Supreme Court No. 91386-2

Court of Appeals No. 70625-0-I

SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY,
a Washington municipal corporation,

Respondent/Cross-Petitioner,

v.

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership d/b/a CHARTER COMMUNICATIONS,

Petitioners/Cross-Respondents.

CENTURYLINK'S REPLY TO THE DISTRICT'S CROSS-PETITION FOR REVIEW

Timothy J. O'Connell, WSBA No. 15372
Hunter Ferguson, WSBA No. 41485
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Attorneys for Petitioner/Cross-Respondent
CenturyLink of Washington, Inc.
(f/k/a CenturyTel of Washington, Inc.)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Statutes

Rules

I. INTRODUCTION

As this Court has already addressed in this case, RAP 18.8(b) provides appellate courts with discretion to extend the 30-day notice of appeal deadline in extraordinary circumstances and to prevent a gross miscarriage of justice. After Petitioners/Cross-Respondents CenturyLink of Washington, Inc. (f/k/a CenturyTel of Washington, Inc.) ("***CenturyLink***"), Comcast of Washington, IV, Inc., and Falcon Community Ventures I, L.P. (collectively with CenturyLink, the "***Companies***") moved for an extension under this rule, the Court of Appeals granted their request in an unpublished order. The Companies had missed the notice of appeal deadline because they reasonably relied upon assurances from trial court staff that they would be notified of further developments in the case, wholly consistent with the previous practices in the trial court, but the Companies did not in fact receive such notice.

Now, Respondent/Cross-Petitioner Public Utility District No. 2 of Pacific County (the "***District***") repeats the arguments it made previously in this Court in its unsuccessful Motion for Discretionary Review, that the Court of Appeals' unpublished order conflicts with other appellate decisions and raises an issue of substantial public interest. To the contrary, nothing has changed since this Court denied the District's request for discretionary review, except for one thing: after an extensive

review, the Court of Appeals concluded that the trial court committed reversible error on the central issue in this case, the initial interpretation of a statute of state-wide application. Further, none of the criteria for review is met. The unpublished order does not announce any rule of law that differs from any other appellate decision interpreting RAP 18.8(b), and it is not inconsistent with any reasoning of any of these decisions. Nor does it announce any legal principle with an impact beyond this case. Separately, the Court also should deny the District's request for fees because it was not the prevailing party on appeal entitled to fees. For all of these reasons, and as set forth below, the District's Cross-Petition should be denied.

II. RESTATEMENT OF THE CASE CONCERNING THE DISTRICT'S CROSS-PETITION

A. The Companies' Efforts To Monitor Entry of Final Judgment.

Litigation of this case in the trial court lasted nearly four years between December 28, 2007 and December 12, 2011, when the trial court entered its ultimately erroneous judgment in favor of the District. *See* pages 2-5 of the Appendix to this Reply ("***App.***") (CP 2324-27). During this time period, counsel for the parties routinely received notice and copies of trial court rulings via U.S. mail, email, and fax. *See* App. 32 at ¶ 9 (CP 2362). For instance, trial court personnel mailed to the parties a

copy of an order denying a motion for summary judgment. App. 35 at ¶ 2 (CP 2365); App. 39 at ¶ 6 (CP 2369).

Before the trial court entered judgment, it conducted a hearing on September 16, 2011, on the District's proposed findings of fact and conclusions of law. App. 1 (CP 2271); App. 63 at ¶ 3 (CP 2380). The trial court did not enter final judgment at that hearing. Rather, it took the District's proposed findings and conclusions under advisement. App. 1 (CP 2271).

After that hearing, the Companies began a coordinated effort to monitor the status of entry of judgment. They did so by having a paralegal working with counsel for CenturyLink, Heidi Wilder, place weekly telephone calls to the Court Administrator for the Pacific County Superior Court. App. 31 at ¶¶ 3-4 (CP 2361); App. 35 at ¶ 4 (CP 2365); App. 40 at ¶ 8 (CP 2370). Ms. Wilder consistently made these calls for several weeks in a row. App. 31 at ¶¶ 3-4 (CP 2361); App. 35 at ¶¶ 3-6 (CP 2365); App. 40 at ¶ 7 (CP 2370).

On November 22, 2011, Ms. Wilder spoke again to Ms. Staricka regarding the status of final judgment. App. 31 at ¶ 5 (CP 2361). Ms. Staricka explained that the judgment still had not been entered because of the trial court's criminal trial schedule. App. 31 at ¶ 5 (CP 2361). Ms. Staricka expressly advised Ms. Wilder that she would inform Ms. Wilder

of any "developments" in the case. App. 31 at ¶ 5 (CP 2361). In the two weeks after Thanksgiving – the latter week being the week before the trial court entered the final judgment – Ms. Wilder called the Court Administrator's office at least two additional times. App. 31 at ¶ 6 (CP 2361). Ms. Wilder spoke with Ms. Staricka during one of those calls, and the Court Administrator stated that the judgment still had not been entered. In another call, Ms. Wilder left a voicemail message but never received a response. App. 31 at ¶ 6 (CP 2361). As Ms. Wilder's calls accumulated, she sensed that her inquiries were exasperating court staff. App. 31 at ¶ 5 (CP 2361). Ms. Wilder stopped calling about the judgment only after receiving assurance from Ms. Staricka that someone on the trial court staff would provide notice of any case developments. App. 31 at ¶¶ 5, 6 (CP 2361).

