

1 the Petitioners "...will suffer substantial and irreparable harm if interlocutory relief is not
2 granted..." because the delay of any relief from the process of the PUC since 1996 when the
3 Petitioners first intervened until now has resulted in a direct and continued violation of both
4 Federal and Oregon law.

5 B. The Petitioners were parties to the administrative proceeding and the PUC rate case,
6 UT 125 which produced the PUC orders for refunds effectively denied by the Order. Petitioners
7 were the successful appellants of the defective rates established by the PUC Order 01-810 and
8 are entitled to the relief sought by the second amended complaint denied by the Order 10-027,
9 the subject of this appeal;

10 1. The PUC in its Order 09-155 admitted that "...CustomNet, which may or may
11 not be subject to the same set of issues and intentions regarding refund obligations as are set
12 forth in the Payphone Orders. Although NPCC asserts that its claims for CustomNet service
13 overcharges arise out of the same legal theories as for PAL services, without a definitive
14 statement from the FCC that services such as CustomNet were within the scope of the original
15 proceeding, we are not so certain." Since that opinion nothing has changed to give the
16 Commission the "FCC statement" it deemed necessary to form the basis of such a decision to
17 either grant or deny the claims subject of the sought Amendment. The PUC did not have
18 sufficient basis to determine if the Amended complaint had claims that were properly includable
19 and therefore Order 10-027 "...is not supported by substantial evidence in the record." In fact
20 there is no competent evidence in the record to support the Order and the Commission has
21 admitted that such evidence is in the province of Federal law to resolve.

22 2.

23 The parties to the appeal are:

24 **Petitioners**

Respondent

1 THE NORTHWEST PUBLIC
2 COMMUNICATIONS COUNCIL, and on
3 behalf of its members

State of Oregon through its Agency the
Public Utility Commission and its
Commissioners in their Official Capacity

Respondent

Oregon Public Utilities Commission and Ray
Baum, Susan Ackerman and John Savage,
in their capacity as Commissioners

Respondent

Qwest Corporation (Intervenor at the PUC)

9 The names, bar numbers, addresses, and telephone numbers of the respective attorneys
10 for the parties as currently known to the Petitioner are:

11 Frank G. Patrick, OSB 76022
12 Attorney at Law
13 PO Box 231119
14 Portland, OR 97281
15 Tel: 503-245-2828
16 **Representing Petitioners**

John R. Kroger, OSB 077207
Attorney General of the State of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301
Tel: 503-378-4400

Northwest Public Communication Council et
al.

**Attorney for Respondent,
State of Oregon**

17 PERKINS COIE LLP
18 Lawrence H. Reichman, OSB No. 860836
19 1120 N.W. Couch Street, Tenth Floor
20 Portland, OR 97209-4128
21 Tel: 503.727.2000
22 **Attorney for Respondent,
Qwest Corporation**

QWEST
Adam L. Sherr
1600 7th. Ave, Room 1506
Seattle, WA 98191
Tel: 206-398-2508
**Attorney for Respondent,
Qwest Corporation**

3.

23 Petitioner designates the record in its entirety and is unwilling at this time to stipulate that
24 the agency record may be shortened.

4.

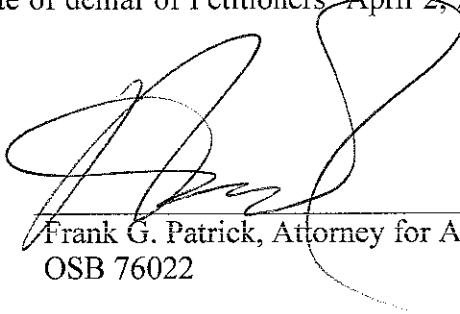
1 Petitioner further advises the court that in consideration of its recent dismissal by
2 Commissioner's James Nass' letter of June 16, 2010, of a similar Petition in Court of Appeals
3 Case No. A143692, that it has already pending Marion County Circuit Court Case No.
4 02C144425 awaiting an amendment to include this relief if so ordered.

5 Petitioner further advises the court that they have filed a proceeding in United States
6 District Court seeking a review and reversal of a determination by the PUC by its Order No. 09-
7 155 on May 4, 2009 that Petitioners' claims for refunds based on overcharges of CustomNet
8 payphone service tariffs are time barred by the two-year statute limitations contained in 47
9 U.S.C. §415 which is a Federal question.

10 6.

