, 87.485 and 87.490..

19 16. At the time the Addendum to the Retainer Agreement was agreed to by NSC and all
20 the other clients, Plaintiff was in communication with managers of NSC who were
21 responsible for its day-to-day operations. Subsequently, NSC ceased operations and all
22 those managers were terminated. Plaintiff was informed by NSC’s then managers that the
23 chief executive officer of Patriarch Partners, LLC and its affiliated entities (‘Patriarch
24 Partners’), Lynn Tilton ‘Tilton’), was the sole director of NSC or any entity that succeeded
25 NSC and would be responsible for directing NSC’s participation in the Litigation going
26 forward once they left NSC’s employ. Thereafter, Plaintiff communicated with two inside

1 corporate counsel for Patriarch Partners who communicated Tilton's directions concerning
2 NSC's interests in the Litigation.

3 17. In this regard, those counsel arranged for a custodian of records to be appointed so
4 NSC could respond to discovery demands made in the Litigation and execute documents
5 such as answers to interrogatories on behalf of NSC in the Litigation.

6 18. That custodian of records executed answers to interrogatories propounded to NSC in
7 one of the pending litigations. Until about a year ago, NSC was paying its share of costs
8 incurred in the Litigation as billed in accordance with the terms of the Retainer Agreement
9 and the Coalition Agreement.

10 19. Plaintiff was informed that the custodian of records originally appointed would no
11 longer serve. At that time, Plaintiff made clear that it was imperative that a new custodian
12 be appointed as it was likely the discovery in one of the cases would increase and a
13 custodian of records would have to sign papers and filings such as answers to
14 interrogatories on behalf of NSC. That person could also expect to be deposed on behalf of
15 NSC by the opposing side. Despite this, NSC did not appoint a replacement custodian of
16 records. In addition, for the past year, NSC has not paid its share of the costs of the
17 Litigation.

18 20. Additional document demands and interrogatories were propounded to NSC as well
19 as all other clients in one of the lawsuits encompassed within the Litigation. Plaintiff
20 prepared answers to the interrogatories on behalf of all the clients, including NSC in time to
21 comply with the discovery demand. Other discovery sought corporate records showing the
22 formation of the various clients, including NSC, the documents reflecting the history of
23 transfers of the claims that were the subject of the Litigation to the persons or entities
24 presently prosecuting the claims were also required to be produced.

25 21. At the request of Plaintiff's point of contact at Patriarch Partners, Plaintiff sought
26 and obtained an extension of time for NSC to answer the interrogatories and to produce the

1 documents it was required to produce based on NSC's assertion that a replacement
2 custodian had not been appointed. No replacement custodian of records was appointed and
3 the requested records were not provided by NSC. As a result of this failure, the opposing
4 defendant filed a motion to compel with respect to NSC's failure to respond to the
5 discovery demands.

6 22. Plaintiff was led to believe that the custodian of records would be appointed and
7 records produced prior to the time Plaintiff would have to respond to the motion to compel.
8 The day before the response to the motion to compel was due, Plaintiff learned that no
9 custodian of records had been appointed and the required documents were not being
10 provided.

11 23. As a result of the delay in having a replacement custodian of records appointed,
12 Plaintiff checked on the corporate status of NSC. As a result of that investigation, Plaintiff
13 learned that NSC had been dissolved in 2012 and that there was considerable litigation
14 involving Patriarch Partners, various funds it managed, and challenged Patriarch Partners=
15 right to manage and control portfolio companies within the various funds and other matters.

16 24. Defendant's failure (1) to cooperate in providing discovery as part of the Litigation,
17 and (2) the failure to pay its share of costs as required by the Retainer Agreement and the
18 Coalition Agreement are clear breaches of Defendant's obligations under the Retainer
19 Agreement and the Coalition Agreement and are substantial defects in prosecution of the
20 claim regardless of its owner.

21 25. By email dated February 13, 2017 to the Patriarch Partners two inside counsel and
22 letter dated February 16, 2017 addressed to Lynn Tilton, CEO of Patriarch Partners,
23 Plaintiff made clear that Defendant's failure to pay costs and cooperate in providing
24 discovery constituted a breach of Defendant's obligations under the Retainer Agreement
25 and the Coalition Agreement and was grounds for foreclosing on Plaintiff's attorney lien.
26 Those communications also made clear that the failure to comply with discovery risked the

1 sanction of having Defendant's claim in the pending case that is part of the Litigation,
2 dismissed with prejudice.

3 26. Defendant has continued to refuse to cooperate in discovery and pay its share of the
4 cost of the Litigation. In addition to the failures to cooperate in discovery detailed above,
5 there have been other significant failures of cooperation in respect of discovery by
6 Defendant.

7 27. In light of Defendant's refusal to cooperate in discovery, pay its share of Litigation
8 costs and other concerns, the USDC has ordered Plaintiff's withdrawal as counsel for
9 Defendant in the one lawsuit in which discovery is taking place. That refusal also risks
10 irreparable impairment of its claims in the other cases comprising the Litigation.

11 28. Without Defendant's cooperation in producing discovery, there is a heightened risk
12 that no recovery may be made on its claims in the Litigation.

13 29. At this time, the fair value of Plaintiff's services (including Gaines' time), prorated
14 to Defendant, as measured by its hours and out-of-pocket expenditures made on
15 Defendant's behalf is not less than \$912,000. On information and belief, the only known
16 Defendant asset available to pay the fair value of Plaintiff's legal services potentially not
17 encumbered by a senior lien by secured creditors, are the claims in the Litigation and any
18 proceeds derived therefrom.

19 30. Had Plaintiff known that Defendant would not cooperate with respect to discovery,
20 would not provide access to NSC's documents and evidence necessary to assist in
21 establishing liability and damages, and that it would not pay its share of the Litigation costs,
22 Plaintiff would never have agreed to represent Defendant on a contingent fee basis.

23 31. Plaintiff would only have undertaken the representation at the normal hourly rate for
24 Plaintiff and Gaines. Plaintiff's and Gaines' normal hourly billing rates are \$347 and \$350
25 per hour, respectively. To date, at their normal hourly billing rate, the fair value of
26 Plaintiff's (including the time of Gaines) services in representing Defendant based on the

1 29.7 % of the total fees, on an hourly basis, and the costs as of the date of this Complaint is
2 not less than \$912,000.

3 **AS AND FOR PLAINTIFF'S FIRST CLAIM, PLAINTIFF ALLEGES AS**
4 **FOLLOWS.**

5 **(Foreclosure of the Attorney Lien)**

6 32. Plaintiff repeats and realleges paragraphs 1 through 31, as though fully set forth at
7 length herein.

8 33. Plaintiff is entitled to 50% of any recovery from the Litigation by written fee
9 agreement.

10 34. Plaintiff would be defrauded by Defendant if the Litigation does not continue and it
11 is not entitled to benefit from years of effort.

12 35. The fair value of Plaintiff's services, prorated to NSC, in the Litigation as of the date
13 of this Complaint is not less than \$912,000.

14 36. Defendant has failed to take the steps necessary to meet Defendant's obligations
15 under the Retainer Agreement, the Addendum or the Coalition Agreement despite
16 Plaintiff's efforts to obtain that assistance.

17 37. Upon information and belief, at this time, it is highly unlikely that any third party
18 would purchase the Defendant's interest in the Litigation at a price anywhere close to the
19 fair value of Plaintiff's services if the interest is auctioned at a public sale.

20 38. Upon information and belief, upon such a sale, based on the fair value of Plaintiff's
21 services, there is a strong likelihood that Plaintiff will not be made whole. In that event,
22 Plaintiff could obtain the entire interest for a small fraction of the fair value of Plaintiff's
23 services to result in Plaintiff owning Defendant's entire interest in the claims and proceeds
24 thereof in the Litigation and leaving a claim against Defendant for the balance of its fees. In
25 the alternative, if Plaintiff does not proceed then the cause of action will be totally lost, the
26 Defendant harmed to the extent it has allowed the harm, and Plaintiff will be defrauded by

1 the breach of the contract and have no remedy for the breach of contract and good faith.
2 39. Plaintiff seeks an order permitting Plaintiff, in its sole discretion, to foreclose on its
3 charging lien by either (1) transferring Defendant's interest in the proceeds of the Litigation
4 in favor of Plaintiff leaving Plaintiff to proceed with the litigation as the owner of each and
5 all of the proceedings and the ultimate proceeds of the Litigation in consideration of
6 Defendant being relieved of all past and future obligations for costs and attorneys fees to
7 Plaintiff, or (2) selling Defendant's 100% interest in the Litigation in any commercially
8 reasonable manner, including a public auction to recover the reasonable value of Plaintiff's
9 services totaling not less than \$912,000 as of the date hereof plus interest at the judgment
10 rate.

11 **AS AND FOR PLAINTIFF'S SECOND CLAIM**

12 **(Declaratory Relief)**

13 40. Plaintiff repeats and realleges paragraphs 1 through 39, as though fully set forth at
14 length herein.

15 41. Pursuant to ORS 9.330, Plaintiff, as attorney for Defendant, has the authority to bind
16 NSC and any successor in interest to the claims of the proceedings, comprising the
17 Litigation whether by agreement or by operation of law with respect to the Defendant's
18 claims in the Litigation.

19 42. Pursuant to ORS 87.445, Plaintiff has a charging lien on each of the proceedings and
20 actions comprising the Litigation and covers all legal services expended on any of the
21 actions comprising the Litigation.

22 43. Plaintiff seeks a declaratory judgment declaring that (1) it has the authority to take
23 such action it deems necessary or appropriate in prosecuting the claims of Defendant in the
24 Litigation to judgment, including but not limited to responding to discovery demands based
25 on the records currently within its possession and/or control, (2) that with respect to the
26 action from which it has withdrawn as counsel for Defendant, it has authority to take such

1 action it shall deem necessary or appropriate to preserve and reduce that claim to judgment
2 and avoid dismissal of the claim, notwithstanding any countervailing direction of any
3 person claiming an interest in such claims, until adjudication of this action or further order
4 of this court, and (3) it, in accordance with its interest in the claim, has full right, right and
5 authority to settle Defendant's claims in the underlying litigation without further order of
6 the Court.

7 **AS AND FOR PLAINTIFF'S THIRD CLAIM**

8 **(Quantum Meruit Reasonable Value of Legal Services)**

9 44. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 43 herein.

10 45. The reasonable value of the services rendered by the Plaintiff for Defendant's benefit in
11 the Litigation is at least \$912,000 that remains outstanding, the fair value of his services to
12 date hereof for the benefit of NSC. Plaintiff is entitled to agreed and the fair value of his
13 services, ORS 87.445.

14 46. Plaintiff is entitled to the fair value of his services for the foreclosure of his lien, ORS
15 87.485.

16 **AS AND FOR PLAINTIFF'S FOURTH CLAIM**

17 **(Preliminary and Permanent Injunction to Preserve Claims)**

18 47. Plaintiff repeats and realleges paragraphs 1 through 46, as though fully set forth at
19 length herein.

20 48. Plaintiff be preliminarily and permanently enjoined and mandated to affirmatively take
21 such action as it shall deem reasonably necessary or appropriate and use materials obtained
22 to date from Defendant and other sources, to comply with any court order or rule applicable
23 to Defendant in any of the cases comprising the Litigation with respect to discovery and
24 otherwise to preserve the Defendant's claims in the Litigation until further order of the court
25 or adjudication of the claims in this complaint and completion of foreclosure of Plaintiff's
26

1 attorney lien, whichever shall occur first.

2 **AS AND FOR PLAINTIFF'S FIFTH CLAIM**

3 **(Attorney Fees for Lien Foreclosure ORS 487.485)**

4 49. Plaintiff realleges paragraphs 1 through 48, as though fully set forth at length herein.

5 50. In suits to foreclose a lien created by ORS 87.445, the court shall allow a reasonable
6 amount as attorney fees at trial and on appeal to the prevailing party ORS 487.485 allows
7 for the prevailing party to obtain attorney fees for the foreclosure of an attorney lien.

8 51. A reasonable attorney's fee is not less than \$2500 or as the court may determine at
9 trial plus in addition the costs and disbursements.
10

11 **SIXTH CLAIM INTEREST FROM THE DATE OF FILING**
12 **OF ACTION AT THE STATUTORY RATE**

13 52. Plaintiff repeats and realleges paragraphs 1 through 51, as though fully set forth at
14 length herein.

15 53. In addition to the Fees Plaintiff should be awarded interest at the statutory rate of
16 9% per annum on the unpaid sums owed to the Plaintiff from the date of the breach of the
17 agreement with the Plaintiff by failing to pay as agreed, but not later than the date of the
18 filing of this foreclosure action.
19

20 **PRAYER FOR RELIEF**

21 **Wherefore, Plaintiff Prays judgment as follows:**

22 1. On Plaintiff's First Claim, judgment foreclosing Plaintiff's charging lien against
23 NSC and the affiliates for which it acts in the Litigation 'Advance Payphone, Pacific Coin
24 and Golden Tel), NSC's successor(s) in interest, John Does 1-10, and against any creditor
25
26

1 of NSC or NSC's successor(s) in interest, John Does 1-10, to the extent that they have an
2 interest in NSC's interest in the Litigation, by Plaintiff, in its sole discretion, and without
3 further order of the Court, either (1) transferring all Defendant's (including Advance
4 Payphone's, Pacific Coin's and Golden Tel's) interest in the Litigation to Plaintiff, free and
5 clear of all other interests, and the proceeds thereof, if any, in full satisfaction of
6 Defendant's (including Advance Payphone's, Pacific Coin's and Golden Tel's) obligation
7 to pay past and future attorneys fees and legal costs related to the Litigation pursuant to the
8 Retainer Agreement, Addendum to the Retainer Agreement and the Coalition Agreement,
9 or (2) selling in any commercially reasonable manner, including a public auction, the joint,
10 several and full interests of Defendant (including Advance Payphone, Pacific Coin and
11 Golden Tel) in the Litigation and any proceeds thereof to recover the fair value of Plaintiff's
12 services of not less than \$912,000 as of the date of this Complaint plus interest at the
13 judgment rate.
14

- 15
- 16 2. On Plaintiff's Second Claim, declaratory judgment declaring that:
- 17 a. Plaintiff has full power and authority to bind Defendant's interest in the Litigation in all
18 respects to the same extent it can bind any other client's interest in the Litigation.
- 19 b. Plaintiff, as owner of 100% of Defendant's interest in the Litigation and any proceeds
20 thereof has full power and authority, to settle Defendant's interest in the Litigation.
- 21 c. Plaintiff has all right, title and interest in the NSC documents and data, in any form,
22 relevant to the claims that are the subject of the Litigation.
23

24 3. On Plaintiffs Third Claim Quantum Meruit;

25 The reasonable value of its services of not less than \$912,000 and as proved at a trial
26

1 on the merits.

2 4. On Plaintiff's Fourth Claim, Preliminary Ad Litem and Permanent Injunction:

3 Preliminarily and permanently enjoining and authorizing Plaintiff in its sole
4 discretion to affirmatively take such action as it shall deem reasonably necessary or
5 appropriate to comply with any court order applicable to Defendant in any of the cases
6 comprising the Litigation with respect to discovery and otherwise to preserve the
7 Defendant's claims in the Litigation until further order of the Court or completion of the
8 foreclosure of Plaintiff's attorney lien, whichever shall occur first.
9

10 5. On Plaintiff's FIFTH Claim, Attorney Fee for This Foreclosure Action:

11 Reasonable Attorney Fee of not less than \$5000.00, for the prosecution of this foreclosure.

12 6. On Plaintiff's SIXTH Claim, Interest:

13 Interest at the Statutory Rate of 9% from the breach of the fee agreement but at a date no
14 later than the filing of this lawsuit.
15

16 7. Such other equitable and lawful relief as the court deems just and fair and for

17 costs and disbursements.

18 Dated: April 7, 2017

19
20 /s/ Frank G. Patrick

21 Frank G. Patrick, OSB 760228

ENTERED
NOV 15 2013
IN REGISTER BY *JS*

J. Oza
FILED
13 NOV 15 PM 3:51
CIRCUIT COURT
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

COMMUNICATION MANAGEMENT
SERVICES, LLC; DAVEL
COMMUNICATIONS A/K/A PHONETEL
TECHNOLOGIES, INC., NSC
COMMUNICATIONS PUBLIC
SERVICES CORPORATION; PACIFIC
NORTHWEST PAYPHONES, INC.;

Plaintiffs, v.

QWEST CORPORATION, UNIDENTIFIED
CORPORATIONS I -X and JOHN DOES I
-10.

15906

Case No. 131115906

COMPLAINT

NOT SUBJECT TO MANDATORY
ARBITRATION

PLAINTIFF DEMANDS TRIAL BY JURY

The plaintiffs, by their attorney, Frank G. Patrick, Esq., for their complaint allege as follows.

PARTIES

1. Plaintiff Communication Management Services, LLC ("CMS") is a limited liability company formed in Oregon, with its principal place of business in Washington County, Oregon. Its members are citizens of the State of Oregon. CMS provides payphone services (as

defined in 47 U.S.C. §276(d)) to the Oregon general public (such payphone services are referred to herein as “Payphone Services”). The companies and persons who are not local exchange carriers who provide Payphone Services in Oregon are referred to as “PSPs” and each individually is a “PSP”. CMS is a PSP that provided Payphone Services in the State of Oregon and elsewhere in the western United States at all relevant times. Its claims against Defendants Corporation d/b/a Century Link (“Qwest”) are not less than \$1,237,000 and not more than \$10,000,000.

2. Plaintiff Pacific Northwest Payphones, Inc. (“Pacific”) is a Colorado corporation with its principal place of business in Denver, Colorado. At all relevant times, Pacific was a PSP that provided Payphone Services in the State of Oregon and elsewhere in the western United States. In addition to its own claims, Pacific is also the assignee of the claims alleged herein against Qwest Corporation of Central Telephone, Inc., Interwest Tel, LLC; Interwest Telecom Services Corporation; Valley Pay Phones, Inc., National Payphone Services, LLC, Partners in Communication; T & C Management, LLC, Northwest Public Communications Counsel (“NPCC”) and Corban Technologies, Inc. Pacific’s claims against Defendants are not less than \$3,444,000 and not more than \$10,000,000.

3. Plaintiff NSC Communications Public Services Corporation (“NSC”) is a PSP providing Payphone Services in the State of Oregon and elsewhere in the Qwest Service Area. NSC’s claims against Defendants are not less than \$1,443,000 and not more than \$10,000,000.

4. Plaintiff Davel Communications a/k/a Phonetel Technologies, Inc. (“Davel”) is a PSP providing Payphone Services in the State of Oregon and elsewhere in the Qwest Service

Area. Davel's claims against Defendants are not less than \$540,000 and not more than \$1,000,000.

5. Upon information and belief, defendant Qwest is a Colorado corporation with its principal place of business located in Monroe Louisiana and with offices in Oregon.

6. Qwest is a successor or assign of U.S. WEST Communications, Inc. (a/k/a U.S. WEST Communications Company) and is a Bell Operating Company ("BOC") as that term is defined in 47 U.S.C. § 153(4). It is also a Regional Bell Operating Company ("RBOC") which owns one or more BOCs.

7. Upon information and belief Qwest serves as a local exchange carrier ("LEC") in fourteen western states, including Oregon (the "Qwest Service Area") where it provides access to the local telephone network and through that network to the long distance and international telephone networks to PSPs within the Qwest Service Area. At relevant times all plaintiffs purchased services from Qwest.

8. Upon information and belief, the Unidentified Corporations I-X, in conjunction with Qwest, provide and/or receive from Qwest, access to basic and enhanced telecommunications services that relate to the provision of Payphone Services.

9. Upon information and belief, the John Does 1-10 are individuals who acted in concert with Qwest and/or the Unidentified Corporations I-X in perpetrating the unlawful acts as alleged herein. The Unidentified Corporations I-X, the John Does 1-10 together with Qwest and its predecessors in interest, including, but not limited to US WEST, Inc. and US WEST Communications, Inc., or their related entities to the extent that such related entities may be

liable for the damages, including refunds, sought herein are collectively referred to herein as the “Defendants”.

10. Qwest and, upon information and belief, certain of the Unidentified Corporations I -X and John Does 1 -10 (the “Regulated Defendants”) are regulated by the Federal Communications Commission (“FCC”) under the provisions of the Telecommunications Act of 1934 and particularly Chapter 5, 47 U.S.C. §§151 et seq. and the Oregon Public Utilities Commission (the “PUC”) in the State of Oregon.

ALLEGATIONS COMMON TO ALL CLAIMS

11. Qwest provides basic and enhanced telecommunications services in Oregon and in the western United States where it serves as a LEC. Basic service is limited to the common carrier offering of transmission capacity for the movement of information. Data processing, computer memory or storage and switching techniques can be components of basic service if they are used solely to facilitate the movement of information. These services continued to be regulated under the Telecommunications Act. Such services are referred to as “Basic Services”.

12. Enhanced service was any offering over the telecommunications network, which is more than a basic transmission service. Enhanced services refer to services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information. Such services are referred to as “Enhanced Services”.

13. The BOCs along with independent local exchange carriers (“LECs”) who had regulated monopolies in the provision of telephone exchange services and exchange access prior to deregulation of the telecommunications industry in 1984 are referred to as “Incumbent LECs” and individually as an “Incumbent LEC”.

14. Upon information and belief, Unidentified Corporations I-X are corporations incorporated in various states presently unknown to plaintiffs who are both affiliated and unaffiliated with Qwest.

15. Upon information and belief, the Unidentified Corporations I-X, in conjunction with Qwest, provide and/or receive from Qwest, access to Basic and Enhanced Services that relate to the provision of Payphone Services.

16. Until about 2004, Qwest was the largest owner of pay phones in the State of Oregon and in the 13 other states in which it operated as a LEC (the “Qwest Service Area”). At relevant times Qwest owned more than 80% of the payphones in Oregon and in the Qwest Service Area.

17. Plaintiffs and other PSPs in Oregon, purchased public access lines (“PAL”) (this is also known as the dial tone) and related telephone exchange services (as defined in 47 U. S.C. § 153(47)) and exchange access services (as defined in 47 U.S.C. § 153(16)) from LECs to provide their own Payphone Services to the public. Plaintiffs purchased, smart and basic PAL service from Qwest to connect their payphones to the local telecommunications network and, through that local network, the national and international telephone networks.

18. In 1991, Qwest sought and received approval from the PUC to operate under an alternative form of regulation (“AFOR”) in Oregon which permitted it to set prices as it chose

for some categories of services so long as the price charged was within a range specified by the PUC.

19. Under the terms of the AFOR, at the end of five years, or, if the AFOR was terminated earlier, upon early termination, Qwest was required to submit new rates for all its telephone services, including its payphone services, for establishment of new rates by the PUC.

20. The order granting the AFOR further provided that unless otherwise ordered by the PUC, the rates in effect on the termination of the AFOR would remain in force but become interim and subject to refund. If the interim rates were determined to generate unreasonably high rates of return, the unreasonable portion of the revenues generated would be refunded to ratepayers based on the difference between the final rate established by the PUC and any higher interim rate.

21. Qwest was having serious service problems throughout the term of the AFOR and in 1995 it became apparent that the AFOR was going to be terminated early. In 1995, it submitted a new revenue requirement request to earn a reasonable rate of return. The PUC initiated an investigation to determine the justness and reasonableness of the new rates Qwest would file in the future to generate the level of revenue they were requesting. The investigation constituted the initiation of a rate case in which all of Qwest's telephone rates, including its payphone rates, were to be determined (the "Rate Case").

22. By order dated April 5, 1996, the PUC bifurcated the Rate Case with the amount of revenue Qwest would be allowed to generate (the "Revenue Requirement Phase") being determined first. The establishment of the rates by which the approved level of revenues Qwest

was allowed to generate to earn a reasonable rate of return(the “Rate Design Phase”) would commence after completion of another PUC proceeding in PUC Docket UM 351.

23. By stipulation pursuant to State law and regulations dated April 11, 1996, the Staff of the PUC (the “Staff”) and Qwest agreed that due to Qwest’s service problems, the AFOR should be terminated early. This stipulation was adopted without modification by the PUC in Order 96-107 dated April 24, 1996, which Order terminated the AFOR and made all Qwest’s telephone rates interim and subject to refund effective May 1, 1996.

24. By PUC Order 96-183 issued July 16, 1996, the PUC clarified that any refunds due ratepayers because the interim rates generated an unreasonable rate of return would be allocated among ratepayers based on the difference between the final rate for a service and any higher interim rate a ratepayer paid for that service (the “Refund Methodology”).

25. The Revenue Requirement Phase of the Rate Case terminated with the issuance of PUC Order No. 97-171 dated May 19, 1997. This Order determined that interim rates had generated an unreasonably high rate of return to Qwest and that an aggregate refund to all telephone ratepayers of \$102 million was due ratepayers for the period May 1, 1996 to April 30, 1997. It also reduced Qwest’s annual revenue requirement going forward by \$97.4 million.

26. Qwest appealed the PUC decisions in PUC Orders Nos. 97-171 (ordering a \$102 million refund) and 96-183 (the Refund Methodology). Qwest sought and received a stay of the appealed orders.

27. Shortly after the commencement of the Rate Case, Congress adopted the Telecommunications Act of 1996 which significantly amended the Telecommunications Act of 1934 (as amended the “TCA”). The TCA deregulated the payphone industry and sought to level

the playing field between BOCs and the independent PSPs who were both their competitors and their customers.

28. With respect to payphones, the two principal changes in the law were that owners of payphones would be compensated for all calls made from their payphones including those made by credit cards and calling 800 numbers. Historically, the long distance carriers such as AT&T and Sprint had not compensated the payphone owner for such calls. The compensation for credit card calls and calls using 800 numbers is referred to as dial-around compensation (“DAC”). BOCs, as the largest owners of payphones in the United States would receive hundreds of millions of dollars annually in DAC.

29. The second major change was that BOCs were required to provide payphone services to their independent PSP competitors at their cost plus a reasonable amount of overhead. The rates charged had to meet various federal tariffing requirements including establishing costs based on the new services test. Rates that satisfy the new services test and the other federal tariffing requirements are referred to as “NST compliant”. Charging a rate higher than a NST compliant rate was a violation of the TCA and would be unjust and unreasonable under Oregon law in violation of ORS 759.180.

30. The payphone deregulation provisions of the TCA applied to both interstate and intrastate Payphone Services. Any state regulation that conflicted with the payphone deregulation provisions of the TCA were preempted. 47 U.S.C. §276. Through this provision, intrastate payphone rates, which had historically been determined solely by state agencies, were required to comply with the deregulation provisions of the TCA including charging NST compliant rates.

31. Under the TCA and the implementing regulations of the FCC, BOCs were required to commence charging NST compliant payphone rates by April 15, 1997.

32. To ensure that BOCs charged NST compliant payphone rates beginning April 15, 1997 and otherwise met all the other deregulation requirements of the TCA and the implementing FCC regulations, the FCC interpreted the TCA to require that a BOC satisfy all payphone deregulation requirements, including charging NST compliant rates as of April 15, 1997 as a condition to collect DAC. If a BOC had not met all the deregulation requirements and was not charging NST compliant intrastate payphone rates within a state, it could not collect DAC on calls made from its payphones within that state.

33. Under the FCC implementing regulations, BOCs were to submit proposed interstate payphone rates to the FCC who would determine whether they were NST compliant. Intrastate payphone rates were to be submitted to state commissions, in Oregon the PUC, who would determine whether the proposed rates were NST compliant and if compliant approve them and make them effective.

34. Under the FCC implementing regulations, only if the FCC or, in Oregon, the PUC with respect to Oregon intrastate payphone rates, determined that proposed rates were NST compliant could the BOC collect DAC on its Oregon payphones.

35. The initial FCC implementing regulations were issued in a proceeding (the "Implementation Proceeding") in which a coalition of RBOCs, including Qwest (the "RBOC Coalition") and the American Public Communications Council ("APCC"), of which NPCC and certain of its members were members, were active participants.

36. On its own motion, the FCC issued an order dated April 4, 1997 (the “Clarification Order”) providing a 45 day waiver period to May 19, 1997 for RBOCs to file NST compliant tariffs with the FCC for their interstate rates. If those proposed rates were reviewed for NST compliance and made effective by the FCC within 15 days, a BOC could collect DAC effective April 15, 1997 even though the NST compliance of the rates in effect on April 15, 1997 had not been determined by the FCC by April 15, 1997 or it was determined that such rates were not NST compliant. This waiver was granted because the FCC determined that BOCs had not submitted all the interstate rates they were supposed to submit to the FCC for NST compliance review. This omission occurred because the RBOCs represented that they had not understood that such rates had to be NST compliant.