B. Entry of Judgment And Motion For Extension Of Time To File Notice Of Appeal.

As noted above, the trial court entered judgment on December 12, 2011. No one from the court staff notified the parties of that development. App. 35 at ¶ 5 (CP 2365); App. 40 at ¶ 9 (CP 2370). The Companies' counsel first learned of the judgment on January 17, 2012. App. 35 at ¶ 6 (CP 2365); App. 40 at ¶ 9 (CP 2370). That same day, the Companies each filed a notice of appeal. App. 6-16 (CP 2328-40).

On January 24, 2012, the Companies filed in the Court of Appeals – Division II a joint motion for extension time to file their notices of appeal under RAP 18.8(b). App. 43-61.[1] In support of this motion, the Companies submitted a declaration signed by Ms. Wilder explaining her efforts to monitor the entry of judgment stated above. App. 70-72. The District opposed the Companies' motion and submitted declarations of two members of the trial court staff (Ms. Staricka and her colleague, Angela Gilbert) prepared by the District's counsel. App. 66-69 (CP 2463-66). In these declarations, court staff acknowledged that Ms. Wilder had called regarding the status of entry of judgment and specifically denied telling Ms. Wilder that they "would notify her when an order of judgment was entered" (App. 69 at ¶ 3 (CP 2466)), but they did ***not*** contradict Ms. Wilder's express statement that Ms. Staricka had said that she would inform Ms. Wilder of any "developments" in the case.

On February 27, 2012, in a unanimous, unpublished order a three-member panel of the Court of Appeals granted the Companies' motion for extension of time to file their notices of appeal (the "***Order***"). App. 73.

On March 13, 2012, the District filed in this Court its Motion for Discretionary Review of the Order under RAP 13.5. App. 74-100. In that

[1] The Companies also filed in the trial court a joint motion to vacate and reenter final judgment, which the trial court denied. App. 17-29 (CP 2344-56).

motion, the District argued that the Court of Appeals had committed obvious and probable error and departed from the accepted and usual course of judicial proceedings, and that discretionary review was therefore warranted under RAP 13.5(b)(1), (2), and (3). On June 5, 2012, Department II of this Court denied the District's motion in an unpublished order. App. 101.

After this Court denied the District's Motion for Discretionary Review, the appeal proceeded in the Court of Appeals. Upon the completion of briefing, the appeal was transferred from Division II to Division I. App. 102. On March 5, 2014, the Court of Appeals heard extended oral argument (time for each side was increased from 10 to 20 minutes). *See* App. 103. On October 13, 2014, the Court of Appeals issued a 65-page published opinion reversing the trial court's most significant ruling interpreting RCW 54.04.045(3) and other aspects of the trial court's ruling, and affirming the remainder of the judgment. The District has not challenged any aspect of the Court of Appeals' opinion on the merits, conceding that the trial court's opinion is in error.

III. ARGUMENT

A. As Department II Of This Court Has Already Considered – And Rejected – The District's Arguments, There Is No Reason to Review These Arguments Further.

In its Cross-Petition, the District argues that review of the Order is warranted because the Order conflicts with a decision of this Court, conflicts with another decision of the Court of Appeals, and involves an issue of substantial public importance, in satisfaction of the criteria under RAP 13.4(b)(1), (2), and (4), respectively. In making these arguments, the District repeats, almost verbatim, the same arguments it presented to this Court in its Motion for Discretionary Review. In support of its arguments that the Court of Appeals' decision conflicts with precedent (RAP 13.4(b)(1), (2)), the District cites the same cases and makes the same points that it presented in its arguments that the Court of Appeals committed obvious and probable error (RAP 13.5(b)(1), (2)). *Compare* Cross-Pet. 25-35 *with* District's Mot. for Discretionary Review 9-18 (App. 86-95). Similarly, the District's argument that the Order raises an issue of substantial public interest mirrors the District's earlier argument that the Order departs from accepted judicial norms. *Compare* Cross Pet. 36-37 *with* District's Mot. for Discretionary Review 18-19 (App. 95-96).

The District's arguments have been reviewed and rejected multiple times. As explained above, Department II of this Court considered and

denied the District's Motion for Discretionary Review. And, of course, the District brought its motion after a unanimous three-judge panel of the Court of Appeals agreed to allow the Companies proceed with their appeals. All told, eight members of our appellate courts have considered the District's arguments, and *none* has agreed with these arguments.

In light of the previous extensive appellate review and rejection of the District's arguments and the identity between the District's earlier and current arguments, the District has failed to identify any conflict or issue of substantial public interest warranting review. Although the denial of a Motion for Discretionary Review does not preclude a petition for review (*see* RAP 13.5(d)), the District has not presented any new arguments in support of its request for review. The only new development in this case after Department II denied the District's Motion for Discretionary Review has been the Court of Appeals' conclusion that the trial court committed reversible error – and then made its own errors of law that the warrant this Court's attention now, before any remand proceeding. In the absence of any new or different arguments regarding the Order, the Court should not depart from its earlier ruling on this issue, especially in light of the considerable resources expended by both the parties and Court of Appeals after this Court's earlier ruling.

B. Review Under RAP 13.4(b)(1) Or (2) Is Not Warranted Because There Is No Conflict Between The Court Of Appeals' Unpublished Order And Any Other Appellate Decision.