11 This appeal is timely and otherwise properly before the Court of Appeals because it is
12 being filed within 60 days of the effective date of denial of Petitioners' April 2, 2010 Motion to
13 Reconsider, to wit June 2, 2010.

14
15 July 2, 2010



16 Frank G. Patrick, Attorney for Appellant
OSB 76022

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing Petition for Review upon:

3 Public Utility Commission Of Oregon
4 550 Capitol Street NE, Suite 215
5 PO Box 2148
6 Salem, OR 97308-2148
7 Respondent

8 John R. Kroger, OSB 077207
9 Attorney General of the State of Oregon
10 Oregon Department of Justice
11 1162 Court Street NE
12 Salem, Oregon 97301
13 503-378-4400
14 Attorney for Respondent,

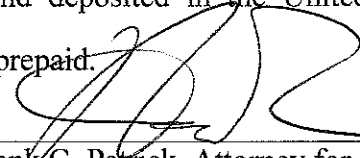
15 PERKINS COIE LLP
16 Lawrence H. Reichman, OSB No. 860836
17 LReichman@perkinscoie.com
18 1120 N.W. Couch Street, Tenth Floor
19 Portland, OR 97209-4128

20 QWEST
21 Adam L. Sherr
22 1600 7th. Ave, Room 1506
23 Seattle, WA 98191

24 Paul Graham, Asst Attorney General
25 Oregon Department of Justice
26 Regulated Utility and Business Section
1162 Court Street NE
Salem, OR 97301

27 I further certify that said copy was placed in a sealed envelope addressed to said
28 attorney's last known address as shown above and deposited in the United States Mail at
29 Portland, Oregon, and that the postage thereon was prepaid.

30 July 2, 2010

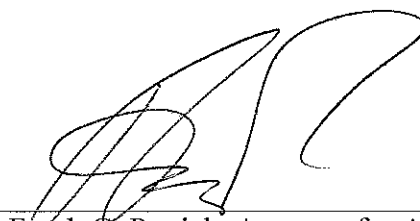

31 _____
32 Frank G. Patrick, Attorney for Appellant
33 OSB 76022

1 **CERTIFICATE OF FILING**

2 I certify that within the time required I Filed this Petition for Review on July 1, 2010, by
3 mailing by HAND DELIERING the Original to:

4 **ATTN: Records Section**
5 State Court Administrator
6 Supreme Court Building
7 1163 State Street
8 Salem, OR 97301-2563

9 July 2, 2010



10 Frank G. Patrick, Attorney for Appellant
11 OSB 76022
12
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ORDER NO. 10-027
ENTERED 02/01/10

FILED
2010 JUL 12 PM 11:58
BY _____ COURT OF APPEALS

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 26/UC 600

THE NORTHWEST PUBLIC COMMUNICATIONS
COUNCIL, on behalf of PSPs A to Z, and NPCC
MEMBERS: Central Telephone, Inc.; Communication
Management Services, LLC; Davel Communications,
a/k/a Phonetel Technologies, Inc.; Interwest Tel, LLC;
Interwest Telecom Services Corporation; NSC
Communications Public Services Corporation; National
Payphone Services, LLC; Pacific Northwest Payphones;
Partners in Communication; T & C Management, LLC;
Corban Technologies, Inc.; and Valley Pay Phones, Inc.,

Complainants,

v.

QWEST CORPORATION,

Defendant.

ORDER

DISPOSITION: MOTION TO STRIKE FIRST AMENDED COMPLAINT
GRANTED IN PART AND DENIED IN PART; MOTION
TO ALLOW SECOND AMENDMENT TO THE
COMPLAINT DENIED; PLAINTIFFS TO FILE AMENDED
COMPLAINT CONSISTENT WITH ORDER

I. INTRODUCTION

In this Order, we grant, in part, the Qwest Corporation (Qwest) Motion to Strike First Amended Complaint and, in its entirety, the Qwest Motion to Strike Second Amended Complaint. We deny the Motion to Allow Second Amendment to the Complaint filed by the Northwest Public Communications Council (NPCC).