37. In the Clarification Order, the FCC also made clear that the RBOCs had failed to submit to the State Commissions for NST compliance review all the intrastate rates they were supposed to submit. This omission also occurred because the RBOCs maintained that they did not understand that such intrastate rates had to be NST compliant.

38. As a result of the Clarification Order, Qwest and the other members of the RBOC Coalition sent a letter dated April 10, 1997 to the FCC (the “Waiver Request Letter”). Ameritech, a RBOC which was not a member of the RBOC Coalition, joined in the Waiver Request Letter so that the Letter represented the position of all RBOCs and BOCs in the United States. In the Waiver Request Letter, Qwest and the other RBOCs requested that they be allowed (1) a 45-day period to review previously filed intrastate payphone rates in each state for NST compliance and where such reviewed rates were found not to be NST compliant, file new rates that were NST compliant, (2) to collect DAC effective April 15, 1997 notwithstanding that

NST compliant payphone rates that had been reviewed and approved as NST compliant by a state commission were not in effect on April 15, 1997, and (3) to collect DAC effective April 15, 1997 even if the State Commissions did not complete their review of the previously filed rates and any new replacement rate within the same 15 day period the FCC had committed to complete its review of their interstate rates in the Clarification Order.

39. To assure the FCC, the APCC and other participants in the Implementation Proceeding that there would be no discriminatory effect or preference as a result of the waiver requested in the Waiver Request Letter, Qwest and the other RBOCs offered to refund to any PSP the differential between the NST compliant intrastate payphone rate as ultimately determined and any higher rate paid by the PSPs prior to the effective date of the NST compliant intrastate payphone rate.

40. In response to, and based upon, the representations, waivers and promises contained in the Waiver Request Letter, the FCC Common Carrier Bureau issued an order dated April 15, 1997 (the "Waiver Order") containing a conditional waiver of the requirement that RBOCs could only collect DAC effective from April 15, 1997 on intrastate calls if intrastate NST compliant Payphone rates in a state were approved by the appropriate State Commission and in effect. The RBOCs, including Qwest, were given 45 days until May 19, 1997 to review their previously filed intrastate rates and refile them if NST compliant or correct them and refile them if not NST compliant with the appropriate state commission (the PUC in Oregon) for the state commission to conduct the required NST compliance review. Even if the compliance review was not completed promptly, the RBOC would be allowed to collect DAC while the compliance review by the State Commission was being conducted.

41. If the foregoing conditions were satisfied by May 19, 1997, Qwest and the other RBOCs could collect DAC beginning April 15, 1997. Except for the 45 day waiver, all other conditions contained in the various orders issued by the FCC with respect to compliance with 47 U.S.C. §276 had to be satisfied in order for Qwest and the other RBOCs to collect DAC.

42. In reliance on the representations, waivers and promises contained in the Waiver Request Letter, APCC took no action to object to, appeal or seek reconsideration of the Waiver Order.

43. On or about May 19, 1997, Qwest submitted new tariffs for intrastate payphone rates in various states other than Oregon and certified that such newly filed rates were NST compliant. Qwest represented that these filings were made after Qwest purportedly had reviewed all previously filed intrastate payphone rates, including Oregon, to check for NST compliance and where such rates were found not to be NST compliant Qwest filed new rates it certified were NST compliant.

44. Based on the certification of NST compliance for the newly filed payphone rates and the representations contained in the Waiver Request Letter, upon Qwest filing the certification of NST compliance with respect to newly filed payphone rates, it also certified that all previously filed payphone rates that had not been modified or replaced, including those in Oregon, were NST compliant

45. Under the Waiver Order, and by taking advantage of the reliance of Plaintiffs, through APCC, on the representations, promises and waivers Qwest and the other RBOCs made in the Waiver Request Letter, Qwest began to collect millions of dollars of DAC on Oregon intrastate calls beginning April 15, 1997.

46. Qwest received the foregoing DAC even though it has been conclusively determined that none of its Oregon intrastate payphone rates were NST compliant on April 15, 1997. The PUC did not adopt and make effective NST compliant payphone rates until November 15, 2007.

47. When the Waiver Request Letter was written, the RBOCs, including Qwest, had a unique position vis a vis its independent PSPs customers/competitors such as Plaintiffs. Qwest was the only person or entity that had access to the cost data from which NST compliant Oregon payphone rates could be determined.

48. Until Qwest released its cost data in 2006, the Plaintiffs and the PUC had to rely on Qwest's representations that its Oregon payphone rates were NST compliant.

49. Because Plaintiffs and other independent PSPs would be obligated to pay whatever payphone rates Qwest determined, Qwest had a fiduciary duty to set those initial rates in good faith and if they were ultimately determined to be too high, refund the amounts of the overpayments with interest promptly upon final determination of NST compliant payphone rates.

50. In Oregon, Qwest payphone rates were not reviewed for NST compliance until 2001, some four years after Qwest began to collect DAC and that review was found to be defective by the Oregon Court of Appeals because inadequate cost data had been supplied the PUC. Throughout this period and until the successful appeal and final rates were set, Plaintiffs and other PSPs in Oregon were totally dependent on Qwest for its determination of NST compliant payphone rates.

51. Qwest knew at the time that it joined in the Waiver Request Letter that there would undoubtedly be some payphone rates that would be lowered as a result of developing NST

compliant payphone rates. Consequently, Qwest knew that it would receive payments from PSPs, including the Plaintiffs, beginning April 15, 1997 that it would be obligated to refund under the TCA and Oregon law.

52. In a letter to long distance carriers dated May 20, 1997, Qwest certified that all its intrastate payphone rates in Oregon and in other states were NST compliant. Based on this self certification, Qwest demanded and received DAC for its payphones in Oregon commencing April 15, 1997.

53. The Revenue Requirement Phase of the Rate Case terminated when Qwest's appeal of PUC Orders Nos. 97-171 (ordering a \$102 million refund) and 96-183 (establishing the Refund Methodology) were settled. The Staff and Qwest entered into a stipulation dated September 9, 1999 to settle the pending appeals and the Revenue Requirement Phase of the Rate Case.

54. The Staff has no authority to bind the PUC without an Order of the Commissioners of the PUC. The PUC held hearings on the proposed settlement reflected in the stipulation between Qwest and the Staff. The PUC modified the stipulation and as modified adopted and so ordered the settlement in two orders dated April 14, 2000, PUC Order 00-190 and 00-191 (collectively the "Settlement Order"). Qwest had the right to withdraw from the settlement if it disagreed with the modifications encompassed in the Settlement Order. Qwest accepted the modifications and agreed to be bound by the Settlement Order.

55. The Settlement Order reduced the refund originally ordered by the PUC (\$102 million annually which after 5 years when the refunds began to be paid would have been in excess of \$500 million) to up to \$272 million for the period May 1, 1996 to September 20, 2000

with interest at 8.77% per annum compounded monthly. The total refunds depended on when they began to be paid which turned out to be after September 2001. The refunds were payable to all ratepayers, including PSPs. With respect to PAL services, a bill credit of \$6.68 per line per month commenced immediately so that additional refunds would not accrue with respect to those services. The bill credit anticipated the reduction in the final PAL payphone rates. The Settlement Order also required that the refunds be allocated among ratepayers in accordance with the Refund Methodology.

56. An important part of the Settlement Order was that Qwest agreed to pay the refunds before the completion of any appeal of the final rates. Qwest also agreed that if, as a result of an appeal of the final rates, rates were lowered and Qwest was required to pay additional refunds and receive lower revenues going forward, Qwest would assume that risk and pay the additional refunds and suffer the revenue loss from lower rates.

57. The Rate Design Phase of the Rate Case commenced upon adoption of the Settlement Order. However, in late 1999, prior to adoption of the Settlement Order, Qwest submitted its proposed rates for the Rate Design Phase of the Rate Case. Over the objection of Plaintiffs in the person of NPCC, Qwest's proposed rates were ultimately adopted by the PUC in PUC Order 01-810 dated September 14, 2001 concluding the Rate Design Phase of the Rate Case.

58. Qwest's proposed payphone rates were for PAL payphone rates and for CustomNet rates (Qwest's fraud protection service). Qwest's proposed PAL rates were less than the interim PAL rates. Qwest's proposed CustomNet rates were the same as the interim rates for those services.

59. Upon information and belief, Qwest submitted proposed payphone rates in Oregon that it certified were NST compliant but that Qwest knew were not NST compliant.

60. Upon information and belief, the submission of proposed payphone rates that were three to six times higher than NST complaint rates was done by Qwest as part of a deliberate scheme and plan to make the provision of Payphone Services by their competitors, the independent PSPs such as the Plaintiffs, as unprofitable as possible and thereby destroy the businesses of Plaintiffs. This strategy was also designed to eliminate their PSP competitors as a factor in the marketplace to enhance the value of Qwest's payphones for ultimate sale to a successor, FSH

61. Upon information and belief, the deliberate imposition of unreasonably high and discriminatory non-NST compliant payphone rates was part of Defendants' scheme to permit Qwest to discriminate in favor of its own Payphone Services by subsidizing them through recovery of costs improperly included in their regulated services and imposing those higher costs on their competitors, including Plaintiffs and other independent PSPs in Oregon.

62. Upon information and belief, the same high payphone rates would provide Qwest and other Regulated Defendants with unjustified and discriminatory revenues and profits that would subsidize their own Payphone Services and other operations until they could sell such payphones favorably for their own or their buyer's benefit.

63. After adoption of Qwest's defective proposed payphone rates by the PUC in 2001, without further order, Qwest purported to calculate and pay the then due refunds to PSPs with respect to PAL Basic Services. No refunds were paid with respect to CustomNet rates

because the final rates were the same as the interim rates. Upon information and belief no refunds were paid with respect to Enhanced Services.

64. Plaintiffs appealed all the payphone rates adopted by the PUC (the “Reversed Rates”) in PUC Order 01-810. In *Northwest Public Communications Council v. Oregon Public Utilities Commission*, 196 Ore. App. 94, 100 P.3d 776 (2004), the Oregon Court of Appeals reversed both the PAL and CustomNet payphone rates as not NST compliant in the case of PAL payphone rates and determined without sufficient cost data in the case of CustomNet payphone rates. The Court of Appeals remanded the PAL and CustomNet rates to the PUC to reset them to be NST compliant. Compliance with the remand order required payment of refunds with respect to the interim rates to make such interim rates lawful under the PUC orders, the TCA and Oregon law.

65. Only after the reversal of the Reversed Rates did Qwest, for the first time, submit cost data associated with the Oregon payphone rates. Prior to the reversal, Qwest had consistently maintained that the Reversed Rates in Oregon were NST compliant or did not need to be NST compliant.

66. On the remand, before the PUC could commence the process of resetting the payphone rates, Qwest moved the PUC to recoup from non-PSP ratepayers the revenue it projected to lose from the additional refunds due PSPs and lower revenue it would receive since it knew the final NST compliant rates were lower than the Reversed Rates.

67. In 1999, during the rate setting process, Qwest opted to be regulated under price cap rather than rate of return regulation. Under price cap regulation, Qwest was allowed to reduce or increase its rates by submission of rates for PUC acknowledgment without prior

approval of the PUC so long as the submitted rates did not exceed the price cap established by the PUC for the service in question. From December 1999 to September 2001 when the Reversed Rates were adopted, the interim rates were the price caps under Qwest's price cap regulation. Once the Reversed Rates were appealed they also became interim rates subject to refund. The interim rates in effect prior to the adoption of the Reversed Rates and the Reversed Rates are collectively referred to as the "Interim Rates".

68. In 2003, Qwest unilaterally reduced the PAL and CustomNet payphone rates without prejudice to its position on appeal that the Reversed Rates were NST compliant or did not need to be NST compliant. In 2003, the Reversed Rates were the price caps.

69. On remand of the Reversed Rates from the Oregon Court of Appeals, the PAL and CustomNet payphone rates Qwest proposed as NST compliant rates were identical to the reduced rates Qwest established in 2003. Because of that reality, Qwest admitted, and the PUC acknowledged, in Qwest's motion to rebalance rates of non PSP ratepayers that Qwest would have to pay additional refunds to PSPs because the NST compliant rates were going to be less than the Reversed Rates. In PUC Order 06-515 dated September 11, 2006, the PUC denied Qwest's rebalancing motion and held that under the Settlement Order Qwest had agreed to accept the risk that it would pay additional refunds and suffer the revenue loss if rates were lowered on appeal.

70. In 2006, Qwest's proposed rates to the PUC and Plaintiffs that it represented were NST compliant. By law, the PUC had to independently determine whether the Qwest proposed rates were NST compliant. After taking testimony, the PUC Commissioners determined that Qwest's proposed PAL and CustomNet payphone rates were NST complaint and adopted those

rates in Order 07-497 dated November 15, 2007. As a result, the price caps for these payphone services were reduced from the Reversed Rate levels to NST compliant levels which were from three to almost 20 times less than the Reversed Rates.

71. In addition to Qwest and/or the Regulated Defendants unlawfully discriminating against Plaintiffs' Payphone Services, they also unlawfully subsidized their own Payphone Services in Oregon through recovery of costs included in their regulated services and imposing a higher cost on Plaintiffs and other independent PSPs. Plaintiffs and other independent PSPs could not recover from their customers the additional costs resulting in predatory price discrimination against Qwest's and/or the Regulated Defendants' competing PSPs, including Plaintiffs.

72. Qwest and/or the Regulated Defendants denied or impeded access to comparably efficient interconnections ("CEI") and other features and functionalities available to payphones owned by Qwest and the Regulated Defendants.

73. Upon information and belief, as part of the scheme of Qwest and other Defendants to interfere with Plaintiffs' customers and potential customers and to damage, if not destroy, Plaintiffs' Payphone Services business in the State of Oregon Qwest and/or the other Regulated Defendants denied or impeded CEI. In addition, as part of the scheme to charge exorbitantly high and unreasonable payphone rates in Oregon, Qwest and/or the Regulated Defendants also provided to Oregon payphones owned by Qwest and/or other Defendants services and functionalities that have not been made available to payphones owned by Plaintiffs.

74. Upon information and belief, among the services provided to Defendants' Payphone Services that have not been made available to the Plaintiffs' payphones is the ability to

handle the calls of more than one pay phone on a single line, to enable simultaneous video and audio recording and such required enhancements to provide payphone service to jails and prisons, and to be able to collect DAC with respect to each payphone attached to such single or enhanced line.

75. Upon information and belief, Qwest has taken or refused to take action to frustrate the commercial efforts of Plaintiffs to develop and implement Enhanced Services by preventing Plaintiffs from having Enhanced Services they developed to be integrated with Qwest's Basic Services in a manner which would continue Plaintiffs' ability to receive DAC, avoid fraudulent calls and employ enhancements. While frustrating Plaintiffs commercial efforts, Qwest provided these benefits to other Defendants and Plaintiffs' competitors.

76. On information and belief Qwest and/or the Regulated Defendants controlled the physical connections to the network for its own customers, but would destroy such connections when terminating services to a site of a payphone when its competitors, including Plaintiffs, successfully obtained such customer, but Qwest and/or the Regulated Defendants would not destroy such connections when it sold its payphones to FSH or other LECs.

77. As a consequence of Qwest's and/or the other Regulated Defendants' unlawful actions, Plaintiffs' ability to introduce Enhanced Services that would improve the profitability and increase the availability of Plaintiffs' payphones has been greatly reduced or completely frustrated.

78. Upon information and belief, Qwest and/or the other Regulated Defendants, in conjunction with three former Qwest executives, used the discriminatory practice of denying

Plaintiffs access to Enhanced and Basic Services as part of their scheme to take over the Payphone Services business of Plaintiffs in Oregon to the extent they did not destroy it.

79. Upon information and belief, during the pendency of NPCC's appeal of the Reversed Rates, in or about 2003 -2004, it became apparent to Qwest and/or the other Regulated Defendants and Qwest executives involved in the provision of Payphone Services, that the practice of Qwest and/or the other Regulated Defendants of charging exorbitant and discriminatory payphone rates in Oregon and the rest of the Qwest Service Area could not be continued.

80. Upon information and belief, having reaped the benefits of its exorbitant payphone rates, Qwest determined to sell substantially all its Payphone Service assets to three Qwest executives.

81. Upon information and belief, in or about May 2004, three Qwest executives formed FSH Communications, LLC ("FSH") to purchase Qwest's Payphone Services assets.

82. Upon information and belief, in or about August 2004, Qwest sold substantially all of its Payphone Service assets to FSH.

83. Upon information and belief, Qwest and/or the Regulated Defendants continue to discriminate in favor of FSH Payphone Services as it discriminated in favor of their own Payphone Services prior to such sale.

84. Upon information and belief, Qwest continues to provide competitive advantages to FSH by providing preferential rates and services to FSH, that are not provided to Plaintiffs.

85. Upon information and belief, Qwest continues to enjoy the benefits of its interference with, and destruction of, Plaintiffs' Payphone Services businesses by having a long

term contract with FSH pursuant to which it provides telephone exchange services and exchange access to FSH.

86. Upon information and belief, FSH is the largest PSP in the Qwest Service Area and in Oregon.

87. Upon information and belief, Qwest is FSH's largest supplier of telephone exchange services and exchange access.

88. Upon information and belief, through the foregoing contract, FSH is precluded from becoming a competitive LEC of Qwest or from using the telephone exchange services or exchange access of Qwest's competitors.

89. Under the Settlement Order and Oregon law, as of the adoption of NST compliant payphone rates by the PUC on November 15, 2007, Defendants were under an obligation to refund to each Plaintiff as well as other Oregon independent PSPs, within a reasonable period of time after the issuance of PUC Order 07-497 on November 15, 2007, any and all overcharges made with respect to Oregon payphone rates. The overcharges from the Interim Rates to be refunded are equal to the difference between the NST compliant rates for the services used by a Plaintiff once NST compliant rates became available and any higher Interim Rate paid by such Plaintiff during the period between May 1, 1996 and November 15, 2007 less refunds previously paid by Qwest. Such refunds are referred to as the "Additional Refunds".

90. Although due demand has been made for the Additional Refunds, Qwest has failed and refused to pay the Additional Refunds to Plaintiffs.

91. Upon information and belief, Qwest, and/or the other Regulated Defendants in furtherance of the scheme to drive Plaintiffs out of business, have used every artifice to avoid its obligation to pay the Additional Refunds to the Plaintiffs promptly.

92. Through the artificially high payphone rates charged by Qwest and/or the other Regulated Defendants and their discriminatory practices in the provision of telephone exchange services and exchange access, Defendants have carried out their unlawful intent to interfere with Plaintiffs' business relations with its customers and with potential future customers.

93. As a result of Defendants' unlawful conduct, Defendants have had the benefit of the discriminatory, unjust and unreasonable overcharges for the past 18 years.

94. Since 1997, the number of payphones Plaintiffs have had in service in the State of Oregon have dropped from about 6,000 phones to about 3,000 phones today.

95. The foregoing reduction in the number of Plaintiffs' payphones in service is a result of the unlawful conduct of Defendants as alleged above.

**(Enforcement and Specific Performance of PUC Orders and Settlement Agreement)
AS AND FOR PLAINTIFFS' FIRST CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

96. Plaintiffs repeat and re-allege paragraphs 1 - 95 with the same force and effect as though fully set forth at length herein.

97. In PUC Orders 00-190 and 00-191 (the Settlement Order), the PUC ordered Qwest to refund up to \$272 million to Plaintiffs and other Oregon ratepayers.

98. The Settlement Order ordered that the refund payable to Plaintiffs and any other ratepayers be equal to the difference between the final rate and any higher Interim Rate paid by a ratepayer from May 1, 1996 to the date the final rates were established.

99. Qwest agreed to the Settlement Order and agreed to abide by its terms.

100. Qwest paid initial refunds based on the Reversed Rate pursuant to the Settlement Order without further order of the PUC and without objection.

101. The final rates were those payphone rates established in PUC Order 07-497 which were substantially below all the Interim Rates.

102. The Settlement Order and the settlement agreement between the PUC and Qwest embodied therein should be specifically enforced and Qwest ordered to calculate and pay to Plaintiffs the Additional Refunds now due.

(Unjust Enrichment)
AS AND FOR PLAINTIFFS' SECOND CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS

103. Plaintiffs repeat and re-allege paragraphs 1 - 102 with the same force and effect as though fully set forth at length herein.

104. Qwest and/or the other Regulated Defendants have been unjustly enriched at the expense of Plaintiffs by failing to (1) timely file NST compliant payphone rates as required by the FCC, (2) pay the Additional Refunds due Plaintiffs, as ordered by the PUC and agreed to by Qwest in the Settlement Order, and (3) make the Interim Rates in effect between May 1, 1996 and November 15, 2007, NST compliant by paying the refunds necessary to make such Interim Rates NST compliant as ordered by the Oregon Court of Appeals upon reversal of the Reversed Rates and remand to the PUC.

105. Qwest and/or the other Regulated Defendants knew that by failing to timely file NST compliant payphone rates as required by the TCA and the FCC implementing regulations and failing to pay the Additional Refunds due Plaintiffs, as ordered by the PUC and the Oregon

Court of Appeal, Qwest and/or the Regulated Defendants were receiving an economic benefit in the form of greater revenues and profits than they would have received otherwise, and that Plaintiffs expected and were entitled to receive the Additional Refunds for the Payphone Services Plaintiffs used.

106. Qwest and/or the other Regulated Defendants knew of the benefit, and the circumstances were such that allowing Qwest and/or the other Regulated Defendants to retain the benefit would be inequitable to Plaintiffs.

107. Qwest and/or the other Regulated Defendants should be equitably required to compensate Plaintiffs for the reasonable value of the Additional Refunds that should have been paid to Plaintiffs, plus prejudgment interest thereon at the maximum rate allowed by law.

**(Estoppel and Judicial Estoppel Claim)
AS AND FOR PLAINTIFFS' THIRD CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

108. Plaintiffs repeat and re-allege paragraphs 1 - 107 with the same force and effect as though fully set forth at length herein.

109. Qwest made material representations and promises in the Waiver Request Letter to the FCC and to APCC as representative of persons and entities in the business of, or involved with the provision of Payphone Services, including Plaintiffs.

110. APCC, as representative, reasonably relied on Qwest's representations and promises contained in the Waiver Request Letter.

111. Plaintiffs were among the persons represented by APCC and on whose behalf APCC acted in the Implementation Proceeding.

112. Qwest is estopped from denying its obligation to pay the Oregon Additional Refunds to Plaintiffs.

113. Although due demand has been made for payment of such Additional Refunds, Qwest has failed and refused to pay the amount of the Additional Refunds.

114. As a result of the unlawful conduct of Qwest, Plaintiffs have been damaged in an amount to be proven at trial.

(Third Party Beneficiary Claim)
AS AND FOR PLAINTIFFS' FOURTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS

115. Plaintiffs repeat and re-allege paragraphs 1 - 114 with the same force and effect as though fully set forth at length herein.

116. Qwest's settlement agreement with the PUC in the Settlement Order to pay refunds to Plaintiffs and other Oregon ratepayers was intended to benefit all independent PSPs, including Plaintiffs.

117. By failing to pay Additional Refunds to independent PSPs, including Plaintiffs, Qwest breached its settlement agreement with the PUC and such breach proximately caused and is causing damage to Plaintiffs in an amount to be proven at trial.

118. Plaintiffs are entitled to enforce the settlement agreement between Qwest and the PUC, which is made for the benefit of Oregon ratepayers, including Plaintiffs.

119. As a result of the unlawful conduct of Qwest, Plaintiffs are entitled to damages the amount of which is to be proven at trial.

(Conversion Claim)
AS AND FOR PLAINTIFFS' FIFTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS

120. Plaintiffs repeat and re-allege paragraphs 1 - 119 with the same force and effect as though fully set forth at length herein.

121. Pursuant to Qwest's agreement with the PUC under the Settlement Order and its agreement with the FCC and APCC on behalf of independent PSPs, including Plaintiffs, Plaintiffs were entitled to receive payment of the Additional Refunds. The Additional Refunds should have been paid once the NST compliant rates were established. Defendants have refused to pay the Additional Refunds due Plaintiffs and have thus willfully deprived Plaintiffs of possession of the Additional Refunds to which Plaintiffs are legally entitled.

122. By failing to pay the Additional Refunds to Plaintiffs, Qwest intentionally and willfully converted Plaintiffs' property and such conversion proximately has caused and is causing damage to Plaintiffs in an amount to be proven at trial.

(Intentional Fraud)
AS AND FOR PLAINTIFFS' SIXTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS

123. Plaintiffs repeat and re-allege paragraphs 1 - 122 with the same force and effect as though fully set forth at length herein.

124. In the Waiver Request Letter and in oral statements made to the FCC, APCC and other participants in the Implementation Proceeding, Qwest and the Regulated Defendants represented that they would review all previously filed intrastate payphone rates, including those in Oregon, for NST compliance. If they found that any previously filed intrastate payphone rate was not NST compliant, they would file new intrastate payphone rates that were NST compliant, including in the State of Oregon.

125. As an inducement to the FCC, APCC and all parties to the Implementation Proceeding to permit the RBOCs, including Qwest, to receive DAC beginning April 15, 1997 in all states including Oregon, even though Qwest would not have in place NST compliant intrastate payphone rates that a State Commission or the FCC had determined were NST compliant, Qwest and the Regulated Defendants promised to refund any overcharges arising from receiving payphone rates that were not NST compliant, including in the State of Oregon, that were higher than the NST complaint intrastate payphone rates that ultimately became effective after a State Commission review and approval to ensure that no PSP would be prejudiced by the requested waiver.

126. On or about May 20, 1997, Qwest represented in a letter to long distance carriers that all its payphone rates were NST compliant. This certification was a representation by Qwest that all its previously filed intrastate payphone rates, including those in Oregon, that were not changed were NST compliant. In all proceedings before the PUC thereafter, it made this representation to all participants in the Rate Case, including Plaintiffs, until the stipulation it executed with the Staff that is incorporated in the Settlement Order. Thereafter, Qwest consistently represented in the Rate Case that the Reversed Rates were NST compliant or did not need to be NST compliant until that position was rejected by the Oregon Court of Appeals when it overturned the Reversed Rates.

127. The foregoing representations and promises were made by Qwest knowing that they were false and that it never intended to carry out its promise to pay refunds as represented.

128. Qwest made such intentional misrepresentations to Plaintiffs and others, including the FCC and PUC with the intent that they be relied upon.

129. Plaintiffs reasonably relied on such representations to their detriment and were severely damaged thereby.

130. As part of the Defendants' deceptive scheme, Qwest and/or the other Regulated Defendants resisted under every pretense, requests for the cost data required to determine NST compliance of Qwest's payphone rates.

131. Upon information and belief the purpose of delaying production of cost data to the PUC was to delay the time when Qwest and/or the other Regulated Defendants would be required to disgorge their unlawful overcharges.

132. As a result of the unlawful conduct of Qwest and/or the other Regulated Defendants, Plaintiffs have been damaged by an amount to be determined at trial.

(Negligent Fraud)
AS AND FOR PLAINTIFFS' SEVENTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS

133. Plaintiffs repeat and re-allege paragraphs 1 - 132 with the same force and effect as though fully set forth at length herein.

134. Qwest made the representations and promises set forth in the Waiver Request Letter negligently.

135. Qwest filed false certifications that all previously filed intrastate payphone rates, including Oregon, that had not been replaced by the newly filed payphone rates were NST compliant payphone rates, including those previously filed in Oregon.

136. Qwest negligently represented that such certifications were true to Plaintiffs' representatives, the FCC, the PUC, Plaintiffs and others.

137. Qwest made the foregoing representations with the intention that the FCC, the PUC, Plaintiffs and others rely on them.

138. As a result of the unlawful conduct of Qwest and/or the other Regulated Defendants, Plaintiffs have been damaged by an amount to be determined at trial.

**(Oregon Deceptive Trade Practices Act)
AS AND FOR PLAINTIFFS' EIGHTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

139. Plaintiffs repeat and re-allege paragraphs 1 - 138 with the same force and effect as though fully set forth at length herein.

140. Defendants' unlawful conduct, as alleged above, constitutes deceptive and unlawful trade practices in violation of the Oregon Revised Statutes §§646.605 et seq., including §605.608(s)and (u).

141. As a result of Defendants' unlawful conduct, Plaintiffs have been damaged by an amount to be determined at trial.

**(Violation of ORS Chapter 759.185 - Refund)
AS AND FOR PLAINTIFFS' NINTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

142. Plaintiffs repeat and re-allege paragraphs 1 - 141 with the same force and effect as though fully set forth at length herein.