Under RAP 18.8(b), an appellate court has discretion to grant an extension of the notice of appeal deadline.[2] The rule provides that an extension is permitted "only in extraordinary circumstances and to prevent a gross miscarriage of justice." RAP 18.8(b). Interpreting this standard, the Court of Appeals has explained that an extension is warranted when "the filing, despite *reasonable diligence*, was defective due to *excusable error* or circumstances beyond the party's control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct." *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765-66, 764 P.2d 653 (1988) (emphases added); *see also Shumway v. Payne*, 136 Wn.2d 383, 395-96,

[2] The discretionary nature of a grant of relief under RAP 18.8(b) is confirmed by RAP 1.2(a), which provides that the appellate rules "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits . . . subject to the restrictions in rule 18.8(b)," and case law explaining that application of the appellate rules involves a court's exercise of discretion. *See State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995) (A court "may exercise its discretion to consider cases and issues on their merits."). In addition, the determination of whether an extension of the notice of appeal deadline turns on whether a party was "reasonably diligent." *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 766, 764 P.2d 653 (1988). This determination requires a court to exercise "sound judgment" regarding what is "right under the circumstances" – the essential function of an exercise of discretion. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971), *abrogation on other grounds recognized in Seattle Times Co. v. Benton Cnty.*, 99 Wn.2d 251, 263, 661 P.2d 964 (1983); *see also Pratt v. McCarthy*, 850 F.2d 590, 591 (9th Cir. 1988), *overruled on other grounds by Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993).

964 P.2d 349 (1998); *Scannell v. State*, 128 Wn.2d 829, 834-35, 912 P.2d 489 (1996); *Beckman v. State Dep't of Soc. & Health Servs.*, 102 Wn. App. 687, 693-94, 11 P.3d 313 (2000).

As an initial matter, the Court of Appeals' unpublished Order does not create any conflict. It does not announce any rule of law or articulate any criterion or factor that conflicts with any other decisions interpreting RAP 18.8(b). The District's disagreement with the Court of Appeals' exercise of discretion under RAP 18.8(b) in the circumstances of this case does not and cannot establish the existence of a conflict. The absence of any conflict is dispositive of the District's request for review under RAP 13.4(b)(1) and (2) because the presence of a conflict is necessary for this Court to grant review under either of these rules.

Turning to the circumstances of this case, the Court of Appeals exercised its discretion consistent with the principles of RAP 18.8(b) and the decisions cited above interpreting this rule. ***First***, it is undisputed that, throughout the litigation, the parties consistently received notice of the trial court's rulings *from the trial court*. Although the Civil Rules do not require trial courts to provide such notice, the trial court, in this instance, established a practice of doing so. Therefore, it was reasonable to expect that notice of entry of judgment also would be provided – especially in light of the undisputed statements of trial court personnel discussed below.

Second, it is undisputed that, after the trial court took the proposed findings and conclusions under advisement, Ms. Wilder made repeated inquires over the course of several weeks as to the status of final judgment. It is further undisputed that Ms. Wilder suspended such inquiries only after the Court Administrator told Ms. Wilder that she would notify Ms. Wilder of any developments in the case. That representation, coupled with the trial court's well-established practice of providing notice of its rulings, made it reasonable to conclude that the trial court would provide notice of the entry of final judgment.

Third, the District's argument that trial court personnel never made assurances to Ms. Wilder is unsupported and unsupportable. Significantly, the trial court personnel do not dispute Ms. Wilder's testimony, as they *do not* deny telling her that she would be notified of any case developments. Further, it would not make any sense for the Companies to regularly inquire for several weeks in a row about the status of entry of judgment and then stop doing so unless they reasonably believed that they would receive notice from the trial court, just as they had regarding other rulings. Under the circumstances, their error was excusable.

Fourth, it is undisputed that the Companies did not have actual notice of the judgment until more than 30 days after judgment was entered

and that, consistent with prior communications with the District, they immediately filed their notice of appeal upon learning of the judgment.

Fifth, the extension prevented a gross miscarriage of justice as evidenced by the Court of Appeals' reversal of the central aspects of the trial court's conclusions. Denial of an opportunity to appeal would have been profoundly unfair in light of CenturyLink's reasonable diligence and excusable error described above. *See Reichelt*, 52 Wn. App. at 766 (explaining that a "lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct"). Taken together, these factors constitute extraordinary circumstances and establish that a gross miscarriage of justice would have occurred absent an extension. Therefore, the Court of Appeals was well within its discretion to extend the notice of appeal deadline.

None of the decisions cited by the District compelled a different result. The District relies heavily on *Reichelt* for the proposition that the Companies' failure to file notices of appeal within the 30-day period forecloses relief under RAP 18.8(b). *See* Cross-Pet. 26-27. But the court did not hold in *Reichelt* that an extension is permitted only when a notice of appeal is filed within the 30-day period after entry of judgment but is defective for some other reason. Rather, the court observed only that the test under RAP 18.8(b) was "rigorous" and at that point had to that point

"been satisfied in reported caselaw" only when the notice was filed within the 30-day period but was ineffective for some other reason. *Reichelt*, 52 Wn. App. at 765. Unlike in this case, nothing in *Reichelt* indicated that the appellant had made *any* effort to monitor the status of the entry of judgment. *Reichelt* did not announce a rule that barred the Court of Appeals' exercise of discretion in this case.

Nor is the Order in conflict with the other decisions cited by the District in which requests for extensions were denied. *See* Cross-Pet. 27 (citing *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 367, 849 P.2d 1225 (1993); *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 112 P.3d 571 (2005); *Beckman*, 102 Wn. App. 687). Unlike the appellants in *Schafeco* who had actual notice of entry of judgment before expiration of the notice deadline as evidenced by their attempt to file a motion for reconsideration (121 Wn.2d at 367), the Companies did not have actual notice of the judgment before expiration of the 30-day notice period. In contrast to the situation in *Bostwick*, where the defendant missed the deadline to file a notice of cross-appeal from a sanction order after failing "to make any inquiry as to the status of pending orders" (127 Wn. App. at 776), the Companies had made repeated inquires about the status of the judgment and halted these efforts only after being told that the court would notify them of case developments. *Beckman* is likewise

easily distinguished, as that case involved a situation in which the defendant had actual notice of but simply did not attend the hearing at which judgment was entered. *See* 102 Wn. App. at 690. The circumstances in this case were far different.[3]

The two decision cited by the District (Cross-Pet. 28-29) in which extensions were granted – *Scannell*, 128 Wn.2d 829, and *Mellon v. Regional Trustee Services Corp.*, 182 Wn. App. 476, 334 P.3d 1120 (2014) – did not announce any rules or tests that precluded the Court of Appeals' Order in this matter. In each of those decisions, the courts applied RAP 18.8(b) and precedent to the unique facts of those cases. Those decisions are not in conflict with the Court of Appeals' Order.