II. PROCEDURAL HISTORY

In Order No. 09-155, entered May 4, 2009, we granted in part and denied in part NPCC's February 26, 2009, Motion for Leave to Amend Complaint and Amended Complaint

EXHIBIT A
PAGE 1 OF 8

(Motion). We denied the portion of the Motion seeking to add new claims against Qwest. The claims NPCC sought to add were for refunds relating to Qwest's provision of "CustomNet" fraud prevention services. We found that granting the request to add the new claims would have: (1) joined claims not sufficiently related to the subject matter of the initial complaint--Public Access Line (PAL) service--to relate back to it, and (2) violated the statute of limitation provisions applicable to the new claims that NPCC proposes to add to this proceeding.

We granted the February 26, 2009, Motion to the extent that we allowed the addition of 13 new plaintiffs. In that Motion, and in the NPCC Reply to Qwest's opposing pleading, NPCC asserted that there would be no change in the claims asserted or the discovery process and that discovery, claims, and damages theories would be the same. The parties proposed to be added by the amendment were the parties with the pecuniary interest in the original complaint, and the amendment served to clarify the true parties with a pecuniary interest in and knowledge of the transactions that were the subject of the complaint. Those parties, not NPCC, had the knowledge and the records, and NPCC had been acting throughout this litigation on their behalf. They would be the ones cross-examined.¹ Therefore, we concluded that Qwest was not prejudiced by their inclusion as parties-plaintiff. NPCC did not request that we reconsider our decision; neither did it appeal our Order, which therefore became final on July 6, 2009.

After substitution of counsel on July 22, 2009, and several subsequent extensions of time in which to file an amended complaint, on November 16, 2009, NPCC simultaneously filed a First Amended Complaint and a Second Amended Complaint and Precautionary Motion to Allow Amendment.²

On December 8, 2009, Qwest filed a Motion to Strike First Amended Complaint and a supporting Declaration of Lawrence Reichman (Reichman Declaration) and a Motion to Strike Second Amended Complaint and Response to Complainants' Precautionary Motion to Allow Second Amendment to the Complaint.

On December 22, 2009, NPCC filed a Reply (NPCC Reply) and Memorandum in Support of NPCC Complainants Reply to Qwest Motions to Strike (Reply Memorandum) and supporting Declarations of Charles W. Jones (Jones Declaration) and Frank G. Patrick (Patrick Declaration).

III. DISCUSSION

A. NPCC First and Second Amended Complaints

The First Amended Complaint asks the Commission to order Qwest to pay refunds for "payphone services overcharges" collected by Qwest since April 15, 1997, or approximately 13 years ago. These services include: (1) PAL, and (2) services under various

¹ Order No. 09-155 at 3, 5-6, 8.

² On November 13, 2009, NPCC filed a Complaint for Declaratory Relief and Damages in the United States District Court for the District of Oregon, essentially requesting relief similar to that requested in the complaints filed with the Commission on November 16, 2009.

names such as Fraud Protection, CustomNet, Selective Class of Call Screening or Originating Line Screening, which were referred to in Order No. 09-155, alternatively and collectively, as "CustomNet." Pursuant to Ordering Clause 2 of Order No. 09-155, NPCC now lists the additional Complainants in Exhibit A to the First Amended Complaint.

The bulk of the First Amendment is a detailed history of the litigation and the actions and inactions of federal and state agencies. NPCC asserts that the outcome of docket UT 125 was a finding that Qwest's Payphone Services rates did not comply with the new services test and Section 276 of the Telecommunications Act of 1996.³ NPCC contends that the purpose of this Amendment is to join the Payphone Service Providers (PSP) as named Complainants and "conform the Complaint to the evidence developed in the Docket UT-125 proceeding and the developments in the law that have occurred since NPCC filed the original complaint in May of 2001." NPCC asks the Commission to issue an order that Qwest: (1) make refunds for payphone services rates to the extent that they exceeded lawful rates under Section 276 and the new services test since April 15, 1997; (2) refund to the complainants the amount by which Qwest's Payphone Services rates exceeded the legal rates; and (3) calculate those refunds based on the amount by which the rates charged since April 15, 1997, exceeded the Payphone Services rates established in the final order in docket UT 125.⁴