143. Effective May 1, 1996 until November 15, 2007 plus the time for appeal of the Settlement Order, Qwest's Oregon payphone rates and its other telephone rates, including payphone rates, were ordered to be interim subject to refund pending final determination of final rates in the Rate Case.

144. The Interim Rates in effect from May 1, 1996 that were higher than the NST compliant Oregon payphone rates were subject to mandatory refund in accordance with Chapter 759.185 of the Oregon Revised Statutes once the lower NST compliant rates were determined and put into effect on November 15, 2007.

145. As a result of such overcharges, Plaintiffs are entitled to the Additional Refunds from Qwest and/or the other Regulated Defendants.

146. As a result of such overcharges, Plaintiffs suffered substantial damages over and above and in addition to the Additional Refunds, the amount of which damages shall be determined at trial.

147. As a result of the unlawful conduct of Qwest and/or the other Regulated Defendants, Plaintiffs are entitled to recovery of their attorneys' fees.

**(Violation of ORS 759.275 Undue -Preferences))
AS AND FOR PLAINTIFFS' TENTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

148. Plaintiffs repeat and re-allege paragraphs 1 - 147 with the same force and effect as though fully set forth at length herein.

149. Based on the acts of Defendants as alleged above, upon information and belief, Qwest has provided undue preferences and advantages in telephone exchange services and exchange access in favor of PSPs who compete with Plaintiffs, including FSH, one or more Unknown Corporations I -X and Qwest's own Payphone Services in violation of ORS 759.275 and other provisions of Chapter 759 of the Oregon Revised Code.

150. Such undue preferences and advantages constitute unjust discrimination under ORS Chapter 759.

151. As a result of such unlawful conduct, Plaintiffs suffered substantial damages, the amount of which is to be proven at trial.

**(Violation of ORS 759.455 Denial -of Access))
AS AND FOR PLAINTIFFS' ELEVENTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

152. Plaintiffs repeat and re-allege paragraphs 1 - 151 with the same force and effect as though fully set forth at length herein.

153. Based on the acts of Defendants as alleged above, upon information and belief, Qwest has provided access to network elements in Basic Service to PSPs who compete with Plaintiffs, including FSH and one or more Unknown Corporations I -X, that it denied to Plaintiffs, all in violation of ORS 759.455.

154. Such access denial constitutes unjust discrimination under ORS Chapter 759.

155. As a result of such unlawful conduct, Plaintiffs suffered substantial damages, the amount of which is to be proven at trial.

**(Loss of Business Opportunity)
AS AND FOR PLAINTIFFS' TWELFTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

156. Plaintiffs repeat and re-allege paragraphs 1 - 155 with the same force and effect as though fully set forth at length herein.

157. Plaintiffs had established contractual relations and/or reasonable expectation of advantageous business relations with prospective customers for their Payphone Services.

158. Defendants were fully aware of Plaintiffs contractual relations and/or reasonable expectation of advantageous business relations with prospective customers for their Payphone Services.

159. As part of Defendants' unlawful scheme to destroy Plaintiffs as Payphone Service competitors, Defendants intentionally and maliciously interfered with Plaintiffs' contractual relations and reasonable expectancies by engaging in discriminatory and preferential pricing of payphone rates in Oregon, discrimination and preferential treatment in making available telecommunications services and access as alleged above.

160. As a result of such unlawful conduct, Plaintiffs suffered substantial damages, the amount of which is to be proven at trial.

**(Breach of Contract)
AS AND FOR PLAINTIFFS' THIRTEENTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

161. Plaintiffs repeat and re-allege paragraphs 1 - 160 with the same force and effect as though fully set forth at length herein.

162. The agreements, promises and representations Qwest made in the Waiver Request Letter and orally to Plaintiffs' representatives and Plaintiffs' representatives' acceptance and reliance thereon, constituted a binding contract between Qwest and the Plaintiffs.

163. Under the terms of that agreement, to the extent Oregon Interim Rates were higher than NST compliant payphone rates, Qwest would pay the Additional Refund due Plaintiffs with interest.

164. Qwest has breached its obligations under the contract and Plaintiffs have been damaged thereby in an amount to be determined at trial.

**(Constructive Trust)
AS AND FOR PLAINTIFFS' FOURTEENTH CLAIM
FOR RELIEF, PLAINTIFFS ALLEGE AS FOLLOWS**

165. Plaintiffs repeat and re-allege paragraphs 1 - 164 with the same force and effect as though fully set forth at length herein.

166. As a result of the facts as alleged above, Qwest had a special fiduciary obligation to the Plaintiffs to refund overpayments made to Qwest in respect of Oregon payphone rates Qwest initially represented as NST compliant. The PUC, in the Settlement Order and in a subsequent order interpreting the Settlement Order neither of which were appealed and are res judicata, has ordered refunds to be calculated and a fund to be established to pay such refunds to its customers upon the resolution of the Rate Case.

167. Qwest's Interim Rates, which Qwest represented were NST compliant, were ultimately determined by the PUC to be higher than NST compliant payphone rates.

168. In violation of its fiduciary duty to Plaintiffs, Qwest has failed and refused to pay the Plaintiffs the Additional Refunds to which they are entitled together with interest and should also account for the refund pool it was ordered to create in conjunction with the disposition of the Rate Case.

169. As a result of such unlawful conduct, Plaintiffs suffered substantial damages, the amount of which is to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs demand judgment as follows:

On Plaintiffs' First Claim judgment against Qwest specifically enforcing the Settlement Order by ordering Qwest to calculate and pay to Plaintiffs the Additional Refunds plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Second Claim, judgment against Qwest and the other Regulated Defendants in an amount to be proven at the time of trial plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Third Claim, judgment against Qwest estopping Qwest from denying its obligation to calculate and pay Plaintiffs the Additional Refunds, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Fourth Claim, judgment against Qwest for Qwest's breach of contract of which Plaintiffs were third party beneficiaries and the award of damages equal to the amount of the Additional Refunds due Plaintiffs, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Fifth Claim, judgment against Qwest for unlawful conversion of Plaintiffs' property in the form of unpaid Additional Refunds and awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Sixth Claim, judgment against Qwest and/or the other Regulated Defendants for their unlawful fraudulent misrepresentations and scheme awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Seventh Claim, judgment against Qwest and/or the other Regulated Defendants for negligently making fraudulent misrepresentations and awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Eighth Claim, judgment against Defendants for Defendants' unlawful conduct in violation of Oregon Unlawful Trade Practices laws and awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Ninth Claim, judgment against Qwest and/or the other Regulated Defendants for their failure to pay the Additional Refunds as required by ORS Chapter 79 in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Tenth Claim, judgment against Defendants for their provision of undue preferences and advantages in services in favor of Regulated Defendants' Payphone Services, and those of PSPs other than Plaintiffs', including FSH and one or more Unknown Corporations I-X, in violation of ORS 759.275, and awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Eleventh Claim, judgment against Defendants for their denial of access to Basic Service network elements that it provided to Regulated Defendants' Payphone Services and those of PSPs other than Plaintiffs', including FSH and one or more Unknown Corporations I-X, in

violation of ORS 759.455, and awarding Plaintiffs damages in an amount to be proven at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

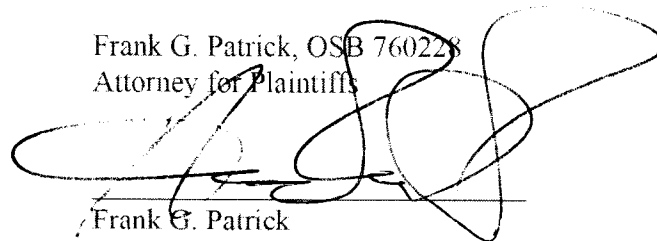
On the Twelfth Claim, judgment against Defendants for Defendants' unlawful scheme to destroy Plaintiffs as competitors and to interfere with Plaintiffs' business relationships with their customers and prospective customers and awarding Plaintiffs damages in an amount to be determined at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Thirteenth Claim, judgment against Qwest for Qwest's breach of contract and awarding Plaintiffs damages in an amount to be determined at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

On the Fourteenth Claim, judgment against Qwest for Qwest's unlawful breach of its fiduciary obligation by imposing a constructive trust on Qwest with respect to all overpayments made by the Plaintiffs to Qwest with respect to non-NST compliant payphone rates, and also awarding Plaintiffs damages in an amount to be determined at trial, plus reasonable attorneys fees, prejudgment interest at the highest applicable rate, costs of court and disbursements, and such other relief as to the Court may seem just and proper.

Dated: November 15, 2013

Frank G. Patrick, OSB 760228
Attorney for Plaintiffs



Frank G. Patrick

**U.S. District Court
District of Oregon (Portland (3))
CIVIL DOCKET FOR CASE #: 3:12-cv-01923-BR**

Northwest Public Communications Council et al v. Harlow et al Date Filed: 10/25/2012
Assigned to: Judge Anna J. Brown Date Terminated: 02/27/2018
Cause: 28:1332 Diversity – Legal Malpractice Jury Demand: Plaintiff
Nature of Suit: 360 Personal Injury: Other
Jurisdiction: Diversity

Plaintiff

**Northwest Public Communications
Council**
TERMINATED: 08/15/2013

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Corporate Lawyers PC
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Plaintiff

Central Telephone Inc
TERMINATED: 08/15/2013

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Plaintiff

**Communication Management Services,
LLC**

represented by **Frank G. Patrick**
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Plaintiff

Davel Communications
TERMINATED: 01/23/2018
also known as
Phonetel Technologies, Inc

represented by **Davel Communications**
PRO SE
Frank G. Patrick
(See above for address)
TERMINATED: 12/29/2017

Plaintiff

**Interwest Telecom Services
Corporation**
TERMINATED: 08/15/2013

represented by **Frank G. Patrick**
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Plaintiff

**NSC Communications Public Services
Corporation**
TERMINATED: 05/16/2017

represented by **NSC Communications Public Services
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TERMINATED: 03/10/2017

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ATTORNEY TO BE NOTICED

Plaintiff

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Partners in Communication

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Plaintiff

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 TERMINATED: 01/31/2018

Defendant

Miller Nash, LLP
attorneys at law
 TERMINATED: 08/15/2013

represented by **Steven K. Blackhurst**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/25/2012	<u>1</u>	Complaint. Filing fee in the amount of \$350 collected. Agency Tracking ID: 0979-3077950 Jury Trial Requested: Yes. Filed by NSC Communications Public Services Corporation, Corban Technologies, Inc., Communication Management Services, LLC, National Payphone Services, LLC, Partners in Communication, Central Telephone Inc, Pacific Northwest Payphones, Northwest Public Communications Council et al, Davel Communications, T & C Management, LLC, Interwest Telecom Services Corporation against Brooks L Harlow. (Patrick, Franklin) (Additional attachment(s) added on 10/29/2012: # <u>1</u> Civil Cover Sheet) (sm). (Entered: 10/26/2012)
12/19/2012	<u>2</u>	First Amended Complaint . Filed by NSC Communications Public Services Corporation, Valley Pay Phones, National Payphone Services, LLC, Partners in Communication, Pacific Northwest Payphones, Northwest Public Communications Council, T & C Management, LLC, Interwest Telecom Services Corporation against All Defendants (Attachments: # <u>1</u> Proposed Summons B. E. Harlow, # <u>2</u> Proposed Summons Miller Nash LLP). (Patrick, Franklin) (Entered: 12/19/2012)
12/19/2012	<u>3</u>	Notice of Case Assignment to Judge Anna J. Brown and Discovery and Pretrial Scheduling Order. NOTICE: Counsel shall print and serve the summonses and all documents issued by the Clerk at the time of filing upon all named parties in accordance with Local Rule 3-5. Discovery is to be completed by 4/18/2013. Joint Alternate Dispute Resolution Report is due by 5/20/2013. Pretrial Order is due by 5/20/2013. Ordered by Judge Anna J. Brown. (cib) (Entered: 12/19/2012)
12/19/2012	<u>4</u>	Summons Issued Electronically as to Brooks L Harlow, Miller Nash, LLP. NOTICE: Counsel shall print and serve the summonses and all documents issued by the Clerk at the time of filing upon all named parties in accordance with Local Rule 3-5. (Attachments: # <u>1</u> issued summons to Miller Nash, LLP) (cib) (Entered: 12/19/2012)
01/07/2013	<u>5</u>	Waiver of Service of Summons Returned Executed by Miller Nash, LLP waiver sent on 1/7/2013. Filed by Miller Nash, LLP. (Blackhurst, Steven) (Entered: 01/07/2013)
01/07/2013	<u>6</u>	Waiver of Service of Summons Returned Executed by Brooks L Harlow waiver sent on 1/7/2013. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/07/2013)
03/14/2013	<u>7</u>	Stipulated Motion for Extension of Time to Answer <i>stipulated by all parties and filed by Plaintiff on behalf of Defendants</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 03/14/2013)
03/15/2013	8	ORDER: Granting Defendants Brooks Harlow and Miller Nash, LLP's Motion for Extension of Time to Answer <u>7</u> . Answer or responsive pleading is now due 4/8/2013. (bb) (Entered: 03/15/2013)
04/09/2013	<u>9</u>	Stipulated Motion for Extension of Time to Answer <i>Plaintiff's First Amended Complaint</i> . Filed by All Parties. (Blackhurst, Steven) (Entered: 04/09/2013)
04/11/2013	10	ORDER: Granting Stipulated Motion for Extension of Time to Answer <u>9</u> . Answer or responsive pleading is now due 4/15/2013. (bb) (Entered: 04/11/2013)
04/11/2013	<u>11</u>	Motion for a More Definite Statement . Filed by All Defendants. (Blackhurst, Steven) (Entered: 04/11/2013)

04/11/2013	<u>12</u>	<i>Defendants' Memorandum in Support of Motion for More Definite Statement</i> . Filed by All Defendants. (Related document(s): Motion for more definite statement <u>11</u> .) (Blackhurst, Steven) (Entered: 04/11/2013)
04/29/2013	<u>13</u>	Stipulated Motion for Extension of Time to File a Response/Reply to Motion for a More Definite Statement <u>11</u> . Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Memorandum in Support) (Patrick, Franklin) (Entered: 04/29/2013)
04/30/2013	<u>14</u>	<i>Response of Defendants</i> to Stipulated Motion for Extension of Time to File a Response/Reply to Motion for a More Definite Statement <u>11</u> <u>13</u> . Filed by All Defendants. (Blackhurst, Steven) (Entered: 04/30/2013)
05/02/2013	15	ORDER: Granting Stipulated Motion for Extension of Time <u>13</u> to File Response to Motion for a More Definite Statement <u>11</u> . Plaintiffs' response is now due 5/13/2013. (bb) (Entered: 05/02/2013)
05/13/2013	<u>16</u>	Motion for Extension of Time . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 05/13/2013)
05/16/2013	<u>17</u>	Stipulated Motion for Extension of Time <i>Supplementing Motion Document #16</i> . Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Supporting Declaration) (Patrick, Franklin) (Entered: 05/16/2013)
05/17/2013	18	ORDER by Judge Anna J. Brown Granting Stipulated Second Motion <u>16</u> for Extension of Time to Respond to Defense Motion to Make More Definite and Certain <u>11</u> . Plaintiff's Response is now due 5/20/2013. (bb) (Entered: 05/17/2013)
05/20/2013	<u>19</u>	<i>Response of Plaintiffs</i> to Motion for a More Definite Statement <u>11</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Supporting Declaration) (Patrick, Franklin) (Entered: 05/20/2013)
05/24/2013	<u>20</u>	<i>Reply Memorandum in Support of Defendants'</i> to Motion for a More Definite Statement <u>11</u> . Filed by All Defendants. (Blackhurst, Steven) (Entered: 05/24/2013)
05/24/2013	<u>21</u>	Declaration of Steven K. Blackhurst <i>in Support of Reply Memorandum in Support of Defendants' Motion for a More Definite Statement</i> . Filed by All Defendants. (Related document(s): Reply to Motion <u>20</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3) (Blackhurst, Steven) (Entered: 05/24/2013)
06/03/2013	22	Order by Judge Anna J. Brown. After reviewing the pleadings, the Court GRANTS Defendants' Motion <u>11</u> for More Definite Statement and gives Plaintiffs until 6/17/13 to file an amended complaint that addresses the specific issues raised in Defendants' Motion. (bb) (Entered: 06/03/2013)
06/17/2013	<u>23</u>	Amended Complaint . Filed by Northwest Public Communications Council against All Plaintiffs. (Patrick, Franklin) (Entered: 06/17/2013)
07/22/2013	<u>24</u>	Unopposed Motion to Amend/Correct Amended Complaint <u>23</u> . Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Memoranda) (Patrick, Franklin) (Entered: 07/22/2013)
07/22/2013	<u>25</u>	Response in Opposition to <i>Plaintiffs' Motion to Withdraw Second Amended Complaint and File Third Amended Complaint</i> to Unopposed Motion to Amend/Correct Amended Complaint <u>23</u> <u>24</u> . Filed by All Defendants. (Blackhurst, Steven) (Entered: 07/22/2013)
07/22/2013	<u>26</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendants' Response to Plaintiffs' Motion to Withdraw Second Amended Complaint and File Third Amended Complaint</i> . Filed by All Defendants. (Related document(s): Response in Opposition to Motion, <u>25</u> .) (Blackhurst, Steven) (Entered: 07/22/2013)
07/26/2013	27	Order by Judge Anna J. Brown. The Court has completed its review of Plaintiff's Motion <u>24</u> to Withdraw Second Amended Complaint <u>23</u> with Leave to File a Third Amended Complaint and Defendants' Response <u>25</u> thereto. In the exercise of its case-management discretion, the Court grants Plaintiff's Motion as follows: Plaintiff's Second Amended Complaint <u>23</u> is withdrawn and of no further effect. Plaintiff has leave to file a Third Amended Complaint no later than 08/07/2013. Defendants' responsive pleading to the Third Amended Complaint, which may be in the form of a Rule 12 Motion against that Third Amended Complaint, is due no later than 08/23/2013. If that responsive pleading is a motion, Plaintiff's response thereto is due

		no later than 09/09/2013, and Defendants' reply is due no later than 09/20/2013, when the motion will be taken under advisement. If that responsive pleading is an Answer, the Court will schedule a Rule 16 Conference promptly after 08/23/2013. (bb). (Entered: 07/26/2013)
08/07/2013	<u>28</u>	(WITHDRAWN) Fourth Amended Complaint . Filed by Corban Technologies, Inc., Communication Management Services, LLC, Central Telephone Inc, Davel Communications against All Defendants (Attachments: # <u>1</u> Attachment Corporate Disclosure 7.1-1 FRCP 26). (Patrick, Franklin) Modified on 8/16/2013 withdrawing (bb). (Entered: 08/07/2013)
08/15/2013	<u>29</u>	Motion to Amend/Correct <i>Complaint</i> Scheduling,,,,, <u>27</u> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/15/2013)
08/15/2013	<u>30</u>	Motion to Amend/Correct <i>Supporting Memorandum</i> Motion to Amend/Correct <u>29</u> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/15/2013)
08/15/2013	<u>31</u>	Third Amended Complaint . Filed by Corban Technologies, Inc., Communication Management Services, LLC, Davel Communications against Brooks L Harlow. (Patrick, Franklin) Modified on 8/16/2013 adding "Third" Amended Complaint (bb). (Entered: 08/15/2013)
08/16/2013	<u>32</u>	ORDER by Judge Anna J. Brown. Granting Motion <u>29</u> to Withdraw Fourth Amended Complaint <u>28</u> with Leave to File a Third Amended Complaint. (bb) (Entered: 08/16/2013)
08/30/2013	<u>33</u>	Stipulated Motion for Extension of Time to Answer <i>Plaintiffs' Third Amended Complaint</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 08/30/2013)
09/03/2013	<u>34</u>	ORDER: Granting Stipulated Motion Extending Time for Defendant to Respond to Plaintiffs' Third Amended Complaint <u>33</u> . Answer or responsive pleading is due by 9/9/2013. (bb) (Entered: 09/03/2013)
09/06/2013	<u>35</u>	Motion for Stay <i>of Action</i> . ORAL requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Declaration, # <u>2</u> Attachment Memorandum) (Patrick, Franklin) (Entered: 09/06/2013)
09/09/2013	<u>36</u>	Answer to <u>31</u> Amended Complaint . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 09/09/2013)
09/10/2013	<u>37</u>	Scheduling Order by Judge Anna J. Brown. Defendant's response to Plaintiff's Motion to Stay the Action <u>35</u> is due 9/23/13, and Plaintiff's reply is due 10/10/13. The Motion will be taken under advisement on 10/10/13. (bb) (Entered: 09/10/2013)
09/18/2013	<u>38</u>	Notice of Appearance of Jeffrey M. Peterson appearing on behalf of Brooks L Harlow Filed by on behalf of Brooks L Harlow (Peterson, Jeffrey) (Entered: 09/18/2013)
09/23/2013	<u>39</u>	Response in Opposition <i>to Plaintiffs'</i> to Motion for Stay <i>of Action</i> <u>35</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 09/23/2013)
09/23/2013	<u>40</u>	Declaration of Brooks Harlow <i>in Support of Opposition to Plaintiffs' Motion to Stay</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>39</u> .) (Blackhurst, Steven) (Entered: 09/23/2013)
10/10/2013	<u>41</u>	Reply to Motion for Stay <i>of Action</i> <u>35</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Declaration of F G Patrick, # <u>2</u> Attachment Declaration of C W Jones) (Patrick, Franklin) (Entered: 10/10/2013)
10/30/2013	<u>42</u>	ORDER by Judge Anna J. Brown. This matter comes before the Court on Plaintiffs Motion <u>35</u> to Stay the Action. Plaintiffs contend a stay in this case is warranted in light of three other related proceedings, the outcome of which may impact this matter. In Defendants Response <u>39</u> in opposition to Plaintiffs Motion, Defendant contends a stay would impose an undue burden on him, he has a strong statute of limitations defense to Plaintiffs claims, and he should be entitled to discovery on Plaintiffs assertion of jurisdiction on diversity grounds. After considering the parties briefs and the record as a whole, the Court concludes Defendant should be permitted (1) to conduct discovery on a limited basis in order to further assess the viability of his defenses based on statute of limitations and jurisdiction and (2) to file a motion seeking a ruling from the Court as to such defenses to the extent they remain viable after such discovery.

		Accordingly, the Court DENIES Plaintiffs Motion <u>35</u> . The Court directs counsel to confer and to submit no later than November 15, 2013, a jointly proposed case-management plan and schedule to complete discovery and the filing of dispositive motions on the limited issues of statute of limitations and jurisdiction. Upon leave of Court, Plaintiff may renew its motion to stay to the extent Defendant does not prevail or chooses not to file such a motion after conducting discovery on these issues. (bb) (Entered: 10/30/2013)
11/15/2013	<u>43</u>	Proposed Joint Case Management Schedule . Filed by All Parties. (Blackhurst, Steven) (Entered: 11/15/2013)
11/19/2013	44	Scheduling Order by Judge Anna J. Brown. The Court adopts the parties' Joint Case Management Plan <u>43</u> as follows: Discovery regarding jurisdictional issues and Defendant's affirmative defense that Plaintiffs' claims are barred by the statute of limitations is to be completed by 2/28/2014. Defendant shall have until 3/28/2014 in which to file any motions with respect to the jurisdictional or statute of limitations issues. (bb) (Entered: 11/19/2013)
03/28/2014	<u>45</u>	Motion for Summary Judgment of <i>Def Harlow and Memorandum in Support</i> . Oral Argument requested. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 03/28/2014)
03/28/2014	<u>46</u>	Declaration of Brooks E. Harlow <i>in Support of his Motion for Summary Judgment</i> . Filed by Brooks L Harlow. (Related document(s): Motion for Summary Judgment <u>45</u> .) (Attachments: # <u>1</u> Exhibit 1) (Blackhurst, Steven) (Entered: 03/28/2014)
03/28/2014	<u>47</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Motion for Summary Judgment</i> . Filed by Brooks L Harlow. (Related document(s): Motion for Summary Judgment <u>45</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8) (Blackhurst, Steven) (Entered: 03/28/2014)
03/28/2014	<u>48</u>	Request for Judicial Notice of <i>Defendant Brooks Harlow Motion for Summary Judgment <u>45</u></i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 03/28/2014)
03/28/2014	<u>49</u>	Declaration of Jeff M. Peterson <i>in Support of Def's Motion for Summary Judgment and Request for Judicial Notice</i> . Filed by Brooks L Harlow. (Related document(s): Request for Judicial Notice <u>48</u> , Motion for Summary Judgment <u>45</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6) (Blackhurst, Steven) (Entered: 03/28/2014)
04/17/2014	<u>50</u>	Motion for Extension of Time to File a Response/Reply to Motion for Summary Judgment of <i>Def Harlow and Memorandum in Support <u>45</u></i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 04/17/2014)
04/21/2014	51	ORDER by Judge Anna J. Brown. The Court GRANTS Plaintiffs' Motion <u>50</u> to Extend Time to File Response to Defendant's Motion for Summary Judgment. Plaintiffs' response to Defendant's Motion for Summary Judgment <u>45</u> is due 5/9/14, and Defendant's reply in support of his Motion is due 5/27/14. The Court will take Defendant's Motion <u>45</u> for Summary Judgment and Defendant's Request for Judicial Notice <u>48</u> under advisement on 5/27/14. (bb) (Entered: 04/21/2014)
05/09/2014	<u>52</u>	Response in Opposition to Motion for Summary Judgment of <i>Def Harlow and Memorandum in Support <u>45</u></i> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Supporting Pltfs Memo, # <u>2</u> Attachment Supporting Pltfs Memo, # <u>3</u> Attachment Supporting Pltfs Memo, # <u>4</u> Attachment Supporting Pltfs Memo, # <u>5</u> Attachment Supporting Pltfs Memo) (Patrick, Franklin) (Entered: 05/09/2014)
05/27/2014	<u>53</u>	Reply <i>Memorandum</i> to Motion for Summary Judgment of <i>Def Harlow and Memorandum in Support <u>45</u></i> Oral Argument requested. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 05/27/2014)
07/25/2014	<u>54</u>	ORDER: The Court directs the parties to submit no later than August 8, 2014, simultaneous supplemental memoranda not to exceed 8 pages in length addressing the issue of whether the Court should dismiss this matter because Plaintiffs claim is not ripe. No further briefing will permitted, and the Court will advise the parties after August 8, 2014, whether oral argument will be helpful to the Court to resolve the