As to the District's argument that the Companies should not be excused from the notice of appeal deadline because the trial court had no duty to notify the parties of entry of judgment (Cross-Pet. 30-35), this is the same straw man argument the District made in its Motion for Discretionary Review (pp. 14-15). CenturyLink has never contended that the Civil Rules impose such a duty on court personnel. The issue is whether CenturyLink acted reasonably under the circumstances. In light

[3] The 1975 Task Force Comment to RAP 18.8(b) (discussed at Cross-Pet. 27-28) does not supply any standards or criteria different from those articulated in the decisions discussed *supra* and *infra*. The Court of Appeals' unpublished Order is not at odds with the Comment.

of the helpful practice of court personnel and the assurances given to Ms. Wilder, CenturyLink's actions were reasonable.

The District's arguments that the Companies were negligent for not monitoring the online docket maintained by the AOC and for failing to employ a service to monitor the docket are wrong, both legally and factually. Legally, there was no duty to monitor AOC website as it is unofficial and, in fact, requires users to accept a disclaimer that none of the information contained therein can be officially relied upon. Certainly, if the website did not contain a court ruling that had actually been entered, the District would not take the position that reliance on the website is reasonable. Factually, the Companies had regularly made direct inquiries about the final judgment until after Ms. Wilder was affirmatively told by trial court personnel that, consistent with established practice in this case, she would be notified of any case developments. Under these circumstances, the Companies' actions were reasonable, and to the extent there was any neglect, they were excusable.[4]

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[4] *Puget Sound Medical Supply v. Department of Social & Health Services*, 156 Wn. App. 364, 234 P.3d 246 (2010), is inapposite. In that case – similar to *Schafeco* and *Bostwick* – the appellant had actual notice of the decision from which it sought to appeal before the notice deadline. *See* 156 Wn. App. at 367 (counsel received the order two days after it was mailed and 19 days before the notice deadline). Again, the Companies did not have actual notice until after the deadline had passed.

To recap: the Companies were diligent in monitoring the status of the entry of judgment, doing so repeatedly until receiving assurances from trial court personnel, and did not have actual notice of the judgment until after expiration of the notice of appeal deadline. The facts in this case are materially different from those in which courts did not find extraordinary circumstances. When the rules of appellate procedure unequivocally bar an extension of time, they do so expressly. *See* RAP 18.8(c). RAP 18.8(b), on the other hand, gives the Court of Appeals discretion to extend the notice appeal deadline. To be sure, exceptions to the 30-day-notice rule are narrow, but no authority holds that exceptions are as limited as the District suggests. In the absence of such authority, the District has not established – as it must – that the Court of Appeals' unpublished Order is in conflict with any appellate court decision.

C. Review Under RAP 13.4(b)(4) Is Not Warranted Because The Court Of Appeals' Unpublished Order Does Not Raise An Issue Of Substantial Public Interest.

In asserting that the Court of Appeals' Order raises an issue of substantial public interest, the District makes two principal points, neither of which warrants this Court's review.

First, the District notes that there is a public policy favoring finality of judgments. *See* Cross-Pet. 36. But the District does not explain how the Court of Appeals' Order undermines this public policy. Nor can

it. The Court of Appeals' unpublished Order does not contravene this policy. As explained above, RAP 18.8(b) allows for extensions of the notice of appeal deadline, and the Court of Appeals exercised its discretion within that framework. The unpublished Order does not alter in any way the principles of RAP 18.8(b) or the decisions interpreting it. Thus, the Order does not raise a question of substantial public interest implicating the policy favoring finality of judgments.

Second, the District contends that the Court of Appeals' unpublished Order conflicts with the premise that court personnel have no obligation to notify parties of court rulings and that it will have a chilling effect on the willingness of court staff to assist litigants and counsel with case-related matters. *See* Cross-Pet. 36-37. The Order does neither. It does not state that court personnel have a duty to notify parties, and it does not criticize the trial court staff in this case for their helpful administration of the docket. The Order does not mention the trial court staff. The Order does not implicate any issue of substantial public interest.

D. Because The District Was Not Awarded Any Fees At The Appellate Level On The Issues Raised In The Companies' Petitions For Review, It Is Not Entitled To A Fee Award For Answering The Companies' Petitions.

The District also argues that it should be awarded fees under RAP 18.1(j). *See* Cross-Pet. 37-38. This rule provides that "[i]f attorney fees

and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review." RAP 18.1(j). This Court has clarified that the award of fees at the appellate level is a *necessary* condition to obtain an award of fees for successful opposition to a petition for review. *See Chevron U.S.A., Inc. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 139, 124 P.3d 640 (2005); *State v. Bright*, 129 Wn.2d 257, 273-74, 916 P.2d 922 (1996); *Metzner v. Wojdyla*, 125 Wn.2d 445, 452, 886 P.2d 154 (1994).