The Second Amended Complaint asserts that it represents "Unidentified Payphone Service Providers A to Z" as well as the NPCC member companies whose interests NPCC had previously represented who "purchase or have purchased Payphone Services from Qwest in Oregon." As in the First Amended Complaint, the subject services are both PAL and CustomNet services, "as well as those services which were the subject of the OPUC Rate Case UT-125." NPCC asserts that it will act on behalf of the "Unidentified Payphone Service Providers A to Z" in a "representative" capacity.⁵ The remainder of the Second Amended Complaint largely repeats the First Amended Complaint but claims that the purpose is also "to assert claims arising from the same series of original transactions and related actions that led to the filing of the original Complaint and to take additional evidence as Ordered by the Marion County Circuit Court, if necessary to show that the Complaint of the Complainants is not and was not made moot by the OPUC orders 01-810 and 02-009 in UT-125."⁶ NPCC also alleges that Qwest made material representations and promises to the FCC and the Commission when it requested a waiver of the rules and that, due to Complainants' reliance on the representations and promises, "Qwest is estopped from denying their obligation to pay the Federal Refund to Plaintiffs" for the difference between the compliant and non-compliant tariffs during the April 15, 1997, to November 15, 2007, period.⁷

In addition to asking the Commission to issue an order that Qwest make refunds as set forth in the First Amended Complaint, the Second Amended Complaint seeks refunds, based upon the differences between the charged and final rates for the period between April 15, 1997, and November 15, 2007, when the stipulated order establishing final rates in UT 125 was

³ First Amended Complaint at 5-7.

⁴ *Id.* at 8-9.

⁵ Second Amended Complaint at 2-3.

⁶ *Id.* at 12-13.

⁷ *Id.* at 14-15.

entered, the award of damages for "discrimination and preferential treatment of its own Payphone Services and those of any third party," interest at the highest rate allowed by law, and attorneys' fees both before the Commission and the Oregon circuit and appellate courts.⁸

B. Qwest's Motions to Strike First and Second Amended Complaints

Qwest contends that the First Amended Complaint doesn't comply with Order No. 09-155 because the First Amended Complaint "clearly continues to include a claim for refund of CustomNet charges, which are expressly included within the operative term 'Payphone Services' in the First Amended Complaint" and, giving no excuse for failure to comply with the order, should therefore be stricken.⁹ Qwest contends that any assertion that NPCC's members are not bound by Order No. 09-155 and are thus permitted to file a claim for refund of CustomNet services notwithstanding the Commission's decision is without merit for several reasons. First, NPCC has consistently purported to act exclusively on behalf of its members and asked that its members, not itself, be paid, filing the amendment to add its members only to "remove the distraction of [Qwest's] spurious defense" with respect to the issue of its standing. Second, Qwest asserts that the claim is time-barred and that points of law relating to recovery for alleged overcharges for CustomNet Services may not be relitigated or reconsidered after having been decided at an earlier stage of the same case. This principle applies whether or not the NPCC members were represented by NPCC at the time the Commission issued its decision. Third, regardless of the issue of standing, "The Order was solidly based on Ninth Circuit precedent directly on point" and there is no reason to believe that the Commission would reach a different conclusion because of a change in the status of the complainant. Finally, Qwest asserts, when the individual complainants received permission from the Commission to become parties to the case, they did not seek or obtain leave from the Commission to include CustomNet Services in their complaint.¹⁰

Qwest asks the Commission to strike the Second Amended Complaint because it was filed without leave of the Commission as required by Oregon law and because it violates an existing Commission Order.¹¹ Qwest also objects to the Complainants' Precautionary Motion to Allow Second Amendment to the Complaint (Precautionary Motion) for several reasons. First, Qwest objects to its inclusion of a claim for refund of CustomNet charges in violation of our order. Second, the Complainants have added additional claims unrelated to the refunds under the FCC's payphone orders, thus expanding the scope of the proceeding.¹² Finally, Qwest notes with disapproval the bringing of claims on behalf of unidentified non-members,

⁸ *Id.* at 17-18.

⁹ Qwest Motion to Strike First Amended Complaint at 3-4.

¹⁰ *Id.* at 4-6.

¹¹ Qwest Motion to Strike Second Amended Complaint at 1, 5-7.