		ripeness question, and, if necessary, the merits of Defendants Motion (#45) and Request (#48). Signed on 7/25/14 by Judge Anna J. Brown. (eo) (Entered: 07/25/2014)
08/08/2014	<u>55</u>	Supplement <i>al Memorandum Regarding Ripeness</i> . Filed by Brooks L Harlow. (Related document(s): Request for Judicial Notice <u>48</u> , Motion for Summary Judgment <u>45</u> .) (Blackhurst, Steven) (Entered: 08/08/2014)
08/08/2014	<u>56</u>	Memorandum in Support of <i>Plaintiffs Position on Ripeness</i> . Filed by All Plaintiffs. (Related document(s): Order on motion for stay,,,,, 42 , Scheduling, 44 , Scheduling,, <u>54</u> .) (Patrick, Franklin) (Entered: 08/08/2014)
08/12/2014	57	Order by Judge Anna J. Brown. The Court has reviewed the parties recent briefing <u>55</u> , <u>56</u> regarding the question whether Plaintiffs' legal malpractice claims are ripe. The Court concludes oral argument would be helpful to the Court in resolving that question and if necessary the issues raised in Defendants' Motion for Summary Judgment <u>45</u> and Request for Judicial Notice <u>48</u> . Accordingly, the Clerk will be contacting counsel to set a date for oral argument on all of these matters at the earliest, mutually available date for all concerned. (bb) (Entered: 08/12/2014)
08/15/2014	58	Scheduling Order by Judge Anna J. Brown. The Court has reviewed the parties recent briefing <u>55</u> , <u>56</u> regarding the question whether Plaintiffs' legal malpractice claims are ripe. The Court concludes oral argument would be helpful to the Court in resolving that question and addressing any other issues that are ready for resolution in Defendants' Motion for Summary Judgment <u>45</u> and Request for Judicial Notice <u>48</u> . Therefore, Oral Argument is SET for 8/27/2014 at 01:30 PM in Portland Courtroom 14A before Judge Anna J. Brown. Ordered by Judge Anna J. Brown. (bb) (Entered: 08/15/2014)
08/27/2014	59	MINUTES of Proceedings: Oral Argument on Motion for Summary Judgment <u>45</u> and Request for Judicial Notice <u>48</u> . Simultaneously filed supplemental briefs not to exceed 10 pages are due not later than 09/04/2014 by NOON. Frank Patrick present as counsel for plaintiff(s). Steven Blackhurst, Jeffrey Peterson present as counsel for defendant(s). Court Reporter: Amanda LeGore. Judge Anna J. Brown presiding. (Related document(s): Request for Judicial Notice <u>48</u> , Motion for Summary Judgment <u>45</u> .) (bb) (Entered: 08/28/2014)
09/04/2014	<u>60</u>	Supplement <i>Plaintiffs' Memo on SOL and Underlying Case</i> . Filed by All Plaintiffs. (Related document(s): Scheduling,, <u>54</u> , Scheduling,, 58 , Scheduling,, 57 .) (Patrick, Franklin) (Entered: 09/04/2014)
09/04/2014	<u>61</u>	Second Supplement <i>al Memorandum in Support of Defendant's Motion for Summary Judgment</i> . Filed by Brooks L Harlow. (Related document(s): Request for Judicial Notice <u>48</u> , Motion for Summary Judgment <u>45</u> .) (Blackhurst, Steven) (Entered: 09/04/2014)
09/05/2014	<u>62</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Oral Argument held on August, 27, 2014 before Judge Anna J. Brown, Court Reporter Amanda M. LeGore, telephone number 503-326-8184. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER-See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript is due by 9/15/2014. Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/9/2014. Release of Transcript Restriction set for 12/8/2014. (LeGore, Amanda) (Entered: 09/05/2014)
09/23/2014	<u>63</u>	Opinion and Order: The Court GRANTS Defendants Request <u>48</u> for Judicial Notice and DENIES Defendants Motion <u>45</u> for Summary Judgment. The Court also directs the parties to confer and to submit a Joint Status Report no later than October 17, 2014, to present their recommendations for case-management procedures and their proposed dates for the efficient resolution of this matter within a reasonable time. See attached Opinion and Order for full text. Signed on 09/23/2014 by Judge Anna J. Brown. (bb) (Entered: 09/23/2014)
10/17/2014	<u>64</u>	Joint Status Report of <i>Counsel In response to Court Order Dkt #63.</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 10/17/2014)
10/17/2014	65	Order by Judge Anna J. Brown. As requested by the parties <u>64</u> , the Court extends to November 10, 2014, the deadline for the parties to submit their jointly proposed

		case-management schedule. (bb) (Entered: 10/17/2014)
11/10/2014	<u>66</u>	Proposed Joint Case Management Schedule . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 11/10/2014)
11/10/2014	<u>67</u>	Joint Status Report <i>Plaintiffs Position on Court Request Order Dkt #63</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 11/10/2014)
11/17/2014	68	Order by Judge Anna J. Brown. The Court has reviewed Plaintiffs' Position <u>67</u> on Case Management and Defendant Harlow's Proposal <u>66</u> for Case Management Schedule. Although the Court directed the parties to file a "joint status report" and a "jointly proposed case-management schedule," the parties, nevertheless, filed separate statements. The parties should note a "joint" filing means a single filing in which the parties may express disparate views if they are unable to agree on the subjects reflected in the filing. Accordingly, when a "joint" filing is required of the parties in the future, the Court expects the parties to make a single, "joint" filing. Having considered the parties' separate statements, and in the exercise of its case-management discretion, the Court concludes as long as this legal malpractice action is pending, discovery should proceed at least as to the liability facts underlying Plaintiffs' legal malpractice allegations (which facts are not subject to change as a result of the related, pending matters and appeals). If Plaintiffs wish to defer discovery until after the related matters are sufficiently determined, then Plaintiffs shall, after additional conferral with Defendant's counsel, file a motion to that end no later than November 25, 2014. If Plaintiffs do not file any such motion by November 25, 2014, the parties shall proceed with and complete fact discovery on the liability issues underlying Plaintiffs' malpractice allegations. Because it does not appear to the Court that eight months would be needed for that purpose, the Court sets April 10, 2015, as (a) the deadline to complete fact discovery and (b) the deadline to file a single, joint status report reflecting the parties' proposals for additional case-management dates. The Court also directs the parties to file a joint status report if significant developments in related matters arise at any time before April 10, 2015. Finally, the last date to file any fact-discovery motion is March 25, 2015, and the response to any such motion is due within seven (7) calendar days. Because replies are not permitted on discovery motions, the Court emphasizes the parties must confer on any discovery dispute before filing a discovery motion. (bb) (Entered: 11/17/2014)
11/25/2014	<u>69</u>	Motion for Stay of Case and to Defer Discovery. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 11/25/2014)
11/25/2014	<u>70</u>	Declaration of Franklin G. Patrick <i>Plaintiffs counsel</i> . Filed by All Plaintiffs. (Related document(s): Motion for Stay <u>69</u> .) (Attachments: # <u>1</u> Exhibit Oregon PUC Docket, # <u>2</u> Exhibit Defendants Billing History, # <u>3</u> Exhibit Defendants Invoice, # <u>4</u> Exhibit Defendant's Letter, # <u>5</u> Exhibit Oregon PUC Granting Qwest SJM) (Patrick, Franklin) (Entered: 11/25/2014)
11/26/2014	71	Order by Judge Anna J. Brown. Defendant's response to Plaintiffs' Opposed Motion to Stay the Case and Defer Discover <u>69</u> is due 12/9/2014. No reply is permitted. The Court will determine whether oral argument is necessary after receiving defendant's response. (bb) (Entered: 11/26/2014)
12/09/2014	<u>72</u>	Response in Opposition to Motion for Stay of Case and to Defer Discovery <u>69</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 12/09/2014)
12/09/2014	<u>73</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Memorandum in Opposition to Plaintiffs' Motion to Stay</i> . Filed by Brooks L Harlow. (Related document(s): Motion for Stay <u>69</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Blackhurst, Steven) (Entered: 12/09/2014)
12/12/2014	<u>74</u>	Objection(s) to <u>72</u> Response in Opposition to Motion, <u>73</u> Declaration, <i>pursuant to LR 56-1 for violation of FRE 408</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 12/12/2014)
01/20/2015	<u>75</u>	ORDER: The Court DENIES Plaintiffs' Motion <u>69</u> for Stay of Case and to Defer Discovery. The Clerk will contact the parties to set a scheduling conference. The parties must submit a jointly proposed case-management schedule at least two business days before the conference. Signed on 01/20/2015 by Judge Anna J. Brown. See attached 3 page Order for full text. (bb) (Entered: 01/20/2015)

02/02/2015	76	Scheduling Order by Judge Anna J. Brown. Telephonic Scheduling Conference is SET for 2/10/2015 at 10:00 AM i before Judge Anna J. Brown. Ordered by Judge Anna J. Brown. The parties are directed to submit a jointly proposed case-management schedule at least two business days before the conference. Counsel notified of the conference call in number by email. (bb) (Entered: 02/02/2015)
02/02/2015	<u>77</u>	Motion for Stay . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 02/02/2015)
02/02/2015	<u>78</u>	Affidavit of Frank G. Patrick in Support of Motion . Filed by All Plaintiffs. (Related document(s): Motion for Stay <u>77</u> .) (Attachments: # <u>1</u> Exhibit State Court Complaint) (Patrick, Franklin) (Entered: 02/02/2015)
02/04/2015	79	Order by Judge Anna J. Brown. Defendants' response to Motion for Stay <u>77</u> is due by 2/6/2015. Counsel to submit a proposed case-management schedule by 02/06/2015 for the hearing set on 2/10/2015. (bb) (Entered: 02/04/2015)
02/06/2015	<u>80</u>	Response in Opposition to Motion for Stay <u>77</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 02/06/2015)
02/06/2015	<u>81</u>	Joint Status Report <i>Discovery Order</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 02/06/2015)
02/10/2015	82	MINUTES of Proceedings: The Court held a telephonic Rule 16 scheduling scheduling conference. The Court finds further briefing on Plaintiffs' Motion <u>77</u> for Stay is unnecessary. For the reasons stated on the record, the Court DENIES Plaintiffs' Motion <u>77</u> for Stay. The parties are to proceed with fact discovery on Plaintiffs' attorney-malpractice claim as to the elements of duty and breach. The parties shall complete fact discovery as to duty and breach no later than June 10, 2015. The parties shall file any discovery motions concerning the issues of duty and breach no later than May 22, 2015, with responses to any such motions due within seven (7) calendar days of the initiating motion and no replies permitted unless invited by the Court. The parties shall file a joint status report no later than June 17, 2015, detailing their calendaring proposals for next steps in this matter. The parties shall promptly notify the Court of any material developments in related litigation by way of a single joint filing. Frank Patrick present as counsel for plaintiff(s). Jeffrey Peterson, Steven Blackhurst present as counsel for defendant(s). Court Reporter: Amanda LeGore. Judge Anna J. Brown presiding. (bb) (Entered: 02/10/2015)
04/02/2015	<u>83</u>	Motion for Extension of Discovery & PTO Deadlines . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 04/02/2015)
04/02/2015	<u>84</u>	Declaration of Franklin G. Patrick . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Discovery & PTO Deadlines <u>83</u> .) (Patrick, Franklin) (Entered: 04/02/2015)
04/03/2015	85	Order by Judge Anna J. Brown. Defendant's response to Plaintiff's Motion for Extension of Discovery & PTO Deadlines <u>83</u> is due no later than 04/10/2015 by NOON. (bb) (Entered: 04/03/2015)
04/10/2015	<u>86</u>	Defendant Harlow's Motion to File under Seal His Response to Plaintiffs' Motion to Extend Time and Supporting Documents. Filed by Brooks L Harlow. (dsg) (Entered: 04/10/2015)
04/10/2015	87	ORDER by Judge Anna J. Brown. Granting Defendant Harlow's Motion to File under Seal His Response to Plaintiffs' Motion to Extend Time and Supporting Documents <u>86</u> . The Clerk is directed to file response under seal. (bb) (Entered: 04/10/2015)
04/10/2015	<u>90</u>	Declaration of Jeff M. Peterson in Opposition to Plaintiffs' Motion to Extend Time (DOCUMENT FILED UNDER SEAL). Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion, (DOCUMENT FILED UNDER SEAL) 89 .) (dsg) (Entered: 04/14/2015)
04/13/2015	88	ORDER by Judge Anna J. Brown. The Court has completed its consideration of Plaintiffs' Motion <u>83</u> for Extension of Time and Defendant's Response thereto. In the exercise of its discretion, the Court concludes Plaintiffs' technically untimely responses to Defendant's First Request for Production and Second Set of Interrogatories should be excused, and, therefore, the Court GRANTS Plaintiffs'

		Motion to the extent that the Court deems the responses timely filed. The Court, however, also acknowledges Defendant's view that Plaintiffs' responses were in some measure frivolous and did not substantively respond to Defendant's discovery requests. The Court directs counsel for both parties to confer again, and, to the extent that any discovery issues remain after that new conferral, the parties must file, no later than Noon on April 20, 2015, a Joint Discovery Report that concisely enumerates each discovery issue on which a ruling is sought together with a concise statement of each party's position as to that issue. The Court will seek to resolve any such disputes based on the record and not schedule the matter for oral argument. (bb) (Entered: 04/13/2015)
04/20/2015	<u>91</u>	Joint Status Report <i>Discovery</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 04/20/2015)
04/23/2015	<u>92</u>	Order. The Court OVERRULES Plaintiffs' objection to Defendant's requested discovery on the basis that this Court lacks subject-matter jurisdiction. Issues related to waiver of attorney-client privilege must be raised in a formal discovery motion no later than 5/22/2015. Because Plaintiffs have not identified any specific discovery requests that Plaintiffs contend are unduly burdensome, the Court OVERRULES Plaintiffs' objection on this basis. See order for full text. Signed on 4/23/15 by Judge Anna J. Brown. (dls) (Entered: 04/24/2015)
05/20/2015	<u>93</u>	Motion to Compel <i>and Supporting Memorandum</i> . Filed by Brooks L Harlow. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Blackhurst, Steven) (Entered: 05/20/2015)
05/27/2015	<u>94</u>	Notice of Attorney Withdrawal: <i>Jeff M. Peterson for Defendant Brooks Harlow</i> Filed by Brooks L Harlow (Blackhurst, Steven) (Entered: 05/27/2015)
06/01/2015	<u>95</u>	Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>and Supporting Memorandum</i> <u>93</u> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 06/01/2015)
06/01/2015	<u>96</u>	Declaration of Franklin G. Patrick . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion <u>95</u> .) (Patrick, Franklin) (Entered: 06/01/2015)
06/02/2015	97	ORDER by Judge Anna J. Brown. Granting Plaintiffs' Motion <u>95</u> and Memorandum to Extend Time to File Response to Defendant's Motion to Compel Production <u>93</u> . Plaintiff's response to Defendant's Motion to Compel Production <u>93</u> is now due 6/8/2015. (bb) (Entered: 06/02/2015)
06/03/2015	<u>98</u>	Notice re Motion to compel <u>93</u> <i>Correction of Citation</i> Filed by Brooks L Harlow (Related document(s): Motion to compel <u>93</u> .) (Blackhurst, Steven) (Entered: 06/03/2015)
06/03/2015	<u>99</u>	Joint Motion for Extension of Discovery & PTO Deadlines . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 06/03/2015)
06/08/2015	<u>100</u>	Response in Opposition to Motion to Compel <i>and Supporting Memorandum</i> <u>93</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Attachment Certificate of Service) (Patrick, Franklin) (Entered: 06/08/2015)
06/10/2015	101	ORDER by Judge Anna J. Brown. Granting Motion for Extension of Discovery & PTO Deadlines <u>99</u> . The Court relieves the parties of the current case-management deadlines including the status report due 06/17/2015. The Court will set new case-management deadlines at the conclusion of the oral argument on the Motion to Compel <u>93</u> which the Court SETS for 6/24/2015 at 02:30 PM in Portland Courtroom 14A before Judge Anna J. Brown. Court directs the parties to file a jointly proposed case-management schedule no later than NOON on 6/22/2015 for the Court to consider at the hearing on 6/24/2015. (bb) (Entered: 06/10/2015)
06/16/2015	<u>102</u>	Notice of Association of Attorney Steven K. Blackhurst,Lori Irish Bauman for Brooks L Harlow. Filed by Brooks L Harlow (Blackhurst, Steven) (Entered: 06/16/2015)
06/22/2015	<u>103</u>	Proposed Joint Case Management Schedule . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 06/22/2015)

06/24/2015	104	MINUTES of Proceedings: Oral Argument on Motion to Compel <u>93</u> . Motion denied with leave to renew after partitioned analysis. Close of discovery extended to September 30, 2015. Frank Patrick present as counsel for plaintiff(s). Steven Blackhurst present as counsel for defendant(s). Court Reporter: Amanda LeGore. Judge Anna J. Brown presiding. (bb) (Entered: 06/29/2015)
07/06/2015	105	Order by Judge Anna J. Brown. After a full review of the parties' submissions on Defendant's Motion <u>93</u> to Compel and having conducted oral argument on Defendant's Motion on June 24, 2015, the Court concludes the record is not sufficiently developed to permit the Court to resolve the privilege-waiver issues raised in Defendant's Motion. In particular, although Defendant has demonstrated there may have been a waiver of the attorney-client and/or work-product privileges as to some otherwise confidential communications and information, the Court cannot efficiently determine the scope of that waiver on this record. Accordingly, the Court DENIES Defendant's Motion <u>93</u> to Compel with leave to renew after full conferral with counsel. In any renewed motion to compel, Defendant must provide a detailed and partitioned analysis of the specific factual bases that constitute a waiver of the attorney-client and/or work-product privileges so that the Court can determine the scope of any such waiver as precisely as possible. In light of the time it will take to resolve these issues, the Court extends the deadline for the parties to complete discovery regarding Defendant's statute-of-limitations defense and the elements of duty and breach until September 30, 2015. No later than that date, the parties must file with the Court a single, joint status report regarding the parties' scheduling proposals for the next steps in this matter. (bb) (Entered: 07/06/2015)
09/01/2015	<u>106</u>	Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow. Oral Argument requested. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 09/01/2015)
09/01/2015	<u>107</u>	Declaration of Steven K. Blackhurst in Support of Defendant Brooks Harlow's Renewed Motion to Compel. Filed by Brooks L Harlow. (Related document(s): Motion to compel <u>106</u> , Motion to compel <u>93</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Blackhurst, Steven) (Entered: 09/01/2015)
09/09/2015	<u>108</u>	Unopposed Motion for Extension of Discovery & PTO Deadlines . Filed by Brooks L Harlow. (Bauman, Lori) (Entered: 09/09/2015)
09/09/2015	<u>109</u>	Unopposed Motion for Extension of Time to File a Response/Reply to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> . Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 09/09/2015)
09/09/2015	<u>110</u>	Unopposed Declaration of Franklin G. Patrick . Filed by All Plaintiffs. (Related document(s): Motion to compel <u>106</u> .) (Patrick, Franklin) (Entered: 09/09/2015)
09/10/2015	111	ORDER: The Court acknowledges receipt of Plaintiff's unopposed Motion <u>109</u> to Extend Time to File Response to Motion <u>106</u> to Compel. The Court points out that Local Rule 1-4 provides the Court with the authority to set deadlines that supersede the deadlines provided in the Local Rules as follows: "In the interest of justice, a judge may suspend or modify the application of these rules in an individual case or group of cases." The Court also points out that the Court's inherent authority to modify deadlines is apparent through the Local Rules and the Federal Rules of Civil Procedure in the following language: "Unless otherwise directed by the Court..." and "Unless otherwise ordered by the Court..." See, e.g., LR 7-1(f), LR 26-2, LR 26-3(c), LR 37-2. It is this Court's practice to set a 7-day response deadline for discovery motions, See Court Order #82 issued 2/10/2015; Court Order #68 issued 11/17/2014. Nevertheless, because of Plaintiff's misunderstanding, the Court GRANTS Plaintiff's unopposed Motion <u>109</u> to Extend Time to File Response to Motion to Compel <u>106</u> . Plaintiff has until 9/15/2015 to file its response. The Motion will be taken under advisement on 9/15/2015. Ordered by Judge Anna J. Brown. (sm) (Entered: 09/10/2015)
09/15/2015	<u>112</u>	Motion for Extension of Time . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 09/16/2015)

09/16/2015	<u>113</u>	Response by <i>Plaintiffs</i> to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Pltfs Notated Chart) (Patrick, Franklin) (Entered: 09/16/2015)
09/16/2015	<u>114</u>	ORDER by Judge Anna J. Brown. The Court has completed its consideration of Defendant Brooks Harlow's Unopposed Motion <u>108</u> to Extend Discovery Deadline and, for the reasons expressed in Defendant's Unopposed Motion, extends until 11/30/2015, the deadline for the parties to complete discovery regarding Defendant's statute-of-limitations defense and the elements of duty and breach. No later than 11/30/2015, the parties must file with the Court a single, joint status report regarding the parties' scheduling proposals for the next steps in this matter. As a result of this extension, the parties need not file a joint status report on September 30, 2015 as previously ordered <u>105</u> . (bb) (Entered: 09/16/2015)
09/16/2015	<u>115</u>	ORDER by Judge Anna J. Brown. Granting Plaintiff's Motion and Memorandum to Extend Time to Complete Filing of Response <u>112</u> . Court deems Plaintiff's Response <u>113</u> to Motion to Compel as timely filed. (bb) (Entered: 09/16/2015)
09/18/2015	<u>116</u>	Order by Judge Anna J. Brown regarding Defendant's Motion to Compel <u>106</u> . Plaintiffs' supplemental Response is due by Noon, 10/2/2015. Defendant's Reply is due by Noon, 10/16/2015. (See full Order). (sm) (Entered: 09/18/2015)
10/02/2015	<u>117</u>	Motion for Extension of Time to File a Response/Reply <i>Supplemental as per Order Dkt #116</i> to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> . Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 10/02/2015)
10/02/2015	<u>118</u>	Declaration of Franklin G. Patrick . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>117</u> .) (Patrick, Franklin) (Entered: 10/02/2015)
10/05/2015	<u>119</u>	ORDER by Judge Anna J. Brown. The Court GRANTS Plaintiffs' Unopposed (per defense counsel) Motion <u>117</u> to Extend Time to File Supplemental Response to Defendant's Renewed Motion to Compel <u>106</u> . Plaintiff's supplemental response is due 10/7/15, and Defendant's reply is due 10/21/15. The Motion will be taken under advisement on 10/21/15. All other dates previously set by the Court remain in effect. (bb) (Entered: 10/05/2015)
10/07/2015	<u>120</u>	Supplemental Response in Opposition <i>Defendant's Renewed Motion</i> to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Ex A, Objection Spreadsheet) (Patrick, Franklin) (Entered: 10/07/2015)
10/08/2015	<u>121</u>	Amended Supplemental Response (amending docket #120) <i>Objection</i> to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> Oral Argument requested. Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit "A" Spreadsheet) (Patrick, Franklin) Modified on 10/8/2015 (bb). (Entered: 10/08/2015)
10/21/2015	<u>122</u>	Reply of Defendant in Further Support to Motion to Compel (<i>Renewed</i>) and Supporting Memorandum of Defendant Brooks Harlow <u>106</u> . Filed by Brooks L Harlow. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Blackhurst, Steven) (Entered: 10/21/2015)
10/30/2015	<u>123</u>	ORDER: The Court GRANTS in Part and DENIES in Part Motion to Compel <u>106</u> .Plaintiffs and Plaintiffs' counsel must provide the discovery the Court compels in this Order no later than Noon on November 16, 2015. Signed on 10/30/2015 by Judge Anna J. Brown. See attached 7 page Order for full text. (bb) (Entered: 10/30/2015)
11/16/2015	<u>124</u>	Motion for Extension of Time <i>to Comply with Dkt 123 Order</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 11/16/2015)
11/16/2015	<u>125</u>	Declaration in Support of Motion <i>to Extend time to Comply with Order Dkt 123</i> . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time <u>124</u> .) (Patrick, Franklin) Modified on 11/19/2015 to correct docket text (dsg). (Entered: 11/16/2015)
11/19/2015	<u>126</u>	Response in Opposition to Motion for Extension of Time <i>to Comply with Dkt 123 Order</i> <u>124</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 11/19/2015)

11/24/2015	127	ORDER by Judge Anna J. Brown. The Court has completed its review of Plaintiffs' Motion <u>124</u> for Extension of Time, to which Defendant objects. The Court grants in part Plaintiffs' Motion as follows. The Court notes Plaintiffs have not produced anything in response to the Court's Order Compelling Discovery (<u>123</u> , and Plaintiffs assert they need more time for counsel to work with his "discovery expert" for the production of "voluminous" discovery, but Plaintiffs do not make any showing why they cannot immediately produce that which they have already identified as within the scope of the Court's Order <u>123</u> . Accordingly, the Court orders Plaintiff to produce no later than Noon on November 25, 2015, that which they have already identified as within the scope of the Court's Order and currently in Plaintiffs' possession. Nevertheless, the Court grants Plaintiffs an extension of time to no later than 5:00 p.m. on December 2, 2015, to produce all remaining documents that Plaintiffs have yet to locate and that fall within the scope of the Court's Order <u>123</u> compelling production. The Court expects Plaintiffs to meet these new deadlines without exception and notes it will not permit Plaintiffs any additional extensions of time to comply with the Court's Order <u>123</u> compelling production of documents. The parties' Joint Proposed Case-Management Report is also now due no later than 12/2/15. (bb) Modified to correct bolded text on 11/24/2015 (jtj). (Entered: 11/24/2015)
12/02/2015	<u>128</u>	Joint Status Report . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 12/02/2015)
12/04/2015	129	Order by Judge Anna J. Brown. The Court has fully considered the parties' Joint Status Report <u>128</u> in which they request an extension to February 1, 2016, of the deadline to complete discovery on the issues of duty, breach and statute of limitations. The Court GRANTS that request and directs the parties to file, no later than February 1, 2016, a Jointly Proposed Case Management Schedule outlining their proposed deadlines for any necessary filings and proceedings to resolve these same issues of duty, breach and statute of limitations. (bb) (Entered: 12/04/2015)
01/26/2016	<u>130</u>	Proposed Joint Case Management Schedule . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/26/2016)
02/22/2016	<u>131</u>	Motion to Quash <i>Opposed</i> . Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 02/22/2016)
02/22/2016	<u>132</u>	Affidavit of Frank Patrick in Support of Motion <i>to Quash</i> . Filed by All Plaintiffs. (Related document(s): Motion to Quash <u>131</u> .) (Attachments: # <u>1</u> Exhibit Ex A to SDT and Declaration) (Patrick, Franklin) (Entered: 02/22/2016)
02/24/2016	133	Order by Judge Anna J. Brown. Defendant's response to Plaintiff's Motion to Quash Subpoena Duces Tecum <u>131</u> is due 3/7/16. No reply permitted. The Court will take the motion under advisement on 3/7/16. (bb) (Entered: 02/24/2016)
02/26/2016	134	The Court has fully considered the parties' Joint Joint Proposed Case-Management Schedule <u>130</u> in which they request an extension to 4/29/2016, of the deadline to complete discovery on the issues of duty, breach and statute of limitations. The Court GRANTS that request and directs the parties to file, no later than 4/29/2016, a Jointly Proposed Case Management Schedule outlining their proposed deadlines for any necessary filings and proceedings to resolve these same issues of duty, breach and statute of limitations. (bb) (Entered: 02/26/2016)
03/04/2016	<u>135</u>	Unopposed Motion for Leave <i>to File Under Seal Response to Plaintiffs' Motion to Quash and Supporting Documents</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 03/04/2016)
03/07/2016	136	ORDER by Judge Anna J. Brown. Granting Defendant Brooks Harlow's Unopposed Motion <u>135</u> for Leave to File Under Seal his Response to Plaintiffs' Motion to Quash and Supporting Documents. (bb) (Entered: 03/07/2016)
03/07/2016	<u>137</u>	Response to Motion to Quash <i>Opposed</i> <u>131</u> , (DOCUMENT FILED UNDER SEAL) . Filed by Brooks L Harlow. (dsg) (Entered: 03/08/2016)
03/07/2016	<u>138</u>	Declaration of Rebecca Turenne (DOCUMENT FILED UNDER SEAL) . Filed by Brooks L Harlow. (Related document(s): Response to Motion, (DOCUMENT FILED UNDER SEAL) <u>137</u> .) (dsg) (Entered: 03/08/2016)