While CenturyLink maintains that its Petition for Review should be granted because the central issue of the correct interpretation of the rate statute (RCW 54.04.045(3)) is a pure question of law that does not require further factual findings, even if the Court were to deny the Companies' petitions, the District is not entitled to a fee award because the Court of Appeals did not award the District fees at the appellate level. On the central issue of statutory interpretation and the appropriate method for calculating rates assessed after the rate statute's effective date, the Court of Appeals reversed the trial court and declined to award fees, ruling that "an award of fees will be appropriate only in the event that the District is

the ultimate prevailing party on that issue." *See* Slip Op. at 59 (App. 59 to CenturyLink's Petition for Review). On the other issues that CenturyLink raised in its Petition for Review, the District was not awarded fees. *See id.* at 62-64. (Appendix 62-64 to CenturyLink's Petition for Review). Absent an award of fees on the issues raised in the Companies' Petitions for Review, there is no basis to award fees and costs to the District.

IV. CONCLUSION

In denying the District's Motion for Discretionary Review, the Court has already reviewed and rejected the arguments in the District's Cross-Petition. The District has not made new arguments, nor identified a decisional conflict or issue of substantial public interest. Further, the District's arguments are unrelated to the issues raised in CenturyLink's Petition for Review and should have no bearing on the Court's review of that petition. For all of these reasons, and as discussed above, the District's Cross-Petition and request for fees should be denied.

DATED this 26th day of May, 2015.

By: _____
Timothy J. O'Connell, WSBA No. 15372
Hunter Ferguson, WSBA No. 41485

Attorneys for Petitioner/Cross-Respondent CenturyLink of Washington, Inc. (f/k/a CenturyTel of Washington, Inc.)

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that I caused a true and correct copy of **CENTURYLINK'S REPLY TO THE DISTRICT'S CROSS-PETITION** to be served on the following individuals:

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DATED: May 26, 2015, at Seattle, Washington.

STOEL RIVES LLP

Leslie Lomax

Leslie Lomax, Practice Assistant

APPENDIX TO CENTURYLINK'S REPLY TO THE DISTRICT'S CROSS-PETITION FOR REVIEW

App. Page

PACIFIC COUNTY SUPERIOR COURT
JUDGE MICHAEL J. SULLIVAN - CIVIL
FRIDAY, SEPTEMBER 16, 2011
M. STARICKA, REPORTER/V. LEACH, CLERK
Elaine Buchanan, Senior Deputy Clerk

07-2-00484-1/ 07-2-00485-0

PUBLIC UTILITY DISTRICT NO 2	COHEN, DONALD-present
OF PACIFIC COUNTY	FINLAY, JAMES-PRESENT
VS	
FALCON COMMUNITY VENTURES I	STAHL, ERIC-present
LIMITED PARTNERSHIP	MURPHY, GILLIAN-NOT PR.
	O'CONNELL, TIMOTHY-PR.
MOTION FOR ATTORNEY FEES	MCGRORY, JOHN – PR.

Donald Cohen, counsel for plaintiff PUD of Pacific County, noted this is on for presentation of the PUD's proposed substantive findings of fact and conclusions of law and the PUD's motion for award of attorney fees and expenses. Counsel addressed the Court regarding the proposed substantive findings of fact and conclusions of law, damages and interest for breach of contract, proposing an alternative remedy.

Counsel for Centurylink made his objections to the proposed findings.

John McGrory, Counsel for Charter and Comcast stated he agreed with counsel for Centurylink's argument, presenting his argument to the Court.

Counsel for PUD made his reply to opposing counsel's argument, and further presented his argument for the district's motion for award of attorney fees and expenses.

Eric Stahl, counsel for Comcast and Charter, presented his argument, asking the Court disregard and strike the fee motion.

Counsel further argued to the Court.

Court took matter under advisement.

FILED

HONORABLE MICHAEL J. SULLIVAN
Hearing Date: September 16, 2011 at 10:30 a.m.

2011 DEC 12 PM 4:02

SUPERIOR COURT OF WASHINGTON FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington Corporation,

Plaintiff,

v.

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES, I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS,

Defendants.

CAUSE NO. 07-2-00484-1

JUDGMENT

11 9 00426 8

JUDGMENT SUMMARY

1.	Judgment Creditor:	Public Utility District No. 2 of Pacific County
2.	Judgment Debtor:	Falcon Community Ventures, I, L.P., d/b/a Charter Communications
3.	Judgment Debtor:	CenturyTel of Washington, Inc.
4.	Judgment Debtor:	Comcast of Washington IV, Inc.
5.	Principal Judgment Amount (Total)	$ 629,913.00
6.	Prejudgment Interest (12% per annum) (Total)	$ 172,210.65
7.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (Falcon Community Ventures, I, L.P., d/b/a Charter Communications)	$ 325,970.56
8.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (CenturyTel of Washington, Inc.)	$ 282,632.54

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2324
133

App. 2
2325

9.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (Comcast of Washington IV, Inc.)	$ 193,520.55
10.	Attorneys' Fees	$ 739,621.42
11.	Costs	$ 314,409.95
12.	TOTAL Judgment Amount:	$1,856,155.02

13. The total judgment amount shall bear interest at the rate of 12% per annum.

14. Attorney for judgment creditor:

Donald S. Cohen
Gordon Thomas Honeywell, LLP
2100 One Union Square
600 University Street
Seattle, Washington 98101
(206) 676-7531