¹² *Id.* at 1-2, 7-14. Qwest asserts that one of the claims raises new factual and legal issues relating to the circumstances surrounding the FCC's issuance of the Waiver Order in 1997: whether an affirmative claim for estoppel even exists and whether the alleged representations were actually made and is without foundation. Similarly, it asserts that the claim for refunds relating to the last Qwest general rate case is both baseless and beyond the scope of the proceeding, as are the claims for discrimination and "prohibited acts" for which NPCC asserts its members are entitled to relief under ORS 759.455. With respect to attorneys' fees, Qwest notes that the statutes referred to by NPCC relate to costs of judicial review of agency orders by the Court of Appeals, not by the Commission.

asserting that NPCC lacks standing to bring such claims and that the Commission lacks authority to order refunds to such non-parties.¹³

C. NPCC's Reply

On December 22, 2009, NPCC filed a Reply to Qwest Motion to Strike Complainants' First Amended Complaint and Second Amended complaint (Reply). NPCC asserts that Qwest has made a number of pleading errors and "reveals its confusion as to the authority concerning any amendment before the PUC."¹⁴ After discussing the legal evolution of the amending process and the interaction of the Oregon Rules of Civil Procedure (ORCP) and the statutes and Commission Rules relative to such amendments, NPCC asserts:

Given a proper reading and application of ORCP 23, the newly added real parties in interest are entitled to the filing of not only the First Amended Complaint, but also the Second Amended Complaint by which they filed their first amendment under ORCP 23A. Following the addition of the "real parties in interest" they have only for the first time appeared by the filing of the First Amended Complaint * * *. Being named as a party gave them, for the first time, the right to appear on their own, to obtain a refund by a PUC order, and each had the right to file its own Complaint * * *. That amended filing was a matter of right * * * without the necessity of filing an additional motion to amend.¹⁵

NPCC contends that Qwest is incorrect in its assertion that the added parties are bound by prior pleadings; they are not because they have never been heard before and cannot be bound, having been a non-party at the time of the motion.

Furthermore, the assumptions as to the knowledge and complicity of the newly named Complainants in the motion by Qwest reaches far beyond its knowledge of the parties and their relationship to prior counsel and even the Motion to amend. It is clear that there was some kind of impasse in that earlier relationship or new counsel would not now be present. Suffice to provide that there was an unresolved conflict in direction which necessitated the substitution of new counsel, but that cannot tar nor bind the newly added Complainants * * *.¹⁶

NPCC next notes that since no economic relief could have been allowed or ordered until the addition of the real parties in interest, the case and the real parties' rights did not really commence until they entered the case and that they therefore may pursue all refunds regardless of their age or the completion and finality of prior dockets. "It would be a travesty for

¹³ *Id.* at 15-17.

¹⁴ Reply at 2.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 5-6.

the Commission to cut short the claims pled by a Complaint which claims could not have been (sic) pled prior to the completion of the over 8 year litigation to develop lawful rates in UT-125 in compliance with Federal law * * * the most of the claims alleged therein did not come into existence until November 15, 2007 when final NST compliant rates were adopted and made effective.”¹⁷

NPCC concludes that the law in Oregon is clearly to allow for a trial on the merits and that a pleading error is to be disregarded unless it affects a substantial right, under ORCP 12, and the amendment is to be liberally granted. Qwest has never filed an Answer or responded to the allegations of the Complaint, and this is the first opportunity they have had to bring their case and obtain reward from the Commission. The Commission granted prior counsel the right to file an Amended Complaint and, the First Amended Complaint was filed in the form as attached to that Motion. Now that the PSP payphone services have been established by UT 125, the Commission should allow the Complainants to proceed under the Second Amended Complaint.¹⁸

D. Analysis and Opinion

The history of this proceeding was recently summarized in our Order No. 09-155 and will not be repeated here. There we made it abundantly clear that the sole allowed purpose of an NPCC Amendment was to permit the NPCC member PSPs who would be subject to cross-examination by Qwest regarding PAL services and would receive any damages if awarded to become named parties to the proceeding. The February 26, 2009, Motion unequivocally stated at the time “The addition of the members to this case would not change the claim asserted, the discovery process or the amount being sought from Qwest. The NPCC members seek from Qwest the same relief that NPCC now seeks on its members’ behalf. There is no imaginable prejudice or disadvantage to Qwest.”¹⁹

In Order No. 09-155, we rejected the attempt by NPCC (and by extension based upon NPCC’s representation, any member PSP) to broaden the scope of the case by the inclusion of CustomNet services, as they did not relate back to the original claim.²⁰ Our finding that Qwest would not be prejudiced by our decision, *i.e.*, that its exposure to litigation of other issues or additional parties beyond those then represented by NPCC would not change, was explicitly set forth:

Qwest is not prejudiced because it knew or should have known that *these parties* were the most likely targets of its efforts at discovery and cross-examination; there is *no significance* in the timing of mentioning their names specifically as the parties; and the *amendment serves to clarify* the true parties with a pecuniary

¹⁷ *Id.* at 6-8.

