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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,

Defendants.

COMPLAINANTS' MOTION FOR
RECONSIDERATION

18 The American Civil Liberties Union of Oregon and the American Civil Liberties
19 Union Foundation of Oregon, Inc. (hereinafter referred to jointly as "ACLU") hereby
20 request, pursuant to ORS 756.561 and OAR 860-014-0095, that the Public Utilities
21 Commission ("PUC" or "Commission") reconsider or clarify it's ruling on the ACLU's
22 Motion to Lift Abeyance Order. On December 6, 2007, the ACLU filed a Motion to
23 Lift Abeyance Order. Verizon Northwest, Inc. ("Verizon") filed a response.
24 Thereafter, the ACLU filed a Reply in which the ACLU specifically requested that the
25 Commission issue an order prohibiting the alteration or destruction of evidence
26 during the pendency of this action (see reply at page 2, lines 8-10; section II., page

1 7; and section III., lines 19-21). On January 3, 2008, the Commission denied the
2 ACLU's Motion to Lift Abeyance Order, Order No. 08-001. However, Order No. 08-
3 001 did not address and thus did not rule on the ACLU's request for an order
4 prohibiting the alteration or destruction of evidence.

5 The ACLU does not intend by this motion to reargue any of the issues
6 pertinent to the Commission's decision to maintain the case in abeyance. However,
7 the ACLU's request for an order prohibiting the alteration or destruction of evidence
8 is all the more important in light of Order No. 08-001. Sufficient reason therefore
9 exists under ORS 756.561 for the Commission to reconsider its decision on that
10 portion of the ACLU's prior motion that was not addressed in Order No. 08-001.
11 Thus, the ACLU moves that the PUC specifically rule on the request presented in
12 Section II. of the ACLU's Reply. The ACLU incorporates herein the arguments
13 previously made in its Reply.

14 **I. THE PUBLIC UTILITIES COMMISSION SHOULD PROHIBIT THE**
15 **ALTERATION OR DESTRUCTION OF EVIDENCE DURING THE PENDENCY**
16 **OF THIS ACTION.**

17 In light of the fact that this case may remain in abeyance for another year or
18 more, an order requiring the retention of documents is quite important. No harm
19 will come to Verizon if it is required to retain all pertinent documents and
20 information. On the other hand, substantial harm would occur should the ACLU be
21 allowed to proceed with its case but only after Verizon has destroyed or altered
22 crucial evidence. In sum, Verizon should not be allowed to benefit from delay by
23 destroying or altering evidence that is relevant to this dispute.

24 As mentioned in the ACLU's Reply, the Honorable Judge Walker agreed that
25 such an order was appropriate in the Multi-District Cases pending before him. (See
26 *In Re National Security Agency Telecommunications Records Litigation*, MDL Docket
No 06-0791-VRW, Order dated November 6, 2007, attached to Dubanevich

1 Supplemental Declaration submitted with the ACLU's Reply as Exhibit "G"). The
2 ACLU requests a similar order here.

3 **II. THERE IS GOOD CAUSE FOR THE COMMISSION TO ADDRESS THE**
4 **RELIEF SOUGHT BY THE ACLU.**

5 As discussed above, if the PUC were to lift the abeyance order at a later date
6 and allow the ACLU to proceed with its case against Verizon but during the term of
7 abeyance Verizon is allowed to alter or destroy evidence, the ACLU's claims against
8 Verizon would be irreparably harmed. There is good cause under OAR 860-014-
9 0095 for the Commission to clarify it's ruling on the ACLU's Motion to Lift Abeyance
10 Order and to issue an order prohibiting the alteration or destruction of evidence
11 during the pendency of this action

12 **III. CONCLUSION.**

13 The ACLU requests that the PUC issue an order requiring the preservation of
14 evidence and further requiring that Verizon not alter or destroy any evidence
15 relevant to the claims asserted by the ACLU.

16 DATED this 11th day of January, 2008.

17 Respectfully submitted,

18 GARVEY SCHUBERT BARER

19
20 By 

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **COMPLAINANTS' MOTION FOR**
3 **RECONSIDERATION** was served on:

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18 by mailing to them a copy of the original thereof, contained in sealed envelopes,
19 addressed as above set forth, with postage prepaid, and deposited in the mail in
20 Portland, Oregon, on January 11, 2008.

21 
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