03/07/2016	<u>139</u>	Declaration of Sarah Houser, (DOCUMENT FILED UNDER SEAL) . Filed by Brooks L Harlow. (Related document(s): Response to Motion, (DOCUMENT FILED UNDER SEAL) <u>137</u> .) (Attachments: # <u>1</u> Exhibits 1–5, # <u>2</u> Exhibits 6–9, # <u>3</u> Exhibits 10–16) (dsg) (Entered: 03/08/2016)
03/14/2016	140	Order by Judge Anna J. Brown. The Court directs Plaintiffs to file a reply in support of their Motion <u>131</u> to Quash Subpoena Duces Tecum no later than 3/25/16. The subpoenaed attorneys have a right to appear at the hearing and to address the issues directly to the Court. The Clerk, therefore, will set oral argument at a time after 4/8/16 that is convenient to both the parties and the subpoenaed attorneys. The Court directs Plaintiffs' counsel to provide the subpoenaed attorneys with a copy of this Order promptly and to file with the Court a Notice that he has done so. The Court will then set a hearing. (bb) (Entered: 03/14/2016)
03/23/2016	<u>141</u>	Certificate of Compliance <i>with Court Order Dkt 140</i> . Filed by All Plaintiffs. (Related document(s): Scheduling,, 140 .) (Patrick, Franklin) (Entered: 03/23/2016)
03/24/2016	<u>142</u>	Unopposed Motion for Leave <i>to File Reply Under Seal</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 03/24/2016)
03/25/2016	<u>143</u>	Unopposed Motion for Extension of Time to File a Response/Reply <i>to Defendant's Response</i> to Motion to Quash <i>Opposed 131</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 03/25/2016)
03/28/2016	144	ORDER by Judge Anna J. Brown. Granting Plaintiff's Motion for Leave <u>142</u> to File Reply to Motion to Quash <u>131</u> under seal. (bb) (Entered: 03/28/2016)
03/28/2016	145	ORDER by Judge Anna J. Brown. Granting Motion for Extension of Time to File Reply to Motion to Quash <u>131</u> . Reply is due by 3/29/2016. (bb) (Entered: 03/28/2016)
03/29/2016	<u>147</u>	Reply to Motion to Quash <i>Opposed 131</i> Oral Argument requested, (DOCUMENT FILED UNDER SEAL) . Filed by Communication Management Services, LLC, Corban Technologies, Inc., Davel Communications, NSC Communications Public Services Corporation, National Payphone Services, LLC, Pacific Northwest Payphones, Partners in Communication, T & C Management, LLC, Valley Pay Phones. (dsg) (Entered: 03/30/2016)
03/30/2016	146	Scheduling Order by Judge Anna J. Brown. Oral Argument on Motion to Quash <u>131</u> is SET for 4/14/2016 at 09:00 AM in Portland Courtroom 14A before Judge Anna J. Brown. Three out of the four attorneys who received a subpoena have informed the Court and counsel of record that they do not intend to appear. The Court is not requiring them to appear. (bb) (Entered: 03/30/2016)
04/12/2016	<u>148</u>	ORDER: The Court GRANTS Plaintiffs Motion <u>131</u> to Quash and QUASHES the subpoenas issued by Defendant to attorneys Peter Jarvis, Michael Ratoza, Michael Greene, and John J. Tollefsen. Signed on 04/12/2016 by Judge Anna J. Brown. See attached 4 page Order. (bb) (Entered: 04/12/2016)
04/12/2016	149	Order by Judge Anna J. Brown. Oral Argument set for 04/14/2016 is STRICKEN. (bb) (Entered: 04/12/2016)
04/28/2016	<u>150</u>	Joint Motion for Extension of Discovery & PTO Deadlines . Filed by Communication Management Services, LLC. (Patrick, Franklin) (Entered: 04/28/2016)
04/29/2016	151	ORDER: The Court GRANTS the Jointly Filed Motion <u>150</u> Proposing a Case Management Schedule on the basis that the parties need additional time to review and to complete discovery as to statute of limitations, duty, and breach because of electronic document production problems and additional time to conduct depositions. Discovery deadline is extended to 8/1/16. A joint status report to include proposed case-management dates is also due 8/1/16. Ordered by Judge Anna J. Brown. (dls) (Entered: 04/29/2016)
07/25/2016	<u>152</u>	Motion for Extension of Discovery & PTO Deadlines . Filed by Brooks L Harlow. (Blackhurst, Steven) Modified on 7/27/2016 to correct event (dsg). (Entered: 07/25/2016)
08/01/2016	153	ORDER by Judge Anna J. Brown. The Court GRANTS the Jointly Filed Motion <u>152</u> Proposing a Case Management Schedule on the basis that the parties need additional time to review and to complete discovery as to statute of limitations, duty,

		and breach because of electronic document production problems and additional time to conduct depositions. Discovery deadline is extended to 10/31/16. A joint status report to include proposed case-management dates is also due 10/31/16. (bb) (Entered: 08/01/2016)
08/05/2016	154	Order by Judge Anna J. Brown. In light of the decision of the Oregon Court of Appeals in Northwest Public Communications Council v. Qwest, the Court directs the parties to confer and to submit no later than August 26, 2016, a single, joint status report with the parties' assessments of the impact of this decision on the existing case-management schedule in this matter. (bb) (Entered: 08/05/2016)
08/26/2016	<u>155</u>	Joint Joint Status Report . Filed by Communication Management Services, LLC. (Patrick, Franklin) (Entered: 08/26/2016)
09/01/2016	156	Scheduling Order by Judge Anna J. Brown. Telephonic Hearing on the parties' Jointly Filed Status Report is SET for 9/16/2016 at 10:30 AM before Judge Anna J. Brown. (bb) (Entered: 09/01/2016)
09/13/2016	157	Scheduling Order by Judge Anna J. Brown. Discovery Hearing set for 09/16/2016 is VACATED and is RESET for 9/23/2016 at 01:30 PM in Portland by telephone before Judge Anna J. Brown. Parties to use the conference call in number previously provided. (bb) (Entered: 09/13/2016)
09/23/2016	158	MINUTES of Proceedings: Status Hearing. Joint Status Report on progress of discovery due 11/30/2016. All fact discovery to be completed by 3/31/2017 with a limitation as to Plaintiff's discovery related to Russ Bretan. The last date to file any fact discovery motion is due 2/28/2017, and responses to such motions are due no later than seven (7) calendar days after the initiating motion is filed; no replies are permitted for discovery motions. Joint Statement of Agreed Facts due 4/10/2017. Dispositive motions due 4/24/2017. Any cross-motion is due on the day that the opposition is due and is to be filed as a separate, stand-alone motion. Frank Patrick present as counsel for plaintiff(s). Steven Blackhurst present as counsel for defendant(s). Court Reporter: Amanda LeGore. Judge Anna J. Brown presiding. (bb) (Entered: 09/26/2016)
10/19/2016	<u>159</u>	Stipulation <i>Allowing Defendant to File an Amended Answer</i> by Brooks L Harlow. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/19/2016)
10/19/2016	<u>160</u>	Amended Answer to Complaint <i>Amended Answer to Third Amended Complaint (DKT 31)</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/19/2016)
10/21/2016	161	Order by Judge Anna J. Brown. The Court accepts the parties Stipulation Allowing Defendant to File an Amended Answer <u>159</u> . Amended Amended Answer to Third Amended Complaint was filed 10/19/2016 <u>160</u> . (bb) (Entered: 10/21/2016)
11/30/2016	<u>162</u>	Joint Status Report . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 11/30/2016)
12/07/2016	<u>163</u>	Proposed Joint Case Management Schedule <i>regarding Expert Witness Disclosures and Expert Discovery</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 12/07/2016)
12/13/2016	164	Order by Judge Anna J. Brown. The Court has reviewed the parties' Proposed Jointly Filed Case Management Schedule <u>163</u> , adopts each of the proposed deadlines set out therein, and hereby vacates the previous case-management schedule. The Court reminds the parties to the extent that they wish to file cross-motions for summary judgment, only one party may file such motion by the July 31, 2017, deadline, and the other party may file a separate cross-motion for summary judgment on the date that party's separate opposition to the first-filed motion is due. (bb) (Entered: 12/13/2016)
12/16/2016	165	Order by Judge Anna J. Brown. The Court adopted the parties' jointly filed Case-Management Schedule and sets the following deadlines: Fact discovery to be completed by 3/31/2017 with a limitation as to Plaintiff's discovery related to Russ Bretan. The last date to file any fact discovery motion is due 2/28/2017, and responses to such motions are due no later than seven (7) calendar days after the initiating motion is filed; no replies are permitted for discovery motions. Plaintiff's to submit any expert witness report by 5/15/2017; Defendant to submit any expert witness report by 5/22/2017; Defendant to submit any rebuttal expert witness report by 6/2/2017; and Plaintiff's to submit rebuttal expert witness report by 6/9/2017. Depositions of any

		expert witnesses to be completed by 7/7/2017. Joint Statement of Agreed Facts due 7/17/2017. Dispositive motions due 7/31/2017. Any cross-motion is due on the day that the opposition is due and is to be filed as a separate, stand-alone motion. (bb) (Entered: 12/16/2016)
01/06/2017	<u>166</u>	Unopposed Motion for Protective Order <i>Stipulated</i> . Filed by Brooks L Harlow. (Attachments: # <u>1</u> Exhibit 1) (Blackhurst, Steven) (Entered: 01/06/2017)
01/10/2017	<u>167</u>	STIPULATED PROTECTIVE ORDER: Signed on 1/10/2017 by Judge Anna J. Brown. See attached 9 page Order. (rrr) (Entered: 01/10/2017)
01/26/2017	<u>168</u>	Motion to Compel <i>Production of Documents and Answers to Interrogatories by Plaintiff NSC Communications Public Service Corporation</i> . Oral Argument requested. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/26/2017)
01/26/2017	<u>169</u>	Declaration of Steven Blackhurst <i>in Support of Defendant's Motion to Compel</i> . Filed by Brooks L Harlow. (Related document(s): Motion to compel <u>168</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Blackhurst, Steven) (Entered: 01/26/2017)
02/09/2017	<u>170</u>	Motion for Extension of Time to Motion to Compel <i>Production of Documents and Answers to Interrogatories by Plaintiff NSC Communications Public Service Corporation</i> <u>168</u> ORAL Argument requested. Filed by NSC Communications Public Services Corporation. (Patrick, Franklin) Modified on 2/15/2017 to correct event to Motion for Extension of Time per pleading caption. NEF regenerated (jtj). (Entered: 02/09/2017)
02/09/2017	<u>171</u>	Declaration of Frank G. Patrick . Filed by NSC Communications Public Services Corporation. (Related document(s): Motion for Extension of Time <u>170</u> , Motion to compel <u>168</u> .) (Patrick, Franklin) Modified on 2/15/2017 to link Declaration to Motion for Extension <u>170</u> (jtj). (Entered: 02/09/2017)
02/12/2017	<u>172</u>	Unopposed Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Production of Documents and Answers to Interrogatories by Plaintiff NSC Communications Public Service Corporation</i> <u>168</u> . Filed by NSC Communications Public Services Corporation. (Patrick, Franklin) (Entered: 02/12/2017)
02/12/2017	<u>173</u>	<i>Counsel's</i> Affidavit in Support of Motion . Filed by NSC Communications Public Services Corporation. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>172</u> , Motion to compel <u>168</u> .) (Patrick, Franklin) (Entered: 02/12/2017)
02/14/2017	<u>174</u>	Response in Opposition to Unopposed Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Production of Documents and Answers to Interrogatories by Plaintiff NSC Communications Public Service Corporation</i> <u>168</u> <u>172</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 02/14/2017)
02/14/2017	<u>175</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Response in Opposition to Plaintiffs' Motion to Extend Time to File a Response to Motion to Compel Production</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion, <u>174</u> .) (Blackhurst, Steven) (Entered: 02/14/2017)
02/17/2017	176	ORDER: by Judge Anna J. Brown The Court GRANTS Plaintiff's Unopposed Motion <u>172</u> to Consider its Motion <u>170</u> as timely filed and GRANTS Plaintiff's Motion <u>170</u> to extend time for Plaintiff to respond to Defendant's Motion <u>168</u> to Compel. Plaintiff is directed to respond to Defendant's Motion to Compel no later than 2/23/2017. No further extensions will be allowed. (rrr) (Entered: 02/17/2017)
02/23/2017	<u>177</u>	Motion to Withdraw . Oral Argument requested.Expedited Hearing requested. Filed by NSC Communications Public Services Corporation. (Patrick, Franklin) (Entered: 02/23/2017)
02/23/2017	<u>178</u>	Affidavit of Frank G Patrick in Support of Motion <i>to Withdraw</i> . Filed by NSC Communications Public Services Corporation. (Related document(s): Motion to Withdraw <u>177</u> .) (Patrick, Franklin) (Entered: 02/23/2017)
02/23/2017	<u>179</u>	Notice of filing of motion to withdraw as counsel for plaintiff NSC in lieu of response to motion to compel (# <u>168</u>). Oral Argument requested. Filed by NSC Communications Public Services Corporation. (Patrick, Franklin) Modified docket text

		to match document title on 2/28/2017. (eo) (Entered: 02/23/2017)
02/27/2017	180	Order by Judge Anna J. Brown. The Court has reviewed Mr. Patrick's Motion <u>177</u> to Withdraw as counsel for Plaintiff NSC Communications Public Services Corporation. Counsel states withdrawal is "mandatory" under Oregon and American Bar Association rules of professional conduct, but does not provide a factual basis to the Court to support that conclusion applies in this matter. The Court, therefore, directs Mr. Patrick to file no later than 3/6/2017, a supplemental affidavit that states a factual basis to allow his withdrawal pursuant to these rules. If necessary to preserve client confidentiality, the Court authorizes Mr. Patrick to file this supplemental affidavit ex parte and under seal. In addition, the Court directs Mr. Patrick to specify in his supplemental filing the status of all remaining Plaintiffs, whether counsel proposes to continue to represent any other Plaintiff in this matter, and the address and other contact information for any such Plaintiffs. (rrr) (Entered: 02/27/2017)
02/28/2017	<u>181</u>	Motion for Extension of Discovery & PTO Deadlines <i>Opposing takes no Position</i> . Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 02/28/2017)
02/28/2017	<u>182</u>	Affidavit in Support of Motion of Plaintiffs counsel Frank G. Patrick. Filed by All Plaintiffs. (Related document(s): Motion for Extension of Discovery & PTO Deadlines <u>181</u> .) (Patrick, Franklin) (Entered: 02/28/2017)
03/02/2017	183	ORDER by Judge Anna J. Brown. The Court acknowledges receipt of Plaintiffs Motion <u>181</u> to Amend Scheduling Order and Respective Discovery Deadlines. Plaintiff indicates Defendant takes no position on this Motion. In light of the pending Motion <u>177</u> to Withdraw by Plaintiffs counsel, the still-pending resolution of the matter in the Oregon Court of Appeals, and the on-going discovery issues between the parties, the Court GRANTS Plaintiffs Motion and sets the following new deadlines: deadline to complete fact discovery is extended to 5/30/2017; deadline to file any fact discovery motions is extended to 4/28/2017. The Court directs the parties to file a JOINT Status Report regarding this case no later than 4/19/2017. All other deadlines remain as previously set in the Courts Order 165 . (rrr) (Entered: 03/02/2017)
03/07/2017	<u>184</u>	<i>Sealed Ex Parte</i> Affidavit of Frank G Patrick in Support of Motion <i>To Withdraw for Plaintiff NSC.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Communication Management Services, LLC. (Related document(s): Motion to Withdraw <u>177</u> .) (Patrick, Franklin) (Entered: 03/07/2017)
03/08/2017	<u>185</u>	Supplemental Supplement <i>Ex A To</i> , Affidavit of Frank Patrick in Support of Motion . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Communication Management Services, LLC. (Related document(s): Motion to Withdraw <u>177</u> .) (Patrick, Franklin) (Main Document 185 replaced on 3/16/2017) (sss). (Entered: 03/08/2017)
03/10/2017	186	ORDER by Judge Anna J. Brown. The Court has considered Franklin Patrick's Supplemental Affidavit <u>184</u> filed under seal and in further support of his earlier Motion <u>177</u> to Withdraw as counsel for Plaintiff NSC Communications Public services Corporation. Based on the facts attested to therein, the Court GRANTS Patrick's Motion to Withdraw subject to the following: The Court will enter in the Record a Notice to NSC directing it to engage counsel or risk dismissal of its claims in this action. The Court DIRECTS Patrick to send the Notice to NSC no later than 3/14/2017, and by all reasonable means to ensure actual notice thereof is received by those within NSC who have an interest in this action and as soon thereafter as practical to file in the record of this action proof of such service. (rrr) (Entered: 03/10/2017)
03/10/2017	<u>187</u>	NOTICE AND ORDER. (Related document: Order on Motion to Withdraw 186 .) The Court advises NSC Communications Public Services Corporation that if it fails to obtain legal representation and notify the Court of same by 4/17/17, the Court will dismiss NSC Communications Public Services Corporation as a party to this action Signed on 3/10/2017 by Judge Anna J. Brown. (joha) Modified on 3/20/2017 (bb). (Entered: 03/10/2017)
03/13/2017	<u>188</u>	Report <i>Of Service of Court Order # 187 by Court Order #186.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Communication Management Services, LLC. (Patrick, Franklin) (Entered: 03/13/2017)

04/17/2017	<u>189</u>	Supplemental Notice re Order on Motion to Withdraw,,, 186 , Order, <u>187</u> <i>Notice of Communication by Interested Party</i> Filed by Communication Management Services, LLC (Related document(s): Order on Motion to Withdraw,,, 186 , Order, <u>187</u> .) (Patrick, Franklin) Modified to Seal Document per Order 180 on 4/21/2017 (joha). (Entered: 04/17/2017)
04/17/2017	<u>190</u>	Declaration of Blair Adams <i>in Support of Notice of Communcation</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Communication Management Services, LLC. (Related document(s): Notice, <u>189</u> .) (Patrick, Franklin) Modified to Seal Document per Order 180 on 4/21/2017 (joha). (Entered: 04/17/2017)
04/18/2017	191	Order by Judge Anna J. Brown. On 3/10/17, the Court entered Orders (#186, #187) granting Franklin Patrick's Motion to Withdraw as counsel for Plaintiff NSC and, as a result, NSC was required to engage new counsel to appear in and to prosecute this matter no later than 4/17/17 or NSC would risk dismissal. On 4/17/17, Mr. Patrick filed a Motion <u>189</u> for extension of time on behalf of NSC despite the fact he no longer represents NSC. The Declaration <u>190</u> of an out-of-state lawyer, Blair Adams, was filed in support of that Motion. Mr. Adams is counsel for a "Collateral Manager" of NSC affiliated companies, and although Mr. Adams explains he has work for other clients that precludes his meeting this Court's deadline of 4/17/17, he does not make any assurance he will be seeking admission to this court and filing an appearance on behalf of NSC. Nor does Mr. Adams explain how long it might be before such decisions are made. Moreover, the Court notes Mr. Patrick's Motion seeks an unlimited extension of time for such an appearance. In the exercise of its case-management discretion, the Court grants in part Patrick's Motion <u>189</u> and grants this single and final extension of time until Noon on 5/8/17 for Plaintiff NSC to comply with the Court's Order <u>187</u> . If NSC fails to comply by that deadline, the Court will dismiss its claims for failure to prosecute. The Court directs Frank Patrick to notify NSC and Blair Adams regarding this Order. (bb) (Entered: 04/18/2017)
04/19/2017	192	Order by Judge Anna J. Brown. In light of the extension of time given to NSC 191 to engage new counsel and to establish it intends to continue to prosecute this matter, the Court also extends until May 11, 2017, the deadline 183 for the parties to file their Joint Status Report. (bb) (Entered: 04/19/2017)
05/08/2017	<u>193</u>	Motion for Extension of Time . Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 05/08/2017)
05/08/2017	<u>194</u>	Declaration of Frank Patrick in Support of Motion . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time <u>193</u> , Motion to compel <u>168</u> .) (Patrick, Franklin) Modified Docket Text to Match Document Caption on 5/11/2017 (joha). (Entered: 05/08/2017)
05/08/2017	<u>195</u>	Response in Opposition to <i>Frank Patrick's Motion to Extend Time</i> to Motion for Extension of Time <u>193</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 05/08/2017)
05/12/2017	<u>196</u>	Joint Status Report . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 05/12/2017)
05/16/2017	197	Order by Judge Anna J. Brown. R: On 3/10/2017 (Order #186) the Court allowed withdrawal of Frank Patrick as counsel for Plaintiff NSC Communications Public Services Corporation in this matter and directed NSC to obtain new legal representation by 4/17/2017. The Court indicated it would dismiss NSC and its claims if new counsel did not appear by that deadline. On 4/17/2017 Patrick sought more time for NSC to obtain counsel. On 4/18/2017 (Order #191) the Court granted Patricks request and allowed NSC until 5/8/2017 to comply with the Courts prior Order or be dismissed. Other Plaintiffs have now filed a Motion (#193) asking for additional time to respond to Defendants Motion to Compel and requesting the Court not dismiss NSC and its claims. Defendant opposes Plaintiffs request. On 5/12/2017 the parties filed a Joint Status Report (# <u>196</u>) and ask the Court to extend the deadline to complete fact discovery. ORDER: The Court concludes NSC has had sufficient time to obtain new counsel and has failed to do so, and, accordingly the Court DENIES Plaintiffs Motion (# <u>193</u>) and DISMISSES Plaintiff NSC Communications Public Services Corporation and its claims with prejudice. Accordingly, the Court DENIES as moot Defendants Motion (# <u>168</u>) to Compel Production against NSC inasmuch as it is no longer a party

		to this action. The Court GRANTS the joint request by the remaining parties to extend the deadline for completion of fact discovery. The deadline to complete fact discovery is extended to 9/15/2017. Any discovery-related motions are due no later than 8/1/2017. The parties are directed to submit no later than 6/9/2017 a proposed case management schedule for completion of expert discovery, for the filing of any dispositive motions, and for the resolution of the remaining disputed issues on their merits. (bb) (Entered: 05/16/2017)
05/25/2017	<u>198</u>	Certificate of Service by Communication Management Services, LLC of Order on Motion to Compel, Order on motion for extension of time,,,,,,,,,,,,, 197 Filed by Communication Management Services, LLC. (Patrick, Franklin) (Entered: 05/25/2017)
06/08/2017	<u>199</u>	Proposed Joint Case Management Schedule <i>regarding Expert Discovery and Dispositive Motions</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 06/08/2017)
06/09/2017	200	ORDER by Judge Anna J. Brown: The Court GRANTS the parties' requested case-management schedule as follows: Fact discovery deadline remains on 9/15/17; any discovery motions remain due 8/1/17 and responses are due within 7 days of filing; Plaintiffs' expert witness reports are due 10/30/17; Defendant's expert witness reports are due 11/6/2017; Defendant's rebuttal expert witness reports are due 11/17/17; Plaintiffs' rebuttal expert witness reports are due 11/24/17; expert witness depositions are to be completed by 1/19/18; Joint Statement of Agreed Facts to be submitted by 1/19/18; and dispositive motions to be filed no later than 2/5/18. In light of the age of this case, no further extensions will be permitted . (eo) (Entered: 06/09/2017)
06/30/2017	<u>201</u>	Motion to Compel <i>Plaintiffs to Produce Documents and Answer Interrogatories</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 06/30/2017)
06/30/2017	<u>202</u>	Declaration of <i>Steven K. Blackhurst</i> . Filed by Brooks L Harlow. (Related document(s): Motion to compel <u>201</u> .) (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit) (Blackhurst, Steven) (Entered: 06/30/2017)
07/05/2017	203	Order by Judge Anna J. Brown regarding Motion to Compel <i>Plaintiffs to Produce Documents and Answer Interrogatories</i> <u>201</u> . Response is due by 7/7/2017. No reply permitted. (bb) (Entered: 07/05/2017)
07/09/2017	<u>204</u>	Response to Motion to Compel <i>Plaintiffs to Produce Documents and Answer Interrogatories</i> <u>201</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 07/09/2017)
07/09/2017	<u>205</u>	Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response to Discovery Motion <u>204</u> .) (Patrick, Franklin) (Entered: 07/09/2017)
07/11/2017	<u>206</u>	Unopposed Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Plaintiffs to Produce Documents and Answer Interrogatories</i> <u>201</u> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 07/11/2017)
07/12/2017	207	ORDER by Judge Anna J. Brown granting Motion for Extension of Time to File Response. The Court deems Plaintiff's filings as timely filed. (jy) (Entered: 07/12/2017)
07/19/2017	208	Scheduling Order by Judge Anna J. Brown. Status Conference is set for 7/25/2017 at 11:00 AM in Portland by telephone before Judge Anna J. Brown. (jy) (Entered: 07/19/2017)
07/25/2017	209	MINUTES of Proceedings Hearing on Defendant's Motion <u>201</u> to Compel Production. ORDER: As stated on the record, the Court GRANTS in part and DENIES in Part Defendant's Motion to Compel as follows: Defendant represented that Plaintiff has responded to Defendant's Sixth Set of Interrogatories, and, therefore, the Court DENIES as moot Defendant's Motion to Compel regarding that discovery request. The Court GRANTS Defendant's Motion to Compel regarding Defendant's Fifth Set of

		Interrogatories, Sixth Request for Production, and Seventh Request for Production. The Court directs Plaintiff to respond in writing to these discovery requests no later than Noon on 8/11/2017, and to certify affirmatively the following: (1) Each response is made by a person or persons with personal knowledge as a representation of fact to the Court; (2) a good-faith effort and diligent search has been made for all documents and/or information responsive to these outstanding discovery requests; (3) all such responsive documents or information have been produced and no other responsive discovery exists or additional responsive documents or information do exist and will be produced by a date with which Defendant agrees. Other than as provided in this Order as to these specific discovery issues, all existing case management deadlines, including as to discovery, remain in effect. Franklin G. Patrick present as counsel for plaintiff(s). Steven K. Blackhurst and Danny Lis present as counsel for defendant(s). Court Reporter: Amanda LeGore. Judge Anna J. Brown presiding. (jy) (Entered: 07/25/2017)
07/25/2017	210	ORDER by Judge Anna J. Brown. The parties may not file any additional discovery motions in this case unless, prior to filing such motion, counsel for Plaintiffs, Mr. Patrick, and counsel for Defendant, Mr. Blackhurst, meet in person and confer regarding the dispute in order to ensure each counsel understands the other's position on each contested and that only a concise statement of such issue(s) and the parties respective positions about the issues are conveyed to the Court by any Motion or responsive Memorandum. The filing party must state in the Motion certification required by LR 7-1 that such in-person conferral has in fact occurred. (jy) (Entered: 07/25/2017)
08/01/2017	<u>211</u>	Motion to Compel <i>Plaintiff</i> . Filed by Brooks L Harlow. (Lis, Daniel) (Entered: 08/01/2017)
08/01/2017	<u>212</u>	Declaration of Daniel Lis . Filed by Brooks L Harlow. (Related document(s): Motion to compel <u>211</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Lis, Daniel) (Entered: 08/01/2017)
08/01/2017	<u>213</u>	Motion to Dismiss <i>Davel Communications, Inc., aka Phonetel Technologies, Inc., or in the Alternative to Compel Production</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 08/01/2017)
08/01/2017	<u>214</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Motion to Dismiss Davel Communications, Inc., aka Phonetel Technologies, Inc., or in the Alternative Compel Production</i> . Filed by Brooks L Harlow. (Related document(s): Motion to Dismiss <u>213</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G) (Blackhurst, Steven) (Entered: 08/01/2017)
08/01/2017	<u>215</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Motion to Compel Depositions of Plaintiffs' Counsel</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Brooks L Harlow. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E 1 of 2, # <u>6</u> Exhibit E 2 of 2, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M, # <u>15</u> Exhibit N, # <u>16</u> Exhibit O, # <u>17</u> Exhibit P, # <u>18</u> Exhibit Q, # <u>19</u> Exhibit R, # <u>20</u> Exhibit S, # <u>21</u> Exhibit T) (Blackhurst, Steven) (Entered: 08/01/2017)
08/01/2017	<u>216</u>	Motion to Compel <i>Depositions of Plaintiffs' Counsel</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 08/01/2017)
08/01/2017	<u>217</u>	Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Plaintiff</i> <u>211</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/01/2017)
08/02/2017	<u>218</u>	Affidavit in Support of Motion . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>217</u> .) (Attachments: # <u>1</u> Exhibit) (Patrick, Franklin) (Entered: 08/02/2017)

08/02/2017	219	Order by Judge Anna J. Brown. Plaintiffs have filed a Motion (# <u>217</u>) for Extension of Time to respond to Defendant's Motion (# <u>211</u>) to Compel. Defendant's Response to Plaintiffs' Motion for Extension of time is due by Noon, Thursday, 8/3/2017 at which time the Court will review the matter and issue a decision on Plaintiffs' Motion. Further, because Plaintiff's Motion did not indicate the conferral between the parties was done face-to-face and directed by the Court's prior Order (# 210 , the Court directs Defendant to indicate if such conferral occurred in regards to Plaintiff's Motion. (jy) (Entered: 08/02/2017)
08/03/2017	<u>220</u>	Response by Defendant Brooks Harlow to Court's Order dated August 2, 2017 to Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel Plaintiff <u>211 217</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 08/03/2017)
08/03/2017	<u>221</u>	Supplemental Exhibits to Declaration Dkt # 218 re Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel Plaintiff <u>211 217</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit) (Patrick, Franklin) (Entered: 08/03/2017)
08/03/2017	222	ORDER: Pending before the Court is Plaintiffs' Motion (# <u>217</u>) for Extension of Time to respond to Defendant's Motion (# <u>211</u>) to Compel. Defendant does not oppose Plaintiffs' request. Also pending are the following: (1) Plaintiffs' Cross Motion to Compel filed as a part of their Motion (# <u>217</u>) for Extension of Time; (2) Defendant's Motion (# <u>211</u>) (Precautionary) to Compel Plaintiff's to Produce Documents and Respond to Requests; (3) Defendant's Motion (# <u>213</u>) to Dismiss Davel Communications or in the Alternative to Compel Production; and (4) Defendant's Motion (# <u>216</u>) to Compel Depositions for Plaintiffs' Counsel. It appears the parties filed each of these "precautionary" motions in order to comply with the Court's deadline (8/1/2017) for filing discovery motions, but in doing so the parties are indirectly seeking an extension of that deadline. It also appears, however, that the parties are continuing to attempt to resolve their discovery disputes, and, in light of those efforts, the Court GRANTS Plaintiffs' Motion (# <u>217</u>) for Extension of Time and DIRECTS Plaintiffs to file no later than 8/25/2017 separate Responses to each of Defendant's pending Motions; the Court also DIRECTS Defendant to file no later than 8/25/2017 his response to Plaintiffs' Cross Motion to Compel. To the extent the parties succeed in resolving any issues raised in the pending Motions, the the parties must so state in their Response. The Court notes it has extended the deadline to complete discovery in this matter approximately twelve times during the almost five years since this action was filed and, most recently on 5/16/2017, the Court extended the deadline to complete discovery to 9/15/2017, and, as noted, set the 8/1/2017 deadline to file discovery motions. Accordingly, the Court will not entertain any additional discovery motion practice, including any "amended" motions to compel. The latest discovery-completion deadline of 9/15/2017 and all other previously set dates remain in effect. No further extensions of time to resolve discovery disputes will be allowed. (jy) (Entered: 08/03/2017)
08/25/2017	<u>223</u>	Response in Opposition to Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel Plaintiff <u>211 217</u> . Filed by Brooks L Harlow. (Lis, Daniel) (Entered: 08/25/2017)
08/25/2017	<u>224</u>	Declaration of Daniel Lis in Support of Defendant's Opposition to Plaintiffs' Alternative Motion to Compel. Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>223</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Lis, Daniel) (Entered: 08/25/2017)
08/25/2017	<u>225</u>	Declaration of Steven K. Blackhurst in Support of Defendant's Opposition to Plaintiffs' Alternative Motion to Compel. Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>223</u> .) (Attachments: # <u>1</u> Exhibit A) (Lis, Daniel) (Entered: 08/25/2017)
08/25/2017	<u>226</u>	Declaration of Tania Starry McGee in Support of Defendant's Opposition to Plaintiffs' Alternative Motion to Compel. Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>223</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Lis, Daniel) (Entered: 08/25/2017)