¹⁸ *Id.* at 8-10.

¹⁹ Motion at 7.

²⁰ Order No. 09-155 at 7-8.

interest in and knowledge of the transactions that are the subject of the complaint.²¹

In both its First and Second Amended Complaints, NPCC and its member PSPs, collaterally attack our opinion in Order No. 09-155, essentially claiming that, with new plaintiffs, all prior rulings and orders are not binding. NPCC then recites the bases on which it believes CustomNet services, and a reopening of issues regarding rights to refunds based on the outcome in docket UT 125, are properly the subject of recovery by its member companies (and any others it might subsequently find along the way).

If that is indeed NPCC's view, it could and should have directly challenged Order No. 09-155, timely seeking either clarification, rehearing, or appeal. It did none of those. Instead, it attempts to identify differences between prior counsel and its clients as a reason why our previous decision should not apply, while failing to provide supporting facts for allegations of inadequate or improper representation of PSPs' interests by prior counsel as the basis for not binding the individual PSPs to our order. We find NPCC's position to be without merit.

The First Amended Complaint should be allowed solely to the extent that we join the entities listed in Exhibit A thereof as Complainants and allow the inclusion of allegations relative to PAL charges. Allegations and argument relative to any other services or charges should be stricken in all respects. The Precautionary Motion should be denied and the Second Amendment not accepted in the proceeding.

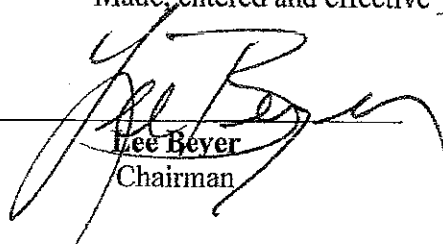
²¹ *Id.* at 10 (emphasis added.)

IV. ORDER


IT IS ORDERED that:

1. The First Amended Complaint is accepted with the following conditions:
 - A. The entities named in Exhibit A of the First Amended Complaint are made parties to the proceeding.
 - B. References to various services generally included under the description "CustomNet" are stricken from the First Amended Complaint.
 - C. The use of the term "Payphone Services" shall only mean Public Access Line services and references to any other services are stricken from the First Amended Complaint.
 - D. All references to docket UT 125 and the calculation of any refund claims thereunder are stricken from the First Amended Complaint.
2. The Precautionary Motion to Allow Second Amendment is denied. The Second Amended Complaint of NPCC *et al.* is not accepted.

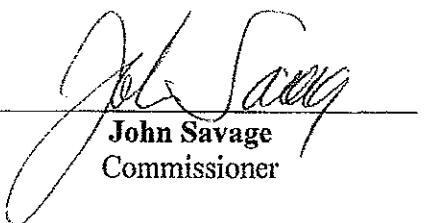
Made, entered and effective FEB 01 2010



Lee Beyer
Chairman



Ray Baum
Commissioner



John Savage
Commissioner



1 **IN THE COURT OF APPEALS OF THE STATE OF OREGON**

FILED
2010 JUL 12 PM 4:58
BY COURT CLERK

2 THE NORTHWEST PUBLIC
3 COMMUNICATIONS COUNCIL, and on
4 behalf of its members

Oregon Public Utility Commission
Docket No. DR 26 / UC 600

5 Petitioner,

6 v.

CA No. A 145973

7 Qwest Corporation, Oregon Public Utilities
8 Commission and Ray Baum, Susan Ackerman
9 and John Savage, in their capacity as
10 Commissioners.

EXPEDITED

**MOTION TO STAY AGENCY
PROCEEDINGS**

11 **RELIEF REQUESTED**

12 The Petitioner seeks the Court's immediate stay of the proceedings in the Public Utilities
13 Commission (PUC) Case No. DR 26 / UC 600. This Stay is requested pursuant to ORS 756.610
14 initially until such time as the PUC has time to respond to this motion. The PUC and Qwest
15 have been notified of this filing.

16 Preliminary action on this motion is requested on Tuesday July 5, 2010.

17 **STATUS OF THE PUC PROCEEDINGS**

18 Petitioner is seeking judicial review of Order No. 10-027 of the Oregon Public Utility
19 Commission in Docket No. DR 26 / UC 600, dated 02/01/10 (attached as **Exhibit A**).

