

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1265

In the Matter of)	
)	
AMERICAN CIVIL LIBERTIES UNION OF)	
OREGON,)	
)	
Complainant,)	ORDER
v.)	
)	
VERIZON NORTHWEST INC. and QWEST)	
CORPORATION,)	
)	
Defendants.)	

DISPOSITION: COMPLAINANT’S MOTION FOR RECONSIDERATION DENIED

By Order No. 08-001, entered January 3, 2008 (Order), the Public Utility Commission of Oregon (Commission) denied the Motion to Lift Abeyance Order (Motion) filed by the American Civil Liberties Union of Oregon, Inc., and American Civil Liberties Union Foundation of Oregon, Inc. (ACLU). The Commission denied the Motion, stating that “[t]here has been no change in the critical factor that caused us to suspend these proceedings in the first instance.” (Order, p. 4.)

On January 8, 2008, ACLU filed Complainant’s Motion for Reconsideration (Reconsideration Motion). In the Reconsideration Motion, ACLU asks the Commission to reconsider or clarify its order because it failed to address an additional request that ACLU had raised for the first time in its Reply pleading to Verizon Northwest Inc’s (Verizon) response to the Motion. Specifically, ACLU requested the Commission to issue an order prohibiting the alteration or destruction of evidence during the pendency of this proceeding.¹

The Reconsideration Motion argues that, because the case may remain in abeyance for some time, an order requiring the retention of documents is important because Verizon could destroy or alter “crucial evidence” in the interim and that “Verizon should not be allowed to benefit from delay by destroying or altering evidence

¹ ACLU Reply, p. 2, ll. 8-10, Section II, p. 7, and Section III, ll. 19-21.

that is relevant to this dispute.”² ACLU notes that a similar order was issued by the Federal District Court Judge in the multi-district cases currently pending in San Francisco.³

Verizon filed a Response to Motion for Reconsideration (Reconsideration Response) on January 16, 2008, noting that “the federal judge overseeing the litigation involving many of the same allegations...already issued a detailed order requiring Verizon and other parties ‘to take steps to prevent the alteration or destruction of evidence,’ including a requirement that parties submit a certification to the court concerning compliance with particular provisions of that order. Verizon already has submitted the requisite certification and obviously is bound to follow the court’s order. As a result, any order by the Commission would be unnecessarily duplicative, and there is not good cause for the Commission to reconsider its order rejecting the ACLU’s Motion to Lift Abeyance Order.”⁴

ACLU filed a Reply in Support of Motion for Reconsideration on January 17, 2008, asserting that the Order was necessary because the federal judge’s order did not cover the wholly intrastate telecommunications that would be the subject of the Commission’s inquiry. Furthermore, ACLU argues that, if the federal case concludes while the case before the Commission is still pending “there would be nothing to prevent Verizon from destroying all the evidence relevant to this case....”⁵

Discussion. The ACLU request for an order requiring the preservation of and prohibition against destruction of documents is unnecessary and relies on arguments both speculative and inapposite. Unlike a court, which has jurisdiction over a party only so long as a case is *pendente lite*, the Commission has continuing jurisdiction over Verizon as long as it is operating as a provider of telecommunications services in Oregon. As a telecommunications utility, Verizon has a continuing duty to furnish the Commission with all information the Commission requires. (*See* ORS 756.105 and 756.115.)

ACLU speculates that Verizon might selectively destroy documents or records relating to intrastate telecommunications, while maintaining interstate and international communications data pursuant to the federal court order or alternatively, once the federal case is concluded, destroy evidence in a wholesale manner. However, ACLU provides no basis in Verizon’s behavior to date that gives any indication of Verizon’s intention to act in the manner which it fears. Furthermore, the pendency of this proceeding already provides notice to Verizon regarding the need to preserve data for the Commission’s potential review. (*See, e.g.*, ORS 756.070, 756.075 and 756.090.)

² Reconsideration Motion, p. 2, ll. 20-22.

³ *Id.*, p. 2, ll. 23-26.

⁴ Reconsideration Response, pp. 1-2.


⁵ Reconsideration Reply, p. 2, ll. 19-20.

ORDER

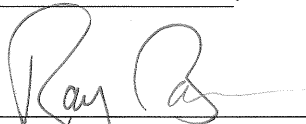
IT IS ORDERED that:

1. Complainant's Motion for Reconsideration filed by the American Civil Liberties Union of Oregon, Inc., and American Civil Liberties Union Foundation of Oregon, Inc., is DENIED.
2. There shall continue to be no further proceedings scheduled in this matter until further notice.

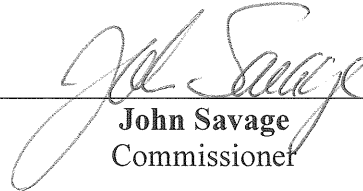
Made, entered and effective JAN 22 2008.



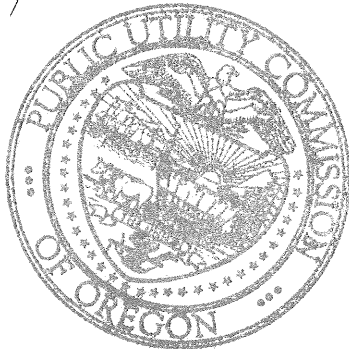
Lee Beyer
Chairman



Ray Baum
Commissioner



John Savage
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.