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7 BEFORE THE PUBLIC UTILITY COMMISSION
8 OF OREGON
9 UM 1265

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

14 Complainants,

15 v.

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

18 Defendants.

COMPLAINANTS' REPLY IN SUPPORT
OF MOTION FOR RECONSIDERATION

18 Verizon Northwest Inc. has opposed the ACLU's request for an order
19 prohibiting the alteration or destruction of evidence for one reason and one reason
20 only: there is already an order in effect in the Northern District of California and
21 thus "any order by the Commission would be unnecessarily duplicative." While it is
22 true Judge Walker issued an order that requires Verizon to "preserve evidence that
23 may be relevant to [that] action," that order is insufficient as it does not require
24 Verizon to preserve evidence that may be relevant to this action.

25 As the ACLU has thoroughly disclosed, and as the Commission has
26 recognized, this case relates only to intrastate telecommunications, not the

1 international and interstate telecommunications at issue in the cases before Judge
2 Walker. Indeed, Verizon acknowledges that the litigation overseen by Judge Walker
3 involves “many of the same allegations” as are made in this case, which by logic
4 means that not all of the allegations here are before Judge Walker.

5 By its terms, Judge Walker’s November 6, 2007, order does not apply to this
6 case. The order only requires the parties to “preserve evidence that may be relevant
7 to [that] action.” (See *In Re National Security Agency Telecommunications Records*
8 *Litigation*, MDL Docket No 06-0791-VRW, Order dated November 6, 2007, page 2,
9 lines 11-13, and page 3, line 11, attached to Dubanevich Supplemental Declaration
10 previously submitted with the ACLU’s Reply in support of its Motion to Lift Abeyance
11 Order as Exhibit “G”). Judge Walker’s order in no way requires Verizon to preserve
12 evidence that may be relevant to this case. Thus, a similar order issued by the
13 Commission would not be duplicative.

14 There is an additional reason why a preservation order issued by the
15 Commission would not be duplicative: the consolidated MDL cases are not working
16 on the same time table as this case and may not be resolved at the same time as this
17 case. As a consequence, it is possible that the cases pending before Judge Walker
18 could be resolved prior to the Commission lifting its abeyance order. If that were to
19 happen, there would be nothing to prevent Verizon from destroying all the evidence
20 relevant to this case as Judge Walker’s preservation order would expire upon
21 conclusion of the cases pending before him.

22 Because no harm will come to Verizon if it is required to retain all documents
23 and information relevant to this case and on the other hand, substantial harm
24 would occur should the ACLU be allowed to proceed with its case but only after
25 Verizon has destroyed or altered crucial evidence, there is substantial good cause for
26 the Commission to issue an order requiring the preservation of evidence.

1 DATED this 17th day of January, 2008.

2 Respectfully submitted,

3 GARVEY SCHUBERT BARER

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5 By 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **COMPLAINANTS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** was served on:

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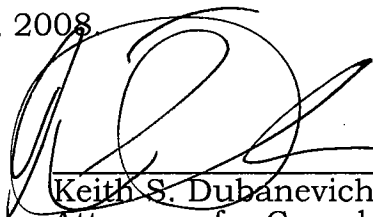
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by mailing to them a copy of the original thereof, contained in sealed envelopes, addressed as above set forth, with postage prepaid, and deposited in the mail in Portland, Oregon, on January 17, 2008



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