20 Currently Sarah Wallace, the Administrative Law Judge assigned to the case has ordered
21 the continued briefing of the Plaintiff's claims to be due on July 8, 2010. Petitioner views such
22 an effort to be a waste of the time of the PUC and the parties. Qwest objects to any stay and has
23 been put on notice of this pending request along with the PUC, at which a further intermediate
24 request will be filed.

25 The only party which would be harmed by the stay is the Petitioner itself. There is no
26 other rate payers affected by the stay and the PUC while it may want resolution of the matter nor

1 Qwest are harmed by delay of these proceedings until the US District Court acts in the next few
2 months to provide at least some clarification for the benefit of all.

3 At issue is both the Jurisdiction of the PUC and also the interpretation of the Federal law
4 the 1996 Telecommunications Act which is the source of the claims at the PUC. Currently the
5 Petitioner and its members are litigating the very issues which will clarify the Federal Law in the
6 United States District Court of Oregon, Portland Division under two cases: NPCC et al v. Qwest
7 in Case No. CV 09-1351 BR and NPCC et al v. Oregon Public Utilities Commission CV 10-
8 00658 BR. Those two cases were brought because of the lack of clarification by the FCC which
9 the Commission has sought since 2005 and which was painfully and fruitlessly awaited. The
10 United States District Court has concurrent jurisdiction with the FCC and it is anticipated that in
11 the next several months the motions of Qwest and the Petitioners in those cases will bring about
12 some certainty as to the judicial interpretation necessary to resolve the instant appeal of the
13 Petitioners.

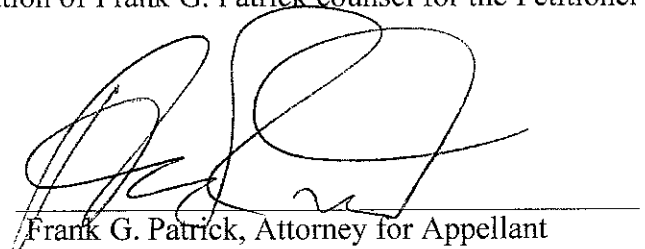
14 RELATED PROCEEDINGS

15 This matter is an outgrowth of the Remand to the PUC by this Court in *Northwest Public*
16 *Communications Council v. Oregon Public Utilities Commission*, 196 Or. App. 94, 100 P.3d 776
17 (2004). This Court there ordered the PUC in 2004 to revisit its Order No. 01-810 to make the
18 rates of Qwest compliant with Federal law. That finally took place in November 2007 which
19 forms the basis of the Complaint sought to be amended as well as the matters before the US
20 District Court.

21 Petitioner "...will suffer substantial and irreparable harm if interlocutory relief is not
22 granted..." because the proceedings at the PUC sought to be stayed hereby, will ultimately
23 result in greater delay and duplication of effort at great cost to both the Petitioner and its
24 members and by the PUC as well as the courts. The wasted effort and any resulting appeal is just
25 a further delay and abuse of the Petitioner in obtaining a final determination by a tribune with the
26 jurisdiction to bring the matter to closure.

1 This Motion is supported by the declaration of Frank G. Patrick counsel for the Petitioner
2 and its members.

3
4 July 2, 2010

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26
Frank G. Patrick, Attorney for Appellant
OSB 76022

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing Motion and Supporting Declaration
3 upon:

4 Public Utility Commission Of Oregon
5 550 Capitol Street NE, Suite 215
6 PO Box 2148
7 Salem, OR 97308-2148
8 Respondent

9 John R. Kroger, OSB 077207
10 Attorney General of the State of Oregon
11 Oregon Department of Justice
12 1162 Court Street NE
13 Salem, Oregon 97301
14 503-378-4400
15 Attorney for Respondent,

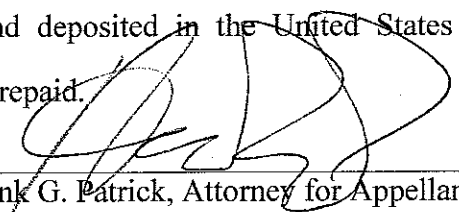
16 PERKINS COIE LLP
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18 LReichman@perkinscoie.com
19 1120 N.W. Couch Street, Tenth Floor
20 Portland, OR 97209-4128

21 QWEST
22 Adam L. Sherr
23 1600 7th. Ave, Room 1506
24 Seattle, WA 98191

25 Paul Graham, Asst Attorney General
26 Oregon Department of Justice
Regulated Utility and Business Section
1162 Court Street NE
Salem, OR 97301

27 I further certify that said copy was placed in a sealed envelope addressed to said
28 attorney's last known address as shown above and deposited in the United States Mail at
29 Portland, Oregon, and that the postage thereon was prepaid.