08/25/2017	<u>227</u>	Declaration of Lisa Peterson <i>in Support of Defendant's Opposition to Plaintiffs' Alternative Motion to Compel</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>223</u> .) (Lis, Daniel) (Entered: 08/25/2017)
08/25/2017	<u>228</u>	Response to Motion to Compel <i>Depositions of Plaintiffs' Counsel 216</i> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>229</u>	Affidavit of Frank Patrick in Support of Motion <i>Response to Motion</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion to compel <u>216</u> .) (Attachments: # <u>1</u> Declaration) (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>230</u>	Response in Opposition to Motion to Compel <i>Plaintiff' 211</i> , Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Plaintiff' 211 217</i> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>231</u>	Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response in Opposition to Motion, <u>230</u> .) (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>232</u>	Declaration of Richard D. Gaines . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response in Opposition to Motion, <u>230</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> 2) (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>233</u>	Response to Motion to Dismiss <i>Davel Communications, Inc., aka Phonetel Technologies, Inc., or in the Alternative to Compel Production 213</i> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>234</u>	Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response to Motion, <u>233</u> .) (Patrick, Franklin) (Entered: 08/25/2017)
08/25/2017	<u>235</u>	Declaration of Richard D. Gaines . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response to Motion, <u>233</u> .) (Patrick, Franklin) (Entered: 08/25/2017)
08/26/2017	<u>236</u>	<i>Report of Discovery Discussions</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit) (Patrick, Franklin) (Entered: 08/26/2017)
08/30/2017	<u>237</u>	Motion to Supplement <i>MOTION TO COMPEL DKT 217</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Attachments: # <u>1</u> Proposed Document) (Patrick, Franklin) (Entered: 08/30/2017)
08/30/2017	<u>238</u>	Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>217</u> , Motion to Supplement <u>237</u> .) (Patrick, Franklin) (Entered: 08/30/2017)
08/30/2017	<u>239</u>	Supplemental Supplement <i>LR 7.1 Certification</i> . Filed by All Plaintiffs. (Related document(s): Motion to Supplement <u>237</u> .) (Patrick, Franklin) (Entered: 08/30/2017)
08/31/2017	<u>240</u>	Scheduling Order by Judge Anna J. Brown. Defendant's Response to Plaintiffs' Motion (# <u>237</u>) to Supplement its Alternative Motion(s) Dkt 217 to Allow Depositions is due no later than NOON, 9/8/17. No reply will be permitted. The Court will take the Motion under advisement on 9/8/17. (jy) (Entered: 08/31/2017)
09/06/2017	<u>241</u>	<i>Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 09/06/2017)
09/06/2017	<u>242</u>	Declaration of Tania M. Starry McGee <i>ISO Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Related document(s): Motion – Miscellaneous <u>241</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit

		2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Blackhurst, Steven) (Entered: 09/06/2017)
09/07/2017	<u>243</u>	Scheduling Order by Judge Anna J. Brown. Plaintiffs' Response to Defendant's Motion (# <u>241</u>) for Order to Demonstrate Authority to Act for Davel Communications, Inc. is due 9/11/17. No further Motions may be filed without leave of Court until the pending Motions have been resolved. (jy) (Entered: 09/07/2017)
09/08/2017	<u>244</u>	Response in Opposition to <i>Plaintiffs' Motion to Supplement Its Alternative Motions to Allow Depositions</i> to Motion to Supplement <i>MOTION TO COMPEL DKT 217 237</i> , Alternative Motion for Extension of Time to File a Response/Reply to Motion to Compel <i>Plaintiff' 211 217</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 09/08/2017)
09/08/2017	<u>245</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Response in Opposition to Plaintiffs' Motion to Supplement Its Alternative Motions to Allow Depositions</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion, <u>244</u> .) (Blackhurst, Steven) (Entered: 09/08/2017)
09/11/2017	<u>246</u>	Motion for Extension of Time to File a Response/Reply <i>Response to Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc. 241</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 09/11/2017)
09/11/2017	<u>247</u>	Brief , Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>246</u> , Motion – Miscellaneous <u>241</u> .) (Patrick, Franklin) (Entered: 09/11/2017)
09/12/2017	<u>248</u>	ORDER by Judge Anna J. Brown. Plaintiffs' Motion [# <u>246</u>] for Extension of Time is GRANTED. The Court DIRECTS Plaintiffs to file their Response to Defendant's Motion [# <u>241</u>] for Order to Demonstrate Authority to Act no later than 9/21/2017 and DIRECTS Defendant to file any Reply in support of his Motion no later than 10/5/2017 when the Court will take the Motion under advisement. (jy) (Entered: 09/12/2017)
09/13/2017	<u>249</u>	ORDER by Judge Anna J. Brown. The Court GRANTS in part and DENIES in part Defendant's Motion (# <u>211</u>) to Compel as set out in this Order and DIRECTS Plaintiffs to produce the described discovery no later than October 13, 2017; DENIES Defendant's Motion (# <u>213</u>) to Dismiss Plaintiff Davel Communications and GRANTS Defendant's Alternative Motion (# <u>213</u>) to Compel Davel Communications to produce the described discovery no later than October 13, 2017; GRANTS Defendant's Motion (# <u>216</u>) to Compel Depositions of Plaintiffs' Counsel, Frank Patrick, and DIRECTS the parties to complete that deposition no later than October 30, 2017; DENIES Plaintiffs' Alternative Precautionary Motion (# <u>217</u>) to Compel; and DENIES Plaintiffs' Motion (# <u>237</u>) to Supplement their Alternative Motion Dkt <u>217</u> to Allow Depositions. IT IS SO ORDERED. See order for details. (jy) (Entered: 09/13/2017)
09/21/2017	<u>250</u>	Unopposed Motion for Extension of Time to File a Response/Reply to Motion <i>for Order to Demonstrate Authority to Act for Davel Communications, Inc. 241</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 09/21/2017)
09/22/2017	<u>251</u>	ORDER: The Court GRANTS Plaintiff's Motion (# <u>250</u>) to Enlarge Time to Respond to Defendant's Motion to Demonstrate Authority to Act for Davel Communications, Inc. (# <u>241</u>). Plaintiff's Response is due by 9/22/2017. Defendant's Reply is now due by 10/6/2017. Motion (# <u>241</u>) will be taken under advisement as of 10/6/2017. Ordered by Judge Anna J. Brown. (pvh) (Entered: 09/22/2017)
09/22/2017	<u>252</u>	Motion for Extension of Time to File a Response/Reply to Motion <i>for Order to Demonstrate Authority to Act for Davel Communications, Inc. 241</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 09/22/2017)
09/22/2017	<u>253</u>	Declaration of Frank G. Patrick . Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion <u>252</u> .) (Patrick, Franklin) (Entered: 09/22/2017)

09/23/2017	<u>254</u>	Response in Opposition to Motion <i>for Order to Demonstrate Authority to Act for Davel Communications, Inc.</i> <u>241</u> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Patrick, Franklin) (Entered: 09/24/2017)
09/24/2017	<u>255</u>	Declaration of CW Jones . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion – Miscellaneous <u>241</u> .) (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit) (Patrick, Franklin) (Entered: 09/24/2017)
09/24/2017	<u>256</u>	Declaration of Richard D. Gaines . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion – Miscellaneous <u>241</u> .) (Patrick, Franklin) (Entered: 09/24/2017)
09/25/2017	<u>257</u>	Declaration of Frank G. Patrick . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Davel Communications. (Related document(s): Response in Opposition to Motion, <u>254</u> .) (Patrick, Franklin) (Entered: 09/25/2017)
09/25/2017	<u>258</u>	Order by Judge Anna J. Brown. After conferral with defendant Harlow's counsel indicating no objection, this Court grants Motion for Extension of Time to File Response <u>252</u> . Plaintiff's Response in Opposition <u>254</u> to Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc. <u>241</u> and supporting declarations <u>255</u> , <u>256</u> , and <u>257</u> are deemed timely filed. Plaintiff counsel also indicated that exhibit 2 to the Declaration CW Jones <u>255</u> was incorrectly filed and therefore is STRICKEN. (bb) (Entered: 09/25/2017)
10/02/2017	<u>259</u>	(STRICKEN BY ORDER OF THE COURT) Motion for Reconsideration of Order on Motion to Compel,, <u>249</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) Modified on 10/10/2017 (jy). (Entered: 10/02/2017)
10/02/2017	<u>260</u>	(STRICKEN BY ORDER OF THE COURT) Affidavit in Support of Motion <i>to RECONSIDER ORDER 249.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration <u>259</u> .) (Attachments: # <u>1</u> Exhibit) (Patrick, Franklin) Modified on 10/10/2017 (jy). (Entered: 10/02/2017)
10/04/2017	<u>261</u>	Unopposed Motion for Extension of Time to File a Response/Reply to Motion <i>for Order to Demonstrate Authority to Act for Davel Communications, Inc.</i> <u>241</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/04/2017)
10/05/2017	<u>262</u>	ORDER: Defendants' response to Plaintiffs' Motion # <u>259</u> for Reconsideration of Order is due 10/16/2017; Plaintiffs' reply, if any, is due 10/26/2017. The Court also GRANTS Defendant until 10/10/2017 to file a reply in support of Defendant's Motion # <u>241</u> for Order to Demonstrate Authority to Act for Davel Communications. Ordered by Judge Anna J. Brown. (pvh) (Entered: 10/05/2017)
10/07/2017	<u>263</u>	Corrected Motion for Reconsideration <i>and</i> of Affidavit in Support of Motion, <u>260</u> , Motion for Reconsideration <u>259</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 10/07/2017)
10/07/2017	<u>264</u>	Affidavit in Support of Motion <i>to RECONSIDER ORDER 249.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration <u>259</u> , Motion for Reconsideration, <u>263</u> .) (Attachments: # <u>1</u> Exhibit Depo Transcript) (Patrick, Franklin) (Entered: 10/07/2017)
10/07/2017	<u>265</u>	Affidavit of Richard D. Gaines in Support of Motion <i>to RECONSIDER ORDER 249.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration <u>259</u> , Motion for Reconsideration, <u>263</u> .) (Attachments: # <u>1</u> Errata, # <u>2</u> Errata) (Patrick, Franklin) (Entered: 10/07/2017)
10/07/2017	<u>266</u>	Affidavit of Richard D. Gaines . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration, <u>263</u> .) (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u>

		Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Errata) (Patrick, Franklin) (Entered: 10/07/2017)
10/10/2017	<u>267</u>	Order by Judge Anna J. Brown. In light of Plaintiffs' "corrected" Consolidated Motion (# <u>263</u>) to Reconsider Order Entered September 13, 2017, the Court STRIKES Docket # <u>259</u> and # <u>260</u> . The briefing schedule set out in Order # 262 remains in effect. (jy) (Entered: 10/10/2017)
10/10/2017	<u>268</u>	Reply <i>in Support</i> to Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc. <u>241</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/10/2017)
10/10/2017	<u>269</u>	Supplemental Declaration of Tania Starry McGee <i>in Support of Defendant's Reply to Motion for Order to Demonstrate Authority to Act for Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Blackhurst, Steven) (Entered: 10/10/2017)
10/16/2017	<u>270</u>	Response in Opposition to Plaintiffs' to Corrected Motion for Reconsideration and of Affidavit in Support of Motion, <u>260</u> , Motion for Reconsideration <u>259</u> <u>263</u> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/16/2017)
10/16/2017	<u>271</u>	Declaration of Steven K. Blackhurst <i>in Support of Defendant's Response in Opposition to Plaintiffs' Motions to Reconsider Order [Dkt. 249]</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>270</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D) (Lis, Daniel) (Entered: 10/16/2017)
10/16/2017	<u>272</u>	Declaration of Tania Starry McGee <i>in Support of Defendant's Response in Opposition to Plaintiffs' Motions to Reconsider</i> . Filed by Brooks L Harlow. (Related document(s): Response in Opposition to Motion <u>270</u> .) (Attachments: # <u>1</u> Exhibit A) (Lis, Daniel) (Entered: 10/16/2017)
10/25/2017	<u>273</u>	Motion to Dismiss <i>Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 10/25/2017)
10/25/2017	<u>274</u>	Declaration of Tania Starry McGee <i>in Support of Defendant's Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> Filed by Brooks L Harlow. (Related document(s): Motion to Dismiss <u>273</u> .) (Blackhurst, Steven) (Entered: 10/25/2017)
10/30/2017	<u>275</u>	Reply to Response Docket 270 filed after extension to Corrected Motion for Reconsideration and of Affidavit in Support of Motion, <u>260</u> , Motion for Reconsideration <u>259</u> <u>263</u> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 10/30/2017)
10/30/2017	<u>276</u>	Declaration of Richard D. Gaines . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration, <u>263</u> .) (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit Prev Filed Document) (Patrick, Franklin) (Entered: 10/30/2017)
10/31/2017	<u>277</u>	ORDER by Judge Anna J. Brown The Court has reviewed Plaintiffs' Motion (# <u>263</u>) for Reconsideration of the Court's Order (# <u>249</u>), issued September 13, 2017, in which, among other things, the Court denied Plaintiffs' Alternative Precautionary Motion (# <u>217</u>) to Compel Production and denied Plaintiffs' Motion (# <u>237</u>) to Supplement their Alternative Motion to Compel Depositions. Plaintiffs also request the Court extend the deadline for discovery in this matter. The Court GRANTS the Motion to Reconsider to the extent the Court has reconsidered Plaintiffs' prior arguments, together with the additional arguments made in support of the Motion for Reconsideration. The Court ADHERES to its prior rulings denying Plaintiffs' Precautionary Alternative Motion (# <u>217</u>) to Compel and denying Plaintiffs' Motion (# <u>237</u>) to Supplement their Alternative Motion Compel Depositions and declines to alter or to amend its Order (# <u>249</u>), issued September 13, 2017. This case was filed in 2012 and the discovery deadline has been reset numerous times generally as a result of the parties' failure to timely meet their discovery obligations. In the exercise of its case-management discretion, the Court, therefore, DENIES Plaintiffs' request to

		extend the discovery deadline. Dispositive Motions remain due by 2/25/2018. (jy) (Entered: 10/31/2017)
10/31/2017	278	Order by Judge Anna J. Brown. The Court mistakenly stated in docket [#277] issued 10/31/2017 that the dispositive motions deadline was 2/25/2018. The correct dispositive motions deadline remains 2/5/2018 and agreed facts are still due 1/19/18. (bb) (Entered: 10/31/2017)
10/31/2017	<u>279</u>	ORDER by Judge Anna J. Brown The Court DENIES Defendant's Motion(# <u>241</u>) for Order to Demonstrate Authority to Act for Davel Communications, Inc., with leave to renew it following the withdrawal of Davel's Counsel and the filing by new counsel for Davel of a Notice of Representation. See order for further details. Signed on 10/31/17. (jy) (Entered: 11/01/2017)
11/01/2017	<u>280</u>	Response to Motion to Dismiss <i>Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> <u>273</u> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Davel Communications. (Attachments: # <u>1</u> Exhibit Ex 1) (Patrick, Franklin) (Entered: 11/01/2017)
11/01/2017	<u>281</u>	Declaration of Richard D. Gaines <i>IN SUPPORT OF OPPOSING RESPONSE.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by Davel Communications. (Related document(s): Response to Discovery Motion, <u>280</u> .) (Patrick, Franklin) (Entered: 11/01/2017)
11/06/2017	<u>282</u>	Motion for Clarification <i>that this Court's Order, DKT. 249, Compelled the Deposition of Richard Gaines.</i> Filed by Brooks L Harlow. (Lis, Daniel) (Entered: 11/06/2017)
11/06/2017	<u>283</u>	Declaration of Steven K. Blackhurst <i>in Support of Motion to Clarify Court's Order, DKT. 249.</i> Filed by Brooks L Harlow. (Related document(s): Motion for Clarification <u>282</u> .) (Attachments: # <u>1</u> Exhibit A) (Lis, Daniel) (Entered: 11/06/2017)
11/06/2017	<u>284</u>	Declaration of Daniel L. Lis <i>in Support of Motion to Clarify Court's Order, DKT. 249.</i> Filed by Brooks L Harlow. (Related document(s): Motion for Clarification <u>282</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Lis, Daniel) (Entered: 11/06/2017)
11/07/2017	285	Scheduling Order by Judge Anna J. Brown. Plaintiff's response to Defendant's Motion (# <u>282</u>) for Clarification is due no later than 11/14/17. No reply will be permitted. The Court will take the Motion under advisement on 11/14/17. (jy) (Entered: 11/07/2017)
11/13/2017	<u>286</u>	Motion for Extension of Time to File a Response/Reply <i>Court's Order #279</i> to Motion to Dismiss <i>Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> <u>273</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 11/13/2017)
11/13/2017	<u>287</u>	Affidavit in Support of Motion <i>To Seek Compliance to Court's Order #279.</i> (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion, <u>286</u> .) (Patrick, Franklin) (Entered: 11/13/2017)
11/14/2017	<u>288</u>	Motion for Reconsideration of Order on Motion – Miscellaneous, <u>279</u> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Oral Argument requested. Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 11/14/2017)
11/14/2017	289	ORDER by Judge Anna J. Brown The Court GRANTS in part Plaintiffs' Motion (# <u>286</u>) to Enlarge Time to Seek Compliance With Court's Direction. The Court STAYS the deadline for withdrawal by Mr. Patrick as counsel for Plaintiff Davel and for Davel to obtain new counsel set in the Courts Order (# <u>279</u>), pending resolution of Plaintiffs' Motion (# <u>288</u>) for reconsideration. The Court directs Defendant's counsel to notify court staff promptly as to whether Defendant wishes to file a response to Plaintiffs' Motion for Reconsideration. If so, that Response is due 11/28/2017, Plaintiffs' Reply is due 12/5/2017, and the Court will take the Motion for Reconsideration under advisement on 12/5/2017. If Defendant advises he does not wish to file a Response, the Court will take the Motion for Reconsideration under advisement at that time. (jy) (Entered: 11/14/2017)

11/14/2017	<u>290</u>	Response in Opposition to Motion for Clarification <i>that this Court's Order, DKT. 249, Compelled the Deposition of Richard Gaines</i> <u>282</u> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. Reply is due by 11/28/2017. (Patrick, Franklin) (Entered: 11/14/2017)
11/14/2017	<u>291</u>	Affidavit of Richard D. Gaines <i>in support of Plaintiffs' Response</i> . (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Related document(s): Response in Opposition to Motion, <u>290</u> .) (Attachments: # <u>1</u> Exhibit 1) (Patrick, Franklin) (Entered: 11/14/2017)
11/15/2017	<u>292</u>	Reply to Motion to Dismiss <i>Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> <u>273</u> . Filed by Brooks L Harlow. (Lis, Daniel) (Entered: 11/15/2017)
11/15/2017	<u>293</u>	Declaration of Daniel L. Lis <i>in Support of Defendant's Reply to Renewed Motion to Dismiss the Claims of Plaintiff Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Related document(s): Reply to Motion <u>292</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J) (Lis, Daniel) (Entered: 11/15/2017)
11/16/2017	294	ORDER by Judge Anna J. Brown. The Court has reviewed Defendant's Motion <u>282</u> for Clarification of the Court's Order <u>249</u> and Plaintiffs' Response. Mr. Gaines, although not counsel of record, has been extensively involved in this case and consistently referred to by all parties as co-counsel with Mr. Patrick. Although the Court's Order inadvertently did not specifically name Mr. Gaines, the Court did not intend to exclude him from that portion of the Order that allowed Defendant to take the depositions of Plaintiffs' counsel. Accordingly, the Court GRANTS Defendant's Motion for Clarification and CLARIFIES that Defendant is authorized to take the deposition of Mr. Gaines in addition to the deposition of Mr. Patrick. (slm) (Entered: 11/16/2017)
11/17/2017	<u>295</u>	<i>Motion to Modify Current Case Management Schedule</i> . Filed by Brooks L Harlow. Response is due by 12/1/2017. (Blackhurst, Steven) (Entered: 11/17/2017)
11/20/2017	296	ORDER by Judge Anna J. Brown. The Court acknowledges receipt of Defendant's Motion (#295) to Modify Current Case Management Schedule. Defendant states the parties have agreed to modify the current case management schedule, but they have not yet agreed on proposed new dates, and, in the meantime, Defendant's counsel is unavailable until after 12/1/17. Accordingly, the Court grants the Motion as follows: The Court DIRECTS the parties to confer upon counsel's return and to submit in a single filing for the Court's consideration no later than 12/7/2017 the parties' proposed amended case management schedule. To the extent the parties have differing proposals, they should be set forth with a concise explanation in support. The Court reminds the parties that the current deadline for filing dispositive motions is 2/5/2018, and deadline for filing the the parties' Joint Statement of Agreed Facts is 1/19/2018. See Order #278. (bb) (Entered: 11/20/2017)
11/28/2017	<u>297</u>	Response in Opposition to Motion for Reconsideration of Order on Motion – Miscellaneous, <u>279</u> <u>288</u> . Filed by Brooks L Harlow. Reply is due by 12/12/2017. (Blackhurst, Steven) (Entered: 11/28/2017)
11/29/2017	298	Order by Judge Anna J. Brown. Per Order at docket 289 , Plaintiffs' reply to its Motion for Reconsideration of Order on Motion – Miscellaneous, <u>279</u> <u>288</u> is due by 12/5/2017 and the Court will take the Motion for Reconsideration under advisement on 12/5/2017. (bb) (Entered: 11/29/2017)
12/06/2017	<u>299</u>	Reply <i>Plaintiff</i> to Motion for Reconsideration of Order on Motion – Miscellaneous, <u>279</u> <u>288</u> Oral Argument requested. (DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit) (Patrick, Franklin) (Entered: 12/06/2017)
12/06/2017	<u>300</u>	Stipulated Motion for Extension of Time <i>after deadline</i> . Filed by All Plaintiffs. (Patrick, Franklin) (Entered: 12/06/2017)
12/07/2017	<u>301</u>	Amended Proposed Joint Case Management Schedule . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 12/07/2017)

12/08/2017	302	ORDER by Judge Anna J. Brown granting Motion for Extension of Time <u>300</u> . (jy) (Entered: 12/08/2017)
12/08/2017	303	Scheduling Order by Judge Anna J. Brown. Joint Agreed Statement of Facts due by January 8, 2018. Summary judgment motions are to be filed no later than January 16, 2018. Responses to summary judgment motions to be filed by February 13, 2018. Reply memoranda to be filed by March 1, 2018. (jy) (Entered: 12/08/2017)
12/13/2017	<u>304</u>	Notice re Motion for Reconsideration <u>288</u> <i>withdrawing Motion</i> Filed by All Plaintiffs. (Related document(s): Motion for Reconsideration <u>288</u> .) (Patrick, Franklin) (Entered: 12/13/2017)
12/19/2017	305	Scheduling Order by Judge Anna J. Brown. The Court sets a Status Conference for 12/20/2017 at 3:00 PM in Portland by telephone before Judge Anna J. Brown. (jy) (Entered: 12/19/2017)
12/20/2017	306	Order by Judge Anna J. Brown. On 12/13/2017, Plaintiffs filed a Notice (# <u>304</u>) Withdrawing their prior Motion (# <u>288</u>) for Reconsideration. Based on Plaintiff's Notice, the Court DENIES as moot Plaintiff's Motion for Reconsideration. (jy) (Entered: 12/20/2017)
12/20/2017	307	MINUTES of Proceedings: For the reasons stated on the record with counsel during the telephone conference on 12/20/2017, the Court's prior Order (# <u>279</u>) is AMENDED in part as to the final paragraph only as follows: The Court DIRECTS Patrick to give notice of his withdrawal to Davel Communications, Inc., and to any other entity associated with or that may assert an interest in Davel or its claim in this matter no later than 12/29/2017. The Court also DIRECTS Patrick to advise Davel that it may not continue prosecute this action without counsel pursuant to LR 83-9(b), that it is required to obtain new counsel, and that such new counsel must file an appearance in this matter no later than 1/12/2018. If new counsel does not file an appearance by the date indicated, the Court will dismiss with prejudice Davel as a party to this action. If new counsel does appear and Defendant wishes to renew its Motion for Order to Demonstrate Authority to Act for Davel, Defendant may file that renewed Motion after full conferral with new counsel. Patrick is further DIRECTED to file with the Court no later than 1/5/2018 proof of service of the Notice required by this Order. Franklin G. Patrick present as counsel for plaintiff(s). Steven K. Blackhurst present as counsel for defendant(s). Court Reporter: Jill Jessup. Judge Anna J. Brown presiding. (jy) (Entered: 12/20/2017)
12/29/2017	<u>308</u>	(DOCUMENT RESTRICTED ACCORDING TO PROTECTIVE ORDER) Lodged Notice of Lis Pendens by Davel Communications , Notice of Attorney Withdrawal: <i>By Franklin Patrick</i> Filed by Davel Communications. (Attachments: # <u>1</u> Exhibit Orders Served to Davel PhoneTel) (Patrick, Franklin) Modified Document Restriction on 1/8/2018 (joha). (Entered: 12/29/2017)
01/08/2018	309	Scheduling Order by Judge Anna J. Brown. The Court notes attorney Frank Patrick has filed Notice (# <u>308</u>) directed to Plaintiff Davel Communications as required by the Court's Orders (# <u>307</u> , <u>279</u>) advising Davel of his withdrawal as counsel for Davel. The Court, therefore, confirms Patrick's withdrawal as counsel for Plaintiff Davel Communications and Davel's obligation to obtain new counsel by 1/12/2018 in order to pursue its claim in this matter. (jy) (Entered: 01/08/2018)
01/18/2018	<u>310</u>	Motion to Dismiss <i>the Claims of Plaintiff Davel Communications, Inc., aka Phonetel Technologies, Inc.</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/18/2018)
01/18/2018	311	Order by Judge Anna J. Brown. On 12/20/2017 the Court allowed Mr. Patrick's withdrawal as counsel for Davel Communications, aka Phonetel Technologies, Inc. (Dkt. # <u>307</u>), and directed Davel to obtain new counsel and to file a Notice of Appearance no later than 1/12/2018 or its claims would be dismissed. Patrick served Davel with Notice of the Court's Order on 12/29/2017 (Dkt. # <u>308</u>). Davel, however, has not filed a notice of appearance of new counsel as required. The Court, therefore, GRANTS Defendant Harlow's Motion (# <u>310</u>) to Dismiss the Claims of Plaintiff Davel Communications, aka Phonetel Technologies, and DISMISSES with prejudice Plaintiff Davel Communications, aka Phonetel Technologies, Inc., and its claims. Accordingly, Defendant Harlow's previously filed Renewed Motion (Dkt. # <u>273</u>) to Dismiss the Claims of Plaintiff Davel is now moot. The Court also STRIKES the

		deadline for dispositive motions. (Entered: 01/18/2018)
01/19/2018	<u>312</u>	Motion for entry of Rule 54(b) Judgment <i>against NSC Communications Public Services Corporation and Davel Communications, Inc.</i> . Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/19/2018)
01/23/2018	313	ORDER by Judge Anna J. Brown On 1/19/2018 the parties filed a joint Motion (# <u>312</u>) for Rule 54(b) Judgment against Plaintiffs NSC Communications Public Services Corporation and Davel Communications, aka Phonetel Communications, Inc. The Court earlier entered Order (# 197) and Order (# 311) against NSC and Davel respectively in which the Court dismissed these parties and their claims with prejudice. Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds there is not a just reason to delay entry of a final judgment as to NSC and Davel. Accordingly, the Court GRANTS the parties' joint Motion (# <u>312</u>) and directs the Clerk to enter final judgment pursuant to Rule 54(b) against NSC Communications Public Services Corporation and Plaintiff Davel Communications, aka Phonetel Communications, Inc. (See separate Judgment). The remaining parties report they have reached a settlement of the still-existing claims in this matter. (jy) (Entered: 01/23/2018)
01/23/2018	<u>314</u>	Judgment. Signed on 1/23/18 by Judge Anna J. Brown. (jy) (Entered: 01/23/2018)
01/31/2018	<u>315</u>	Notice of Attorney Withdrawal: <i>of Lori Irish Bauman for Defendant Brooks Harlow</i> Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 01/31/2018)
02/23/2018	<u>316</u>	Stipulation <i>to Entry of Final Judgment</i> by Brooks L Harlow. Filed by Brooks L Harlow. (Blackhurst, Steven) (Entered: 02/23/2018)
02/27/2018	<u>317</u>	Judgment of Dismissal with Prejudice. Signed on 2/27/18 by Judge Anna J. Brown. (jy) (Entered: 02/27/2018)

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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**COMMUNICATION MANAGEMENT
SERVICES, LLC; NSC
COMMUNICATIONS PUBLIC SERVICES
CORPORATION, et al**

Plaintiffs,

v.