* * * * *

THIS MATTER came before the above-entitled Court on the presentation of Judgment in favor of Plaintiff Public Utility District No. 2 of Pacific County (the "District", the "PUD", or "Pacific PUD"). The Judgment in this matter is supported by the Court's Memorandum Decision dated March 15, 2011, the written Findings of Fact and Conclusions of Law dated September 16, 2011, the Declaration of Mark Hatfield in Support of Post-September 30, 2010 Damages (with exhibits), the Court's Order Granting Plaintiff Pacific PUD's Motion for an Award of Attorneys' Fees and Litigation Expenses dated September 16, 2011, the Court's Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for Award of Attorneys' Fees and Litigation Expenses, the Declaration of Donald S. Cohen in Support of Plaintiff Pacific PUD's Motion for Award of Attorneys' Fees and Litigation Expenses (with exhibits), the Declaration of Mark Hatfield in Support of Motion for an Award of Attorneys' Fees and Litigation Expenses (with exhibits), the Declaration of Robert M. Sulkin, Plaintiff's Reply and Supplemental and Second Supplemental Declarations of Donald S. Cohen in Support of Plaintiff's Motion for Award of Attorneys' Fees and Litigation Expenses (with exhibits), and the records and files in this lawsuit.

Consistent with the Memorandum Decision and Findings of Fact and Conclusions of Law with respect to the claims and defenses in this lawsuit, and declarations, and

Plaintiff's Motion, declarations (with exhibits), and Findings of Fact and Conclusions of Law with respect to Plaintiff's Motion for an Award of Attorneys' Fees and Litigation Expenses, the Court enters judgment in favor of Plaintiff and against Defendants as follows:

(1) The District's pole attachment rates as set forth in Resolution No. 1256, being $13.25 prior to January 1, 2008 and $19.70 effective January 1, 2008, were just, reasonable, and non-discriminatory, are in compliance with RCW 54.04.045 (both before and after its amendment effective June 12, 2008), and are in all other respects in compliance with applicable law.

(2) Section 3(a) of RCW 54.04.045 (2008) reflects the FCC Telecom method, and Section 3(b) reflects the American Public Power Association ("APPA") method for public utility district pole attachment rates as of the date of trial.

(3) The non-rate terms and conditions in the District's proposed Pole Attachment Agreement were just, reasonable, non-discriminatory, and sufficient, are in compliance with RCW 54.04.045, and are in all other respects in compliance with applicable law, once a few undisputed revisions to the Agreement are made for pole attachment processing timing and notification provisions in Sections 5 and 6 of the 2008 amendments.

(4) Defendants' refusal to vacate the District's poles and remove their equipment was in breach of continuing obligations in agreements between Defendants' predecessors and the District, which had been assigned to Defendants and which terminated after required notice in 2006.

(5) Defendants have been unjustly enriched by using the District's poles to conduct their business and failing to remove their equipment from the District's poles, without executing the new Agreement proposed by the District and paying for their pole attachments at the rate adopted by the Commission in Resolution No. 1256.

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(6) Defendants have been intentionally occupying the District's poles without the District's permission and are liable to the District for trespass.

(7) Judgment for damages and attorneys' fees and litigation expenses in the total amount of $1,856,155.02 for Plaintiff against Defendants is entered, consisting of:

$325,970.56 for Plaintiff's damages and interest through entry of Judgment against Defendant Charter;

$282,632.54 for Plaintiff's damages and interest through entry of Judgment against Defendant CenturyTel;

$193,520.55 for Plaintiff's damages and interest through entry of Judgment against Defendant Comcast;

$1,047,758.87 for Plaintiff's attorneys' fees and litigation expenses against Defendants jointly and severally; and

$6,272.50 for Plaintiff's attorneys' fees and costs severally against defendant Charter.

(8) Defendants shall pay for their attachments on the District's poles at the $19.70 rate adopted by Resolution No. 1256 unless/until such rate is changed by District resolution and enter into the Pole Attachment Agreement proposed by the District (revised per ¶3 above), or, alternatively, remove all of their equipment from the District's poles within thirty (30) days of entry of this Judgment and, if not so removed, pay the District's expenses of removing such equipment.

ENTERED this 12th day of Dec., 2011.

Honorable Michael J. Sullivan
Judge, Pacific County Superior Court

Presented by:
GORDON THOMAS HONEYWELL LLP

Donald S. Cohen, WSBA No. 12480
dcohen@gth-law.com
Attorney for Plaintiff

FILED

PACIFIC COUNTY SUPERIOR COURT
VIRGINIA A LEACH
PACIFIC CO CLERK
SOUTH BEND WA

07-2-00484-1

Rept. Date 01/18/2012 Acct. Date 01/18/2012 Time 12:25 PM

Receipt/Item # 2012-01-00177/01 Tran-Code 1116 Docket-Code $AFF

Cashier: DLL

Paid By: DAVIS, WRIGHT Transaction Amount: $200.00

FILED

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VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA

BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	No. 07-2-00484-1 NOTICE OF APPEAL TO COURT OF APPEALS DIVISION II

Defendants Comcast of Washington IV, Inc., CenturyTel of Washington, Inc., and Falcon Community Ventures I, L.P. seek review by the Court of Appeals, Division II, of (i) the Judgment entered on December 12, 2011, and (ii) the Memorandum Decision dated March 15, 2011. A copy of both decisions is attached to this Notice.

DATED this 17th day of January, 2012.

Davis Wright Tremaine LLP
LAW OFFICES
1201 Third Avenue, Suite 2200
Seattle, Washington 98101
(206) 622-3150 · Fax: (206) 757-7700

DAVIS WRIGHT TREMAINE LLP

By _____
Eric M. Stahl, WSBA #27619
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101

Attorneys for Defendants Comcast of Washington, IV, Inc. and Falcon Community Ventures I, L.P.