30 July 2, 2010

31 
32 _____
33 Frank G. Patrick, Attorney for Appellant
34 OSB 76022

1 **IN THE COURT OF APPEALS OF THE STATE OF OREGON**

2 THE NORTHWEST PUBLIC
3 COMMUNICATIONS COUNCIL, on behalf
4 of its MEMBERS

5 Petitioner,

6 v.

7 Qwest Corporation, Oregon Public Utilities
8 Commission and Ray Baum, Susan Ackerman
9 and John Savage, in their capacity as
10 Commissioners.

FILED
JUL -2 PM 4:58
BY COURT CLERK APPEALS
Oregon Public Utility Commission
Docket No. DR 26 / DC 600

CA No. A 145973

**DECLARATION IN SUPPORT OF
EXPEDITED**

**MOTION TO STAY AGENCY
PROCEEDINGS**

11 The undersigned, Frank G. Patrick does submit this Declaration in Support of the
12 Expedited Motion to Stay Agency Proceedings.

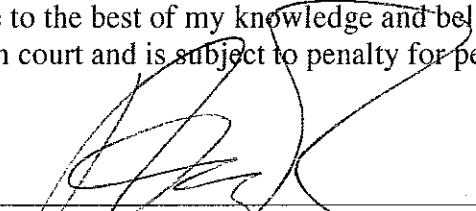
- 13 1. I am the counsel for the Petitioner.
- 14 2. I have prepared the Petition and the Motion to Stay the Proceedings at the Agency.
- 15 3. I have asked for an extension of time to from opposing counsel who is unwilling to allow that
16 extension at the PUC to allow this matter to be heard.
- 17 4. I called Jason Jones, of the Department of Justice, who has been monitoring this matter but he
18 has not returned the call.
- 19 5. I will be filing a motion to extend time contemporaneous with this filing and will inform the
20 court of that resolution.
- 21 6. The cost to the Petitioner and its members to date on this matter has exceeded \$250,000
22 because of time spent litigating at the PUC which apparently may not have jurisdiction. The
23 appeal will allow the time to obtain the judicial review and determination necessary for either the
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1 PUC to act or the US District Court to act in resolution of the claims currently only partially
2 before the PUC.

3 7. It is in the best interest of the parties before that tribune and in the interest of justice and
4 judicial economy that this motion be granted to allow the time to reach an orderly prosecution of
5 the matters pending rather than piecemeal litigation.
6

7
8 "I hereby declare that the above statement is true to the best of my knowledge and belief, and
9 that I understand it is made for use as evidence in court and is subject to penalty for perjury."

10 July 2, 2010

11 
12 _____
13 Frank G. Patrick, Attorney for Appellant
14 OSB 76022

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing Petition for Review upon:

3 Public Utility Commission Of Oregon
4 550 Capitol Street NE, Suite 215
5 PO Box 2148
6 Salem, OR 97308-2148
7 Respondent

8 John R. Kroger, OSB 077207
9 Attorney General of the State of Oregon
10 Oregon Department of Justice
11 1162 Court Street NE
12 Salem, Oregon 97301
13 503-378-4400
14 Attorney for Respondent,

15 PERKINS COIE LLP
16 Lawrence H. Reichman, OSB No. 860836
17 LReichman@perkinscoie.com
18 1120 N.W. Couch Street, Tenth Floor
19 Portland, OR 97209-4128

20 QWEST
21 Adam L. Sherr
22 1600 7th. Ave, Room 1506
23 Seattle, WA 98191

24 Paul Graham, Asst Attorney General
25 Oregon Department of Justice
26 Regulated Utility and Business Section
27 1162 Court Street NE
28 Salem, OR 97301

29 I further certify that said copy was placed in a sealed envelope addressed to said
30 attorney's last known address as shown above and deposited in the United States Mail at
31 Portland, Oregon, and that the postage thereon was prepaid.

32 July 2, 2010

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34 _____
35 Frank G. Patrick, Attorney for Appellant
36 OSB 76022