**BROOKS HARLOW, ATTORNEY AT
LAW,**

Defendant.

Case No. 3:12-cv-01923-BR

FRANK G. PATRICK, MOTION TO
WITHDRAW AS COUNSEL
FOR PLAINTIFF
NSC COMMUNICATIONS PUBLIC
SERVICES CORPORATION
AND MEMORANDUM PURSUANT
TO Fed. R. Civ. P. 83-11, AND
LR 83-11

EX PEDITED HEARING
REQUESTED

ORAL ARGUMENT REQUESTED

NO POSITION BY DEFENDANT

LOCAL RULE 7.1 CERTIFICATION

Pursuant to LR 7.1(a)(1), Plaintiffs' counsel certifies he has conferred in good faith with Steven K. Blackhurst, counsel for Defendant Brooks Harlow regarding the substance of this Motion, and that Defendant takes no position on the Motion.

MOTION

FRANK G. PATRICK sole Counsel for Plaintiff NSC Communications Public Services Corporation, (NSC) respectfully moves the Court pursuant to Fed. R. Civ. P. 83-11 and Loc. Rule 83-11(a) to withdraw as counsel for NSC. This motion is made only as to representation of the Plaintiff, NSC. It is made prior to expiration of the February 23, 2017 due date of NSC's Response to Defendant's Motion to Compel under the Court Order Dkt. # 176.

Expedited hearing is required pursuant to Local Rule 83-11.

This motion is not made for purposes of delay, is not frivolous but is made based on professional considerations, and is supported by the following Memorandum and the Affidavit of Counsel attached hereto.

MEMORANDUM

The Federal Rules of Civil Procedure 83-11 and Loc Rule 83-11, provide for the withdrawal by counsel only by motion unless there is a simultaneous substitution by successive counsel not the case here. Such motion of withdrawal is considered procedural for which there is no clear resolution under the Rules of Professional Responsibility. See Chapter 4 of *The Oregon Ethical Lawyer*. There is no basis at the time of this filing to advise the court that other counsel may substitute prior to the court imposed deadline of February 23, 2017, to respond to the Defendant's Motion to Compel and therefore 83-11 (d) is not applicable. The lawyer has not been discharged by the Client. The *Oregon Rules of Professional Conduct* 1.1 and 1.6 and the ABA Rules 1.16 are applicable to this situation.

CONCLUSION

Given the affidavit of counsel and the above memorandum, the court should grant this

motion to allow counsel to withdraw from the representation of this client in this case.

Further, the court should grant such time as the court will deem sufficient to allow this Plaintiff time to respond to the requirements of the Court in response to the Discovery Requirements and the motion to Compel.

Respectfully submitted.

Dated: February 23, 2017

Attorney for Plaintiffs

/s/ Frank G. Patrick

Frank G. Patrick, OSB 760228

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Portland, OR 97281

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons registered with the system:

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Attorney for Defendants

Dated: February 23, 2015

Frank G. Patrick, OSB 76022
Attorney for Plaintiffs

/s/ Frank G. Patrick

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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**COMMUNICATION MANAGEMENT
SERVICES, LLC;
NSC COMMUNICATIONS PUBLIC
SERVICES CORPORATION, et al**

Plaintiffs,

v.

**BROOKS HARLOW, ATTORNEY AT
LAW,**

Defendant.

Case No. 3:12-cv-01923-BR

FRANK G. PATRICK, MOTION TO
WITHDRAW AS COUNSEL
FOR PLAINTIFF
NSC COMMUNICATIONS PUBLIC
SERVICES CORPORATION
AND MEMORANDUM PURSUANT
TO Fed. R. Civ. P. 83-11, AND
LR 83-11

EXPEDITED HEARING
REQUESTED

SUPPORTING AFFIDAVIT

I, Frank G. Patrick, hereby affirm under penalties of perjury as follows:

I am the sole counsel for the Plaintiffs in the pending matter. I am competent to make this declaration, made on my own personal knowledge, information and belief in support of the Motion of Frank G. Patrick to Withdraw as Counsel for Plaintiff NSC Communications Public Services Corporation, (NSC).

This motion is respectfully made pursuant to Fed. R. Civ. P. 83-11 and Loc. Rule 83-11(a).

This motion is not made for purposes of delay, is not frivolous but is made based on professional considerations arising out of a communication problem between the client and the attorney movant.

Counsel for Plaintiff NSC has submitted for production with Bates numbering to Court Discovery Management, Ltd. (“CMD”), all documents believed to be responsive to the Discovery Demands of Defendant except for those discovery demands that were just recently made. Counsel for Plaintiff has also delivered to counsel for Defendant, those documents that were responsive to the Defendant’s Discovery Demands that were not in the document database managed by CMD. Such documents were also delivered to CMD to be incorporated into the document database, Bates stamped and delivered with Bates numbering to counsel for Defendant.

Counsel for Plaintiff NSC has not delivered the NSC answers to Defendant’s Fourth and Fifth Interrogatories because a custodian of records authorized to sign such answers to Interrogatories has not been appointed to Counsel’s knowledge. With this exception, NSC has complied with or is in the process of complying with, all Defendant’s discovery requests that are currently due.

Counsel for Plaintiff, NSC requests that his motion to withdraw be granted and that NSC be given 30 days to appoint replacement counsel.

Respectfully submitted.

Dated: February 23, 2017

Attorney for Plaintiffs

/s/ Frank G. Patrick
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Tel: (503) 245-2828
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons registered with the system:

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Facsimile: (503) 226-0079
Attorney for Defendants

Dated: February 23, 2015

Frank G. Patrick, OSB 76022
Attorney for Plaintiffs

/s/ Frank G. Patrick

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 19-46 & 19-53
)
FRANKLIN G. PATRICK,)
)
Respondent.)

Counsel for the Bar: Courtney C. Dippel

Counsel for the Respondent: Arden J. Olson

Disciplinary Board: None

Disposition: Violation of RPC 1.7(a)(2). Stipulation for Discipline. 60-day suspension.

Effective Date of Order: August 3, 2020

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Franklin G. Patrick (Respondent) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 60 days, effective August 3, 2020, for violations of RPC 1.7(a)(2).

DATED this 20th day of May, 2020.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Franklin G. Patrick, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1976, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 22, 2019, the Bar filed a formal complaint against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of Oregon Rule of Professional Conduct (RPC) 1.7(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Prior to June 2009, attorney Brooks Harlow (Harlow) had represented Davel Communications, Inc. (Davel), in various matters before the Oregon Public Utility Commission, the Federal Communications Commission, and other courts in Oregon and Washington. Respondent replaced Harlow as counsel for those utility matters in July 2009. Three years later, Respondent filed a legal malpractice action against Harlow on behalf of those plaintiffs in the United States District Court of Oregon, *Northwest Public Communications Council et al v. Harlow et al*, Case No. 3:12-cv-01923-BR (legal malpractice matter).

6.

On July 25, 2012, Davel ceased to exist as a corporation under Delaware law. Respondent, after investigation, concluded that the interests which had been Davel's were thereafter controlled by Y.A. Global, a secured creditor that, although it had not assumed Davel's obligations, had the right to control Davel's stock, assets and corporate authority under its Article 9 UCC recorded security agreement.

7.

In August 2014, while Respondent was still representing Davel's interests in the legal malpractice matter and in at least one utility matter, *The Northwest Public Communications Council v. Qwest Corp*, Docket No. Dr26/UC 600, Oregon Public Utility Commission (the Qwest Case), Respondent's law firm, Corporate Lawyers, P.C. (Corporate), filed suit against Davel in Washington County Circuit Court (the Washington County matter) for breach of Davel's fee agreement with Respondent.

8.

Corporate sought to foreclose on its attorney charging lien pursuant to ORS 87.445 against Davel and to acquire Davel's claims in the legal malpractice matter, as well as Davel's claims in five other pending litigation matters being handled by Respondent. Respondent obtained a default judgment against Davel, after entering into an agreement with Y.A. Global that Respondent believed constituted a consent for him to proceed despite any conflict of interest, which included a declaration that Corporate obtained all of Davel's rights in the legal malpractice matter (and the other matters) and a money judgment against Davel in the amount of the fair value of the legal services provided, \$375,000 and for costs advanced by Corporate that Respondent contended Y.A. Global had not advanced or reimbursed. On reflection now, however, Respondent agrees that the agreement by Y.A. Global did not satisfy the "informed consent" requirements of RPC 1.7(b)(4).

9.

Respondent purchased Davel's claims under the default judgment at a public Sheriff's auction sale and then transferred those claims to a limited liability company jointly owned by Corporate and Respondent's co-counsel (the LLC). Thereafter, Respondent continued to represent Davel's interests, now owned by the LLC, in the Qwest Case and the legal malpractice matter until the United States District Court ordered him to withdraw from the malpractice case due to a perceived conflict of interest on October 31, 2017. Respondent withdrew from representing Davel in that matter on December 20, 2017.

Violations

10.

Respondent admits that, by suing Davel while prosecuting the Davel interests as a current client in other matters, there was a significant risk that the representation of one or more clients would be materially limited by Respondent's personal interests. Respondent admits that he had a conflict of interest in violation of RPC 1.7(a)(2) to which the persons authorized to speak for his client had not validly given informed consent.

Sanction

11.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards). The ABA Standards require that Respondent's conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. **Duty Violated.** Respondent violated his duty of loyalty to a current client by acquiring what had been the interests of Davel without validly obtaining the client's informed consent, which Respondent believed and believes could only have been obtained from Y.A. Global. ABA Standard 4.3.
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Respondent's conduct was intentional. He acted to accomplish a particular result – obtain a judgment against his current client and his client's interests in its claims in the ongoing litigation.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Davel's interests suffered actual injury by being subjected to a judgment obtained by Respondent while he was representing those interests in the Qwest and legal malpractice actions. Additionally, after the court ordered respondent to withdraw, Davel's interests were left unrepresented in the legal malpractice matter.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Dishonest or selfish motive. ABA Standard 9.22(b). Respondent's purpose in suing Davel was to protect his right to attorney's fees and obtain Davel's rights and interests in the ongoing lawsuits.
 2. Substantial experience in the practice of law. ABA Standard 9.22(j). Respondent was licensed to practice in Oregon in 1976.

- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 2. Cooperative attitude toward proceedings. ABA Standard 9.32(e).

12.

Under the ABA Standards, suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. ABA Standard 4.32.

Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will materially adversely affect another client, and causes injury or potential injury to a client. ABA Standard 4.33.

13.

The parties acknowledge that the Oregon Supreme Court has imposed a range of sanctions, including reprimands, in conflict of interest cases. However, "[w]e have imposed suspension in cases involving serious aggravating circumstances," for conflicts of interest even in the absence of the any other rule violations. *In re Hockett*, 303 Or 150, 163, 734 P2d 877 (1987).

The following cases reflect suspensions ranging from 60 days to seven months when the lawyers' only disciplinary violations were conflicts of interest:

- *In re Baer*, 298 Or 29, 688 P2d 1324 (1984) [**60-day suspension**] Attorney violated the conflict rule when he represented the buyer, his wife, and the sellers, in a real estate transaction.
- *In re Boyer*, 295 Or 624, 669 P2d 326 (1983) [**7-month suspension**] Attorney violated the conflict rule when he represented the borrower and lender on a loan transaction and failed to disclose to the lender that he had a financial interest in the loan transaction in the form of a finder's fee paid by the borrower after the loan closed.
- *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) [**four-month suspension**] Attorney violated the conflict of interest rule when, while representing a corporation, the attorney also represented a lender on an underlying loan to the corporation, and sought to represent the lender in collecting the loan.

14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.7(a)(2), the sanction to be effective August 3, 2020.

15.

In addition, on or before May 31, 2020, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$980.10, incurred for the cost of the court reporter's appearance fee and deposition transcript reproduction. Should Respondent fail to pay \$980.10 in full by May 31, 2020, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

16.

Respondent acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, Respondent has arranged for Herbert Grey, an active member of the Bar, to either take possession of or have ongoing access to Respondent's client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Herbert Grey has agreed to accept this responsibility.

17.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

18.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

19.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or

suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: none.

20.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 7, 2020. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of May, 2020.

/s/ Franklin G. Patrick

Franklin G. Patrick, OSB No. 760228

APPROVED AS TO FORM AND CONTENT:

/s/ Arden J. Olson

Arden J. Olson, OSB No. 870704

EXECUTED this 18th day of May, 2020.

OREGON STATE BAR

By: /s/ Courtney C. Dippel

Courtney C. Dippel, OSB No. 022916
Disciplinary Counsel

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

COMMUNICATION MANAGEMENT SERVICES, LLC; DAVEL COMMUNICATIONS INC. a/k/a PHONETEL TECHNOLOGIES, INC.; NATIONAL PAYPHONE SERVICES, LLC; NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION; PACIFIC NORTHWEST PAYPHONES; PARTNERS IN COMMUNICATION; T & C MANAGEMENT, LLC; CORBAN TECHNOLOGIES, INC.; and VALLEY PAY PHONES, INC.,

v.

BROOKS HARLOW, ATTORNEY AT LAW,

Defendant.

Case No.: 3:12-cv-01923-BR

PLAINTIFF'S MOTION TO AMEND SCHEDULING ORDER AND RESPECTIVE DISCOVERY DEADLINES

ORAL ARGUMENT REQUESTED

DECLARATION OF COUNSEL

I, Frank G. Patrick, hereby affirm under penalties of perjury as follows:

I am counsel for the Plaintiffs in the pending matter with the exception of NSC for which a

motion to withdraw is pending. I am competent to make this declaration which is made on my

Page 1 – Supportiong Declaration to Motion to Amend Scheduling Order To Extend Discovery

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own personal knowledge, information and belief in support of Plaintiffs' Motion AMEND SCHEDULING ORDER AND RESPECTIVE DISCOVERY DEADLINES, under Fed. R. Civ. Pro. 16 (4), 6 B and Loc. Rule 16-3, for an order extending the deadlines for completing discovery.

The Motion and Memorandum set out the facts and circumstances faithfully, and neither counsel would report any disagreement over the process as it is rolling out, nor the collegial process. The primary fact is that there just is not enough time to accomplish all that must be done to meet the current deadlines here and in the other matters as well as keeping other clients of the lawyers from abandoning them to more timely responding lawyers.

In addition to the matters pending in this proceeding are related matters that require diligence if the Plaintiff is not going to be forced to rely on this sole cause of action to be made whole. The work is far greater than this counsel anticipated and becoming more aware of the extreme time to do the electronic discovery has been mind numbing, but there have been technological issues that counsel did not anticipate. The difficulty with helping the Plaintiffs now out of business and stretching to New York and Ohio, and the reality that the doors of the businesses have closed, due to the lack of revenues and profits as well as the refunds for overcharges actually paid to a third party, has made the discovery process one of enormous cost to these mostly mom and pop businesses but the large Plaintiffs have simply closed.

The pressure on each of the plaintiffs to close has been impossible to overcome with the exception of one. The only still standing operation, has reported that the equipment which served them well for the last 20 years has been shutting down and the cost to reprogram and more to other computers is beyond their resources and so they are constantly working to provide answers in

alternative and more time consuming methods. Storage of records has required moving them and making access more time consuming.

There is no lack of desire or effort, but the slowness of the underlying cases made this case a severe test which none expected would find us doing discover until after the underlying matters were resolved, and then perhaps never.

Forbearance and grace is of course the discretion of the sovereign and its Judges to allow justice. The Plaintiff here asks for relief from the discovery schedule in place to allow it to adequately prepare for perhaps its only or last day in court to obtain a recovery. Such extension is not violently contrary to the interests of the opposing party who has little to gain or lose by the extension, but its resources are much greater and the court can take that into account as well as the proportional needs.

Respectfully submitted.

Dated: February 28, 2017

Attorney for Plaintiffs

/s/ Frank G. Patrick

Frank G. Patrick, OSB 760228

fgplawpc@hotmail.com

PO Box 231119

Portland, OR 97281

Tel: (503) 245-2828

Fax: (503) 245-1448

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons registered with the system:

STEVEN K. BLACKHURST, OSB No.
730320
E-mail: skb@aterwynne.com
ATER WYNNE LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-3280
Telephone: (503) 226-1191
Facsimile: (503) 226-0079
Attorney for Defendants

Dated: February 28, 2017

Frank G. Patrick, OSB 76022
Attorney for Plaintiffs

/s/ Frank G. Patrick

Business Name Search

[New Search](#)

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Business Entity Data

01-09-2024
09:14

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
1107034-93	DLLC	INA	OREGON	04-22-2015		
Entity Name DAVEL PHONETEL LLC						
Foreign Name						

[New Search](#)

[Printer Friendly](#)

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	255 NW TORREYVIEW DR					
Addr 2						
CSZ	PORTLAND	OR	97229	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-22-2015	Resign Date
Of Record	377572-83	CORPORATE LAWYERS PC			
Addr 1	255 NW TORREYVIEW DR				
Addr 2					
CSZ	PORTLAND	OR	97229	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS
Addr 1	PO BOX 231119	
Addr 2		
CSZ	PORTLAND	OR 97281 Country UNITED STATES OF AMERICA

Type	MGR	MANAGER	Resign Date
Name	CHARLES	W JONES	
Addr 1	PO BOX 231119		
Addr 2			
CSZ	PORTLAND	OR 97281	Country UNITED STATES OF AMERICA

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Name History







Business Entity Name	Name Type	Name Status	Start Date	End Date
DAVEL PHONETEL LLC	EN	CUR	04-22-2015	

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Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ADMINISTRATIVE DISSOLUTION	09-01-2022		SYS		
	AMENDED ANNUAL REPORT	05-20-2021		FI		
	REINSTATEMENT AMENDED	12-10-2020		FI		
	ADMINISTRATIVE DISSOLUTION	06-18-2020		SYS		
	REINSTATEMENT AMENDED	03-15-2019		FI		
	ADMINISTRATIVE DISSOLUTION	06-21-2018		SYS		
	AMENDED ANNUAL REPORT	05-30-2017		FI		
	REINSTATEMENT AMENDED	01-23-2017		FI		
	ADMINISTRATIVE DISSOLUTION	06-23-2016		SYS		
	ARTICLES OF ORGANIZATION	04-22-2015		FI	Agent	

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Business Entity Data

01-09-2024
09:17

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
272845-87	FBC	INA	WASHINGTON	12-02-1991		
Entity Name	CENTRAL TELEPHONE, INC.					
Foreign Name						

[New Search](#)

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Associated Names

Type	PRINCIPAL PLACE OF BUSINESS					
Addr 1	1505 S GRANT ST					
Addr 2						
CSZ	GOLDENDALE	WA	98620		Country	UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	02-07-2002	Resign Date	
Of Record	272965-81	MN SERVICE CORPORATION (OREGON)				
Addr 1	111 SW FIFTH ST #3500					
Addr 2						
CSZ	PORTLAND	OR	97204	3699	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS				
Addr 1	PO BOX 25					
Addr 2						
CSZ	GOLDENDALE	WA	98620		Country	UNITED STATES OF AMERICA

Type	PRE	PRESIDENT				Resign Date	
Name	RICHARD	STEVENS					
Addr 1	321 NW HIGH						
Addr 2							
CSZ	GOLDENDALE	WA	98620		Country	UNITED STATES OF AMERICA	

Type	SEC	SECRETARY				Resign Date	
Name	IONE	STEVENS					
Addr 1	321 NW HIGH						


Addr 2					
CSZ	GOLDENDALE	WA	98620	Country	UNITED STATES OF AMERICA

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Business Entity Name	Name Type	Name Status	Start Date	End Date
CENTRAL TELEPHONE, INC.	EN	CUR	12-02-1991	

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Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Disolved By
	WITHDRAWAL OF AUTHORITY	01-31-2011		FI		
	ANNUAL REPORT PAYMENT	12-01-2009	11-30-2009	SYS		
	ANNUAL REPORT PAYMENT	11-26-2008	11-25-2008	SYS		
	ANNUAL REPORT PAYMENT	12-03-2007	11-30-2007	SYS		
	ANNUAL REPORT PAYMENT	10-30-2006	10-27-2006	SYS		
	ANNUAL REPORT	11-02-2005		FI		
	ANNUAL REPORT PAYMENT	11-23-2004		SYS		
	AMENDMENT TO AUTHORITY	05-26-2004		FI		
	ANNUAL REPORT PAYMENT	11-10-2003	11-07-2003	SYS		
	ANNUAL REPORT PAYMENT	10-24-2002		SYS		
	CHANGE OF REGISTERED AGENT/ADDRESS	02-07-2002		FI	Agent	
	ANNUAL REPORT	12-26-2001		FI		
	CHANGE OF REGISTERED AGENT/ADDRESS	06-29-2001		FI		
	STRAIGHT RENEWAL	11-28-2000		FI		
	CHANGED RENEWAL	12-08-1999		FI		
	STRAIGHT RENEWAL	11-17-1999		FI		
	STRAIGHT RENEWAL	11-10-1998		FI		
	STRAIGHT RENEWAL	11-28-1997		FI		
	STRAIGHT RENEWAL	11-19-1996		FI		
	STRAIGHT RENEWAL	11-13-1995		FI		
	STRAIGHT RENEWAL	10-27-1994		FI		
	STRAIGHT RENEWAL	10-20-1993		FI		

	AMENDED RENEWAL	12-04-1992		FI		
	NEW FILING	12-02-1991		FI		

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Business Entity Data

01-09-2024
09:18

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
214359-95	DBC	INA	OREGON	04-16-2004		
Entity Name	VALLEY PAY PHONES, INC.					
Foreign Name						

[New Search](#)

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Associated Names

Type	PPB PRINCIPAL PLACE OF BUSINESS					
Addr 1	6068 CRAMPTON DR N					
Addr 2						
CSZ	KEIZER	OR	97303	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT REGISTERED AGENT			Start Date	04-16-2004	Resign Date
Name	CHRISTINE	E	GARRISON			
Addr 1	6068 CRAMPTON DR N					
Addr 2						
CSZ	KEIZER	OR	97303	Country	UNITED STATES OF AMERICA	

Type	MAL MAILING ADDRESS					
Addr 1	6068 CRAMPTON DR N					
Addr 2						
CSZ	KEIZER	OR	97303	Country	UNITED STATES OF AMERICA	

Type	PRE PRESIDENT			Resign Date	
Name	CHRISTINE		GARRISON		
Addr 1	6068 CRAMPTON DR N				
Addr 2					
CSZ	KEIZER	OR	97303	Country	UNITED STATES OF AMERICA

Type	SEC SECRETARY			Resign Date
Name	CHRISTINE		GARRISON	
Addr 1	6068 CRAMPTON DR N			
Addr 2				


CSZ	KEIZER	OR	97303	Country	UNITED STATES OF AMERICA
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Business Entity Name	Name Type	Name Status	Start Date	End Date
VALLEY PAY PHONES, INC.	EN	CUR	04-16-2004	

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Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ADMINISTRATIVE DISSOLUTION	06-15-2012		SYS		
	AMENDED ANNUAL REPORT	03-08-2011		FI		
	ANNUAL REPORT PAYMENT	03-30-2010		SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-12-2007	03-11-2007	SYS		
	ANNUAL REPORT PAYMENT	03-13-2006	03-11-2006	SYS		
	AMENDED ANNUAL REPORT	03-14-2005		FI		
	ARTICLES OF INCORPORATION	04-16-2004		FI	Agent	

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Business Entity Data

01-09-2024
09:24

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
052301-98	DLLC	INA	OREGON	12-03-2001		
Entity Name	NATIONAL PAYPHONE SERVICES, LLC					
Foreign Name						

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Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	1302 SOUTH HIGH SCHOOL RD					
Addr 2						
CSZ	INDIANAPOLIS	IN	46241	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	12-03-2001	Resign Date	
Of Record	789551-85	WSCJ BUSINESS SERVICES, INC.				
Addr 1	805 SW BROADWAY STE 2440					
Addr 2						
CSZ	PORTLAND	OR	97205	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS				
Addr 1	1302 SOUTH HIGH SCHOOL RD					
Addr 2						
CSZ	INDIANAPOLIS	IN	46241	Country	UNITED STATES OF AMERICA	

Type	MGR	MANAGER			Resign Date	
Name	PAM	LIVINGSTON				
Addr 1	1302 S HIGH SCHOOL RD					
Addr 2						
CSZ	INDIANAPOLIS	IN	46241	Country	UNITED STATES OF AMERICA	

Type	MGR	MANAGER			Resign Date	
Not of Record	TELEPHONE TECHNOLOGIES INC					



Addr 1	1302 SOUTH HIGH SCHOOL RD				
Addr 2					
CSZ	INDIANAPOLIS	IN	46241	Country	UNITED STATES OF AMERICA

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Business Entity Name	Name Type	Name Status	Start Date	End Date
NATIONAL PAYPHONE SERVICES, LLC	EN	CUR	12-03-2001	

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Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ADMINISTRATIVE DISSOLUTION	01-31-2014		SYS		
	AMENDED ANNUAL REPORT	11-21-2012		FI		
	AMENDED ANNUAL REPORT	10-25-2011		FI		
	ANNUAL REPORT PAYMENT	11-23-2010		SYS		
	ANNUAL REPORT	11-12-2009		FI		
	ANNUAL REPORT PAYMENT	12-02-2008		SYS		
	ANNUAL REPORT PAYMENT	12-05-2007		SYS		
	ANNUAL REPORT PAYMENT	12-14-2006		SYS		
	ANNUAL REPORT PAYMENT	11-29-2005		SYS		
	ANNUAL REPORT PAYMENT	01-26-2005	01-25-2005	SYS		
	ANNUAL REPORT PAYMENT	11-10-2003		SYS		
	AMENDED ANNUAL REPORT	11-26-2002		FI		
	ARTICLES OF ORGANIZATION	12-03-2001		FI	Agent	

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Business Entity Data

01-09-2024
09:25

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
569396-80	DBC	INA	OREGON	04-09-1997		
Entity Name	CORBAN TECHNOLOGIES, INC.					
Foreign Name						

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Associated Names

Type	PRINCIPAL PLACE OF BUSINESS					
Addr 1	1556 SE CONDOR AVE					
Addr 2						
CSZ	GRESHAM	OR	97080	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT REGISTERED AGENT			Start Date	05-29-2007	Resign Date
Name	GREGG		MARSHALL			
Addr 1	1556 SE CONDOR AVE					
Addr 2						
CSZ	GRESHAM	OR	97080	Country	UNITED STATES OF AMERICA	