STOEL RIVES LLP

By _____
Timothy J. O'Connell, WSBA No. 15372
(via telephonic authorization)
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 9810
Attorneys for Defendant CenturyTel of Washington, Inc.

CERTIFICATE OF SERVICE

I, Christine Kruger, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on January 17, 2012, I caused a true and correct copy of the foregoing document to be served upon the following counsel of record in the manner indicated:

Donald S. Cohen Gordon Thomas Honeywell et al. One Union Square 600 University Street, Suite 2100 Seattle, WA 98101	( ) ( ) (X)	Via U.S. Mail Via Facsimile Via Messenger
James B. Finlay, Esq. P. O. Box 755 Long Beach, WA 98631	(X) ( ) ( )	Via U.S. Mail Via Facsimile Via Messenger
Timothy J. O'Connell John H. Ridge Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101	( ) ( ) (X)	Via U.S. Mail Via Facsimile Via Messenger

Executed at Seattle, Washington, this 17th day of January, 2012.

Christine Kruger

FILED

HONORABLE MICHAEL J. SULLIVAN
Hearing Date: September 16, 2011 at 10:30 a.m.

2011 DEC 12 PM 4:02

PACIFIC CO.

BY

SUPERIOR COURT OF WASHINGTON FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington Corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES, I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	CAUSE NO. 07-2-00484-1 JUDGMENT

JUDGMENT SUMMARY

1.	Judgment Creditor:	Public Utility District No. 2 of Pacific County
2.	Judgment Debtor:	Falcon Community Ventures, I, L.P., d/b/a Charter Communications
3.	Judgment Debtor:	CenturyTel of Washington, Inc.
4.	Judgment Debtor:	Comcast of Washington IV, Inc.
5.	Principal Judgment Amount (Total)	$ 629,913.00
6.	Prejudgment Interest (12% per annum) (Total)	$ 172,210.65
7.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (Falcon Community Ventures, I, L.P., d/b/a Charter Communications)	$ 325,970.56
8.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (CenturyTel of Washington, Inc.)	$ 282,632.54

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9.	Principal Judgment Amount and Prejudgment Interest (12% per annum) (Comcast of Washington IV, Inc.)	$ 193,520.55
10.	Attorneys' Fees	$ 739,621.42
11.	Costs	$ 314,409.95
12.	TOTAL Judgment Amount:	$1,856,155.02

13. The total judgment amount shall bear interest at the rate of 12% per annum.

14. Attorney for judgment creditor: Donald S. Cohen
Gordon Thomas Honeywell, LLP
2100 One Union Square
600 University Street
Seattle, Washington 98101
(206) 676-7531

* * * * *

THIS MATTER came before the above-entitled Court on the presentation of Judgment in favor of Plaintiff Public Utility District No. 2 of Pacific County (the "District", the "PUD", or "Pacific PUD"). The Judgment in this matter is supported by the Court's Memorandum Decision dated March 15, 2011, the written Findings of Fact and Conclusions of Law dated September 16, 2011, the Declaration of Mark Hatfield in Support of Post-September 30, 2010 Damages (with exhibits), the Court's Order Granting Plaintiff Pacific PUD's Motion for an Award of Attorneys' Fees and Litigation Expenses dated September 16, 2011, the Court's Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for Award of Attorneys' Fees and Litigation Expenses, the Declaration of Donald S. Cohen in Support of Plaintiff Pacific PUD's Motion for Award of Attorneys' Fees and Litigation Expenses (with exhibits), the Declaration of Mark Hatfield in Support of Motion for an Award of Attorneys' Fees and Litigation Expenses (with exhibits), the Declaration of Robert M. Sulkin, Plaintiff's Reply and Supplemental and Second Supplemental Declarations of Donald S. Cohen in Support of Plaintiff's Motion for Award of Attorneys' Fees and Litigation Expenses (with exhibits), and the records and files in this lawsuit.

Consistent with the Memorandum Decision and Findings of Fact and Conclusions of Law with respect to the claims and defenses in this lawsuit, and declarations, and

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Plaintiff's Motion, declarations (with exhibits), and Findings of Fact and Conclusions of Law with respect to Plaintiff's Motion for an Award of Attorneys' Fees and Litigation Expenses, the Court enters judgment in favor of Plaintiff and against Defendants as follows:

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(2) Section 3(a) of RCW 54.04.045 (2008) reflects the FCC Telecom method, and Section 3(b) reflects the American Public Power Association ("APPA") method for public utility district pole attachment rates as of the date of trial.

(3) The non-rate terms and conditions in the District's proposed Pole Attachment Agreement were just, reasonable, non-discriminatory, and sufficient, are in compliance with RCW 54.04.045, and are in all other respects in compliance with applicable law, once a few undisputed revisions to the Agreement are made for pole attachment processing timing and notification provisions in Sections 5 and 6 of the 2008 amendments.

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ENTERED this 12th day of Dec., 2011.

Hohorable Michael J. Sullivan
Judge, Pacific County Superior Court

Presented by:
GORDON THOMAS HONEYWELL LLP

Donald S. Cohen, WSBA No. 12480
dcohen@gth-law.com
Attorney for Plaintiff

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURY TEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 MEMORANDUM DECISION

The Court held trial on this matter and heard closing arguments on October 20, 2010. The Court appreciates the parties' patience in this matter. The Court has considered the testimony of witnesses, exhibits, counsels' memorandums and oral arguments and now publishes its decision.

Burden of Persuasion

The Court accepts the Plaintiff's position that the Court should apply an "arbitrary and capricious" standard against which to judge the Plaintiff's actions.