Type	MAL MAILING ADDRESS					
Addr 1	1556 SE CONDOR AVE					
Addr 2						
CSZ	GRESHAM	OR	97080	Country	UNITED STATES OF AMERICA	

Type	PRE PRESIDENT			Resign Date	
Name	GREGG		MARSHALL		
Addr 1	1556 SE CONDOR AVE				
Addr 2					
CSZ	GRESHAM	OR	97080	Country	UNITED STATES OF AMERICA

Type	SEC SECRETARY			Resign Date	
Name	GREGG		MARSHALL		
Addr 1	1556 SE CONDOR AVE				
Addr 2					


CSZ	GRESHAM	OR	97080	Country	UNITED STATES OF AMERICA
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[New Search](#) [Printer Friendly](#) **Name History**

Business Entity Name	Name Type	Name Status	Start Date	End Date
CORBAN TECHNOLOGIES, INC.	EN	CUR	08-27-2008	
SMARTSTOP, INC.	EN	PRE	04-09-1997	08-27-2008

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Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Disolved By
	ADMINISTRATIVE DISSOLUTION	06-09-2016		SYS		
	ANNUAL REPORT	04-30-2015		FI		
	AMENDED ANNUAL REPORT	05-29-2014		FI		
	ANNUAL REPORT PAYMENT	04-05-2013		SYS		
	ANNUAL REPORT PAYMENT	04-02-2012		SYS		
	ANNUAL REPORT PAYMENT	03-31-2011		SYS		
	ANNUAL REPORT PAYMENT	03-18-2010		SYS		
	ANNUAL REPORT PAYMENT	03-05-2009		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	10-13-2008		FI		
	CHANGE OF REGISTERED AGENT/ADDRESS	09-10-2008		FI		
	ARTICLES OF AMENDMENT	08-27-2008		FI	Name	
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	04-24-2008		FI		
	ANNUAL REPORT PAYMENT	04-22-2008	04-21-2008	SYS		
	CHANGE OF REGISTERED AGENT/ADDRESS	05-29-2007		FI	Agent	
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-29-2007		FI		
	ANNUAL REPORT PAYMENT	05-25-2007	05-24-2007	SYS		
	ANNUAL REPORT PAYMENT	04-10-2006		SYS		

	ANNUAL REPORT PAYMENT	03-28-2005	03-25-2005	SYS		
	ARTICLES OF AMENDMENT	03-23-2005		FI		
	ARTICLES OF AMENDMENT	07-30-2004		FI		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	04-09-2004		FI		
	ANNUAL REPORT PAYMENT	04-06-2004		SYS		
	ANNUAL REPORT	03-14-2003		FI		
	CHANGE OF REGISTERED AGENT/ADDRESS	05-09-2002		FI	Agent	
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	03-28-2002		FI		
	ANNUAL REPORT	03-28-2002		FI		
	NOTICE RESIGNED AGENT OF 30 DAYS	03-22-2002		SYS		
	AGENT RESIGNATION	02-05-2002		FI	Agent	
	ARTICLES OF AMENDMENT	09-26-2001		FI		
	ANNUAL REPORT	05-15-2001		FI		
	AMENDED RENEWAL	03-21-2000		FI		
	CHANGED RENEWAL	04-08-1999		FI		
	STRAIGHT RENEWAL	03-22-1999		FI		
	NB AMENDMENT	04-09-1998		FI		
	STRAIGHT RENEWAL	03-18-1998		FI		
	CHANGED RENEWAL	03-18-1998		FI		
	NB AMENDMENT	06-26-1997		FI		
	NEW FILING	04-09-1997		FI		

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FILED
2018 NOV 21 PM 2:59
CIRCUIT COURT
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CORPORATE LAWYERS PC,)	Case No. 17CV14749
)	
Plaintiff,)	
)	
vs.)	GENERAL JUDGMENT BY DEFAULT
)	
NSC COMMUNICATIONS PUBLIC)	
SERVICES CORPORATION,)	
)	
Defendant,)	
)	
)	
)	
)	
)	
)	
)	
)	

This matter came before the court a number of times for hearings regarding plaintiff's motion for a default judgment against defendant. Plaintiff was represented by its attorney, Frank G. Patrick. The final hearing occurred on October 12, 2018. The plaintiff in this action is counsel for defendant in other litigation, which is referred to herein as the "underlying litigation." Having reviewed the court file, the submissions by plaintiff, and heard oral argument,

IT IS HEREBY ORDERED AND ADJUDGED:

1. Plaintiff is not entitled to relief on its first, second, and fourth claims for relief in which plaintiff seeks authority to take over and prosecute defendant's claims in the underlying litigation. The attorney's lien statute and other statutes and case law relied upon by plaintiff, as well as its contractual rights under the contingent fee agreement, do not give the court authority to allow plaintiff, as counsel for defendant, to take over the prosecution of its client's claims in

the underlying litigation.

2. Plaintiff is not entitled to relief on its third claim for quantum meruit for the value of its legal services to defendant because of the existence of a contingent fee agreement. The nature of a contingent fee agreement is conditional. Counsel is only entitled to fees in the event of the contingency of a recovery. If a client does not pursue a claim, the attorney is not entitled to an alternative remedy of the fair value of the attorney’s services. The agreement does, however, provide for the payment of costs, regardless of whether there is any recovery in the underlying litigation. I will therefore allow plaintiff to recover defendant’s unpaid share of the costs of the underlying litigation pursuant to its contingent fee agreement in the amount of \$12,218.64.

3. On its sixth claim for relief plaintiff is entitled to recover prejudgment interest on its costs of \$12,218.64 from April 10, 2017 at the legal rate of 9% per annum for total interest to the date of judgment of \$1,777.56.

4. Plaintiff’s right to recover attorney fees incurred in this action pursuant to ORS 87.485 as alleged in plaintiff’s fifth claim for relief shall be determined pursuant to ORCP 68.

5. Plaintiff’s right to recover any costs incurred in this action will also be determined pursuant to ORCP 68.

MONEY AWARD

- 1. Name of Judgment Creditor: Corporate Lawyers PC
- 2. Judgment Creditor’s Address: PO Box 231119
Portland, OR 97281
- 3. Name of Judgment Creditor’s Attorney: Frank G. Patrick
PO Box 231119
Portland, OR 97281
(503) 245-2828
- 4. Name of Judgment Debtor: NSC Communications Public Services Corporation
 - a. Last known address: c/o Lynn Tilton, Patriarch Partners, LLC
1 Liberty St., 35th Floor,
New York, NY 10006

- b. Date of birth: N/A
- c. SSN: N/A
- d. Driver's license number: N/A
- e. State of issuance: N/A

- 5. Name of Judgment Debtor's Attorney: None

- 6. Payment Entitlement: There is no person or public body that is known by the judgment creditor to be entitled to any portion of the money award.

- 7. Principal Amount of Judgment: \$12,218.64

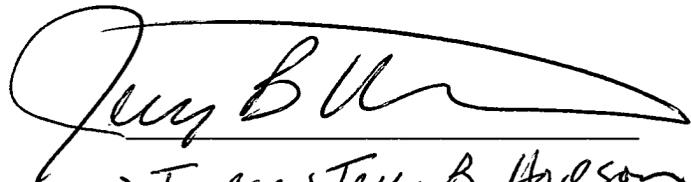
- 8. Prejudgment Interest: \$1,777.56

- 9. Post-judgment Interest: At the rate of 9% per annum from the date of entry of judgment until paid

- 10. Attorney Fees: Entitlement to fees to be determined pursuant to ORCP 68

- 11. Costs and Disbursements: To be determined pursuant to ORCP 68

11/21/18



Judge Jerry B. Hodson

IN THE CIRCUIT COURT OF THE STATE OREGON
FOR THE COUNTY OF MULTNOMAH

CORPORATE LAWYERS PC)
)
 Plaintiff,)
)
 v.)
)
 NSC COMMUNICATIONS PUBLIC)
 SERVICES CORPORATION,)
)
 Defendant.)

Case No. 17CV14749

ASSIGNMENT OF JUDGMENT

Please take notice that Plaintiff in the above entitled action does hereby sell, assign and transfer to NPCC NSC Deval Phonetel LLC all of its' right, title and interest in that certain judgment that was entered against Defendant herein on the 21st day of November, 2018.

Dated this 23rd day of February, 2022

Corporate Lawyers PC

By:

Frank G. Patrick
Frank G. Patrick, President

STATE OF OREGON)
) ss
County of Washington)

Subscribed and sworn to before me by Frank G. Patrick as President for Corporate Lawyers PC on this 23rd day of February, 2022.



Loriann L. Schenkelsberg
Notary Public for Oregon
My Commission Expires: May 5/2023

Ted A. Troutman
Troutman Law Firm, P.C.
5075 SW Griffith Dr., Ste. 220
Beaverton, OR 97005
503-292-6788 TEL
503-596-2371 FAX
tedtroutman@sbcglobal.net



**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY**

Case No. 17CV14749

NPCC NSC DAVEL PHONETEL, LLC,
Assignee of Corporate Lawyers PC,

Plaintiff,

vs.

NSC COMMUNICATIONS PUBLIC SERVICES
CORPORATION,

Defendants.

**SHERIFF'S RETURN ON
WRIT OF EXECUTION
Intangible Personal Property
CREDIT BID \$18,473.63**

I HEREBY CERTIFY, that I received the writ of execution on March 9, 2022 commanding me to levy on and sell the intangible property of judgment debtors NPCC NSC DAVEL PHONETEL, LLC, Assignee of Corporate Lawyers PC:

- All claims and any claim for money due from Qwest Communications Corp. dba Qwest (also now known as Century Link Communications) in the State of Oregon accruing from about May 1, 1996 through the date of about October 31, 2003 and through November 15, 2007, along with interest accruing as provided by the orders of the Oregon PUC at 8.75% compounded monthly; along with any claims in litigation since about 9/13/1996 and currently on appeal in PUC Case DR 26/UC 600 and UT 125 at the Oregon Court of Appeals Case No. A166810, and other appeals in the USDC of Oregon Case No. 3:14-cv-00249-BR (at the Ninth Circuit Court of Appeals as Docket #: 15-35035, by DC Order Document 75 Filed 06/20/18) now remanded by the USDC to the Multnomah Circuit court Case No. 131115906.

On March 21, 2022, I levied on this property by filing a notice of levy with this court.

On March 18, 2022, March 20, 2022 and March 21, 2022, the Notice of Sale was posted in three public places in the county. This notice stated the above intangible personal property would be sold at the Multnomah County Sheriff's Office at 3083 NE 170th Place, Portland, Oregon on April 5, 2022, at 12:00 P.M.

On March 21, 2022, I sent copies of the Notice of Judicial Sale, Writ of Execution, Notice of Levy, and Challenge of Execution by certified mail with return receipt and by first class mail to:

NSC Communications Public Services Corp
By its Registered Agent
329227 – C T Corporation System
780 Commercial St STE 100
Salem, OR 97301

MULTNOMAH COUNTY SHERIFF'S OFFICE
MICHAEL REESE,
Sheriff

Attachment K
Page 1 of 13



NSC Communications Public Services Corp
And its parent or affiliate Intera Group Inc.
C/O Lynn Tilton Patriarch Partners, LLC
1 Liberty St, 35th Floor
New York, NY 10006.

and by first class mail only to the judgment debtor's attorney at the following address:

Ted Troutman
Troutman Law Firm P.C.
5075 SW Griffith Dr., Ste 220
Beaverton, OR 97005

pursuant to the Instructions to Sheriff.

I conducted an oral public auction at the time and place fixed for sale. The highest bidder was NPCC NSC DAVEL PHONETEL, LLC, Assignee of Corporate Lawyers PC, judgment creditor, for the sum of \$18,473.63, as a credit toward the judgment they hold in this matter. I provided to said purchaser a Bill of Sale, containing a description of said intangible personal property.

I incurred the following fees that have been paid by the judgment creditor:

Civil Fee	\$	150.00
Posting Fee	\$	150.00

MICHAEL REESE,
Sheriff

By: 

Francis Cop, MCSO Program Manager
Civil Unit

April 6, 2022

Court clerk has not verified the figure in this writ. If you have questions regarding this writ, please contact your legal counsel, the issuing attorney or company. Debtor may contest this writ by filing a claim of exemption.

**CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH**

MAR 9 2022 PM 2:55

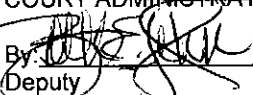
NPCC NSC DAVEL PHONETEL, LLC Assignee of Corporate Lawyers PC,	NO. 17CV14749
Plaintiff, v.	WRIT OF EXECUTION ON GENERAL JUDGMENT PURSUANT TO CIVIL CLAIM SUBJECT OF ATTORNEY LIEN
NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION,	INTANGIBLE PERSONAL PROPERTY
Defendant,	


TO: SHERIFF OF MULTNOMAH COUNTY OREGON:

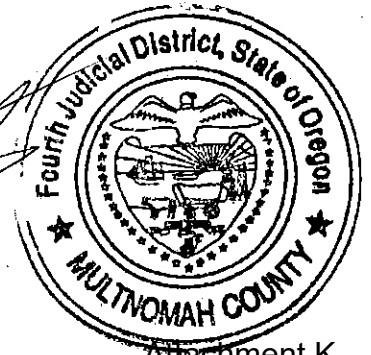
On or about November 21, 2018 in the above-entitled court, a general judgment and award of money was entered in this case in favor of Corporate Lawyers PC and against Defendant. On February 23, 2022 the judgment was assigned to NPCC NSD Davel Phonetel, LLC. The mailing address for the assignee is 12371 NW Kearney St, Portland, OR 97229.

Now, therefore, in the name of the State of Oregon, you are hereby commanded to sell, in the manner prescribed by law for the sale of intangible personal property, excepting as the law exempts, all intangible personal property owned by the defendant, to satisfy the principal sum of \$12,218 together with the costs of and upon this writ and make due return hereon within 60 days after you have received this writ. The total due as of 2/23/2022 is \$18,620.22. Thereafter interest continues to accrue at the rate of \$3.01 per day.

DATED: ~~February 23, 2022~~
March 7, 2022

CLERK
COURT ADMINISTRATOR
By: 
Deputy

Submitted by:

/s/ Ted Troutman
Attorney for Plaintiff



**CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH**

NPCC NSC DAVEL PHONETEL, LLC
Assignee of Corporate Lawyers PC,

Plaintiff,

v.

NSC COMMUNICATIONS PUBLIC SERVICES
CORPORATION,

Defendant,

NO. 17CV14749

WRIT OF EXECUTION

**ON JUDGMENT PURSUANT TO
CIVIL CLAIM SUBJECT OF ATTORNEY LIEN**

**CALCULATION OF ASSIGNED JUDGMENT
DEBT**

TO: SHERIFF OF MULTNOMAH COUNTY OREGON:

RE: DEFENDANT(s) **NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION** (Debtor).

The following amounts have been calculated to be owing from you to NPCC NSC Davel Phonetel, LLC, Assignee of PLAINTIFF (Creditor)

XX A judgment entered dated November 21, 2018, in Multnomah County Circuit Court Case No. 17CV14749,

THE COURT ADMINISTRATOR HAS NOT CALCULATED ANY AMOUNTS FOR THE PURPOSE OF THIS FORM AND IS NOT LIABLE FOR ERRORS IN THIS FORM OR IN THE WRIT OF EXECUTION / GARNISHMENT MADE BY THE JUDGMENT CREDITOR OR GARNISHOR.

Original Debt Amount	\$12,218.64	
+ Pre-adjudication Interest	\$ 1,777.56	
+ Attorney Fees	\$ _____	
+ Cost Bill	\$ _____	
+ Post-adjudication Interest	\$ 120.51 to December 31, 2018 plus \$3.01/day to date Execution	
+ Delivery Fee for Writ	\$ 15.00	
+ Sheriff's Fees other than Delivery Fees	\$ _____	
+ Other (Explain. Attach Additional Sheet additional sheets if necessary.)		

Preparation of Execution	\$12.00	
_____	\$ _____	

Total "Other" from add/l sheets (if used)		
+ Past Delivery Fees	\$ _____	
+ Transcript and Filing Fees for Other Counties	\$ _____	
= Subtotal		\$14,155.71

PLUS accrued interest (12/31/18 to 2/23/22) 1151 x \$3.01 = **\$ 3,464.51**

LESS Payments Made on Debt **\$ -0-**

Total Amount Required to **Satisfy Debt in Full as of 2/23/22** **\$17,620.22**

(Plus the **daily rate of interest at \$3.01** thereafter until paid.)

+ Past Writ Issuance Fees	\$ 500.00	
Plus Costs of Sale by Sheriff	\$ 500.00	

Total to Satisfy Debt in Full

\$18,620.22

I certify that I have read this Debt Calculation form and to the best of my knowledge, information and belief the amount shown as owing is correct.

s/ Ted A. Troutman

Ted A Troutman, OSB 844470
Troutman Law Firm PC
5075 SW Griffith Dr Ste 220
Beaverton OR 97005
503-292-6799
tedtroutman@sbcglobal.net

Date of Calculation as of February 23, 2022

RE: JUDGMENT Debtor NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION

XX A judgment entered dated November 21, 2018, in Case NO. 17CV14749,
The Circuit Court for Oregon, Multnomah County, in the sum as calculated on attachment.

This writ has been issued by the Court and is valid only if it has been delivered to you within 60 days after the date of issuance. If the court administrator is issuing this writ, the date of issuance is the date the court administrator signs the writ (see "COURT SEAL" below). If this writ is issued by any other person, the date of issuance is the date on which the issuer signs the certification (see "CERTIFICATION" below).

IMPORTANT ADDRESSES

1. Address of the Court Administrator:

Multnomah County Circuit Court
1021 SW Fourth Avenue
Portland, OR 97204-1123

Tel: (503) 988-3957

2. Address(s) of the Judgment Debtor: (Debtor)

DEFENDANT: NSC Communications Public Services Corporation, Judgment Debtor

a. NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION,
By its Registered Agent:
329227 - C T CORPORATION SYSTEM
780 COMMERCIAL ST SE STE 100
SALEM OR 97301 USA

b. NSC Communications Public Services Corporation, and its parent or affiliate Intera Group Inc. by
C/O Lynn Tilton Patriarch Partners LLC
Its Putative Collateral Manager
1 Liberty St 35th Floor
New York NY 10006
(212) 825-0550 alt. 646-723-7636

c. NSC Communications Public Services Corporation and its parent or affiliate Intera Group Inc. by its Trustee

3. Address of the Judgment Creditor:

NPCC NSC Davel Phonetel LLC
12371 NE Kearney St.
Portland, OR 97229
Ted Troutman
tedtroutman@sbcglobal.net

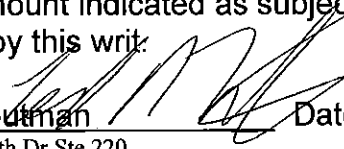
Judgment Creditor by Assignment

Attorney for Creditor:

CERTIFICATION

(The following certification must be signed by the Creditor if this writ is issued by the court administrator. In all other cases, the following certification must be signed by the person issuing the writ.)

X I certify that I have read this writ of execution/garnishment and to the best of my knowledge, information and belief, there is good ground to support issuance of the writ, and the amount indicated as subject to execution/garnishment is lawfully subject to collection by this writ:

/s/ Ted Troutman  Date: February 23, 2022
5075 SW Griffith Dr Ste 220
Beaverton OR 97005
503-292-6788 TEL
tedtroutman@sbcglobal.net

(To be completed only if this Writ is issued by the court administrator. The writ must be stamped by the court administrator. The court administrator has not calculated any amounts on the writ and is not liable for errors made in the writ by the Creditor.)

Issued by the court administrator this _____ day of _____, 2019.

Court seal

COURT ADMINISTRATOR

By _____

**CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH**

NPCC NSC DAVEL PHONETEL, LLC
Assignee of Corporate Lawyers PC,

Plaintiff,

v.

NSC COMMUNICATIONS PUBLIC SERVICES
CORPORATION,

Defendant,

NO. 17CV14749

WRIT OF EXECUTION

**ON JUDGMENT PURSUANT TO
CIVIL CLAIM SUBJECT OF ATTORNEY LIEN**

**DESCRIPTION OF INTANGIBLE PROPERTY
TO BE SOLD BY EXECUTION Exhibit A**

TO: SHERIFF OF MULTNOMAH COUNTY OREGON:

RE: DEFENDANT(S) **NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION** (Debtor).

The Judgment sum has been calculated and attached amounts have been calculated to be owing from the Judgment Debtor, NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION, to NPCC NSC Davel Phonetel, LLC, Assignee of PLAINTIFF (Creditor)

XX ___ A judgment entered dated November 21, 2018, in this case:

Now, therefore, in the name of the State of Oregon, you are hereby commanded to sell the following claims of the Judgment Debtors, of the following Intangible Personal Property:

Description of Intangible Property:

Now, therefore, in the name of the State of Oregon, you are hereby commanded to sell the following claims of the Judgment Debtors, of the following Intangible Personal Property: a. All claims and any claim for money due from Qwest Communications Corp. dba Qwest (also now known as Century Link Communications.) in the State of Oregon accruing from about May 1, 1996 through the date of about October 31, 2003 and through November 15, 2007, along with interest accruing as provided by the orders of the Oregon PUC at 8.75% compounded monthly; along with,

b. Any claims in litigation since about 9/13/1996 and currently on appeal in PUC Case DR 26/UC 600 and UT 125 at the Oregon Court of Appeals Case Nos. A166810, and other appeals in the USDC of Oregon Case No. 3:14-cv-00249-BR (at the Ninth Circuit Court of Appeals as Docket #: 15-35035, by DC Order Document 75 Filed 06/20/18) now remanded by the USDC to the Multnomah Circuit court Case No. NO. 13 1115 906.

Judgment Creditor makes no representations on the value of such claims. The Plaintiff Assignor is the Firm and Lawyer who filed an attorney's lien on the Cause of Action and proceedings and that Lien is Not discharged by the execution on the judgment nor the payment of the judgment, and continues until the lien is fully satisfied under Oregon Law. Further litigation must be continued/undertaken before recovery on the claims could be realized and such legal work is at the expense of the buyer. The judgment Creditor is not obligated to continue without further payment of fees after the execution sale and on terms satisfactory to the Judgment Creditor herein.

The Buyer at the Execution Sale will be entitled to a Bill of Sale, as issued by the Sheriff for the described intangible property.

s/ Ted A. Troutman

Ted A Troutman, OSB 844470
Troutman Law Firm PC
5075 SW Griffith Dr Ste 220
Beaverton OR 97005
503-292-6788 TEL
tedtroutman@sbcglobal.net

SHERIFF'S BILL OF SALE AND ASSIGNMENT OF CLAIMS

This Bill of Sale and Assignment of Claims is to evidence the transfer of the intangible property subject of sale under a Writ of Execution on the Judgment of the Judgment Creditor at a Sheriff's execution sale as follows:

TRANSFER AND ASSIGNMENT of ALL CLAIMS, RIGHTS AND OWNERSHIP

1.1 Pursuant to the attached Sheriff's Return of Levy and Sale under the Writ of Execution of the Judgment, attached hereto as Exhibit, This Bill of Sale and Assignment of Claims hereby transfers and assigns to the Buyer identified below as the successful buyer at the Sale and is the Assignee, and is successor of all of the Judgment Debtor, NSC COMMUNICATIONS PUBLIC SERVICES CORPORATION right, title, and interest in the claim as identified on the attached **Exhibit A**;

1.2 Upon evidence of Search at the Secretary of State, there was no other lien recorded.

Description of Intangible Property:

Now, therefore, in the name of the State of Oregon, you are hereby commanded to sell the following claims of the Judgment Debtors, of the following Intangible Personal Property:

a. All claims and any claim for money due from Qwest Communications Corp. dba Qwest (also now known as Century Link Communications.) in the State of Oregon accruing from about May 1, 1996 through the date of about October 31, 2003 and through November 15, 2007, along with interest accruing as provided by the orders of the Oregon PUC at 8.75% compounded monthly; along with

b. Any claims in litigation since about 9/13/1996 and currently on appeal in PUC Case DR 26/UC 600 and UT 125 at the Oregon Court of Appeals Case Nos. A166810, and other appeals in the USDC of Oregon Case No. 3:14-cv-00249-BR (at the Ninth Circuit Court of Appeals as Docket #: 15-35035, by DC Order Document 75 Filed 06/20/18) now remanded by the USDC to the Multnomah Circuit court Case No. NO. 13 1115 906.

Judgment Creditor makes no representations on the value of such claims. The Plaintiff is the Firm and Lawyer who has filed an attorney's lien on the Cause of Action and proceedings and that Lien is Not discharged by the execution on the judgment nor the payment of the judgment, and continues until the lien is fully satisfied under Oregon Law. Further litigation must be undertaken before recovery on the claims could be realized and such legal work is at the expense of the buyer. The judgment Creditor is not obligated to continue without further payment of fees after the execution sale and on terms satisfactory to the Judgment Creditor herein.

This ____ day of _____, 2022

By: _____
Sheriff of Deputy for Multnomah County

CIRCUIT COURT OF OREGON

COUNTY OF MULTNOMAH

NPCC NSC DAVEL PHONETEL, LLC
Assignee of Corporate Lawyers PC,

Plaintiff,

v.

NSC COMMUNICATIONS PUBLIC SERVICES
CORPORATION,

Defendant,

NO. 17CV14749

WRIT OF EXECUTION

**Judgment Debtor's
Challenge or Claim of Exemption**

THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOLLOWING PURPOSES:

(1) To claim such exemptions from execution as are permitted by law.

(2) To assert that the amount specified in the writ of execution as being subject to execution is greater than the total amount owed.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____

Signature _____

Address _____

Telephone _____

Number _____

(Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

(1) Fill out the Challenge to Execution form that you received with this notice.

(2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.

(3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING PURPOSES:

(1) To claim such exemptions from execution as are permitted by law.

(2) To assert that the amount specified in the writ of execution as being subject to execution is greater than the total amount owed.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
 - (b) \$218 per workweek.
- (2) Social Security benefits.
(3) Supplemental Security Income (SSI).
(4) Public assistance (welfare).
(5) Unemployment benefits.
(6) Disability benefits (other than SSI benefits).
(7) Workers' compensation benefits.

(8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are held in a bank account.

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly own the homestead with another person who is also liable on the debt, up to \$50,000 of the value of the homestead is exempt.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$5,000.

*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

- (20) Public or private pensions.
 - (21) Veterans' benefits and loans.
 - (22) Medical assistance benefits.
 - (23) Health insurance proceeds and disability proceeds of life insurance policies.
 - (24) Cash surrender value of life insurance policies not payable to your estate.
 - (25) Federal annuities.
 - (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
 - (27) Professionally prescribed health aids for you or any of your dependents.
 - *(28) Rental assistance to an elderly person allowed pursuant to ORS 458.375.
 - *(29) Your right to receive, or property traceable to:
 - *(a) An award under any crime victim reparation law.
 - *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
 - *(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
 - (30) Amounts paid to you as an earned income tax credit under federal tax law.
 - (31) Your right to the assets held in, or right to receive payments under, a medical savings account or health savings account authorized under section 220 or 223 of the Internal Revenue Code.
 - (32) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
 - (33) Equitable interests in property.
- Note:** If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

[Formerly 18.512; 2007 c.71 §7; 2007 c.166 §9; 2007 c.496 §§12,17; 2009 c.430 §11; 2009 c.612 §5; 2011 c.93 §3; 2011 c.228 §4; 2011 c.317 §7; 2013 c.597 §3; 2015 c.348 §25]

18.898 Hearing on challenge to execution. (1) A challenge to execution shall be adjudicated in a summary manner at a hearing before the court with authority over the writ of execution. Upon receipt of a challenge to execution, the court administrator shall immediately set a hearing date and send notice of the hearing to the judgment debtor and the judgment creditor. The hearing shall be held as soon as possible. The sheriff may not sell any property that is described in the challenge to execution until the court has issued a decision on the challenge, and the time for making a return on the writ is suspended until the decision is made or the sale

completed, whichever is later. The sheriff shall not delay sale if the judgment debtor has filed the challenge to execution in violation of ORS 18.892 (2).

(2) Hearings on a challenge to execution may be held by telecommunication devices.

(3) The judgment debtor has the burden to prove timely delivery of a challenge to execution under ORS 18.892. [Formerly 18.515]

18.899 Sanctions. A court may impose sanctions against any person who files a challenge to execution in bad faith. The sanctions a court may impose under this section are a penalty of not more than \$100 and responsibility for attorney fees under ORS 20.105. [Formerly 18.518]