The Court finds in favor of the Plaintiff, and specifically finds that:

1) Plaintiff's actions in negotiating the "Pole Attachment Agreement Terms and Conditions" were reasonable, fair and not arbitrary or capricious;

2) Plaintiff's actions during the negotiation process were done in good faith, pursuant to the Plaintiff's usual and ordinary course of conducting business;

3) Plaintiff met the requirements of the Public Open Meetings Act;

4) Section 3(a) of the RCW 54.04.045 (2008) reflects the FCC Telecom Method and Section 3(b) reflects the APPA Method;

5) PUD acted within the bounds of reasonableness and fairness in electing to interpret their pole rates pursuant to Paragraph 4, above;

6) Public Utility District (PUD) Commissioners adopted pole attachment rates that were fair, reasonable and sufficient; those rates being $13.25 prior to January 1, 2008, and $19.70 after January 1, 2008;

7) The Non-rate Terms and Conditions in Plaintiff's proposed Pole Attachment Agreement Terms and Conditions were approved by the PUD Commissioners after a lengthy process which involved property advertised, public meetings, negotiations with Defendants, some modifications to Plaintiff's initial draft agreement and after considering PUD staff reports and recommendations;

8) PUD displayed noteworthy patience in not exercising their contractual right to initiate removal of Defendants' attachments during the time Defendants' did not pay the adopted pole attachment rates stated in Paragraph 5, above;

9) Prior to and even during this trial, the parties demonstrated that their respective company administrators and "on-the-ground employees" have gotten along

well and that disagreements have been worked out on what appears to be a somewhat informal basis. This has been occurring for over twenty (20) years. The parties either "worked around" non-rate bothersome or disagreeable terms, ignored them, or compromised some other solution in order to "just make it work";

10) It is clear that the real, germane issue before this Court is the rate-setting method adopted by Plaintiff and not the other non-rate matters, regardless how those non-rate matters have been presented during trial;

11) Defendants failed to demonstrate by a preponderance that PUD's use of the excluded pole space for light fixtures was an adopted practice rather than a phasing out of that system;

12) PUD's survey of the number of PUD utility poles and transmission poles was accomplished in a reasonable and practical manner as well as their estimate of attachments, both fiber and non-fiber;

13) The pole attachment rate derived by Defendant's expert witness, Patricia Krafton, is unreasonable and impractical as it relates to this case.

14) Damages should be awarded against Defendants as requested by Plaintiff: $601,108.00, plus interest through September 30, 2010, and as adjusted through entry of Judgment;

15) Plaintiff's request to enter an order for Defendant's to start paying at PUD's adopted rates set in Paragraph 6, above, or remove their attachments from PUD poles is also granted;

16) Defendant's have also failed to prove their case as to all remaining claims;

17) Attorney's Fees and Costs are reserved for argument upon sworn declarations.

18) The Court reserved ruling on the admission of Identifications 108 and 117, excerpts from the deposition of Kathleen Moisan. Both are admitted.

The Court's decision, set forth in Paragraphs 1 – 18 are not exhaustive. The Court will entertain proposed findings and conclusions consistent with this opinion when presented.

Decided March 15, 2011.

JUDGE MICHAEL J. SULLIVAN

FILED

2012 JUN 20 PM 3:37

The Honorable Michael J. Sullivan
Noted for Hearing: February 17, 2012
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 JOINT MOTION OF DEFENDANTS CENTURYLINK, COMCAST, AND CHARTER COMMUNICATIONS TO VACATE AND REENTER FINAL JUDGMENT

I. INTRODUCTION

Pursuant to CR 60(b)(1), CenturyTel of Washington, Inc., now known as CenturyLink ("CenturyLink"), Falcon Community Ventures I, L.P., d/b/a Charter Communications ("Charter") and Comcast of Washington IV, Inc., ("Comcast") (collectively "Defendants") move to vacate and reenter the final judgment entered on December 12, 2011 in favor of Public Utility District No. 2 of Pacific County ("District") to reset the time period to file a notice of appeal. As a result of extraordinary circumstances, Defendants did not learn of the judgment until after the

time period to file a notice of appeal had expired. It had been the practice in this case for Court personnel to provide notice and copies of the Court's rulings on substantive, contested issues that were not entered in open court, as well as other orders of procedural significance. Even though that was the practice, Defendants diligently sought information about the status of final judgment on many occasions following the Court's final hearing on the District's proposed findings and conclusions. Defendants stopped making such inquires only when, three weeks before final judgment was entered, Court staff assured a paralegal working with CenturyLink's counsel that notice of any case developments would be provided to the parties and that a ruling was not imminent. Defendants' reliance on that representation was objectively reasonable. That reliance – in light of the prior practice of notification between the Court and the parties and Defendants' diligent efforts to monitor the case – constitutes excusable neglect. Furthermore, the statewide public importance of this case on pole attachment rate setting qualifies as the type of extraordinary circumstances that requires vacation and reentry of the judgment to allow Defendants to file a timely notice of appeal.

II. EVIDENCE RELIED UPON

Defendants rely on the Declarations of Timothy J. O'Connell, Heidi L. Wilder, and Jill Valenstein (which are attached hereto).

III. STATEMENT OF FACTS

A. The Underlying Litigation.

As this Court is aware, the dispute over the rates the District seeks to charge Defendants for pole attachments is long standing and involves significant public policies that will have statewide effects. In 2008, the Washington State Legislature revised the law setting the formula for determining the rates to be charged for pole attachments by public utility districts – and only public utility districts, among all of the public electric providers in the state. *Compare* HB 2533 *with* E2SHB 2533. This case became the "test case" – the only one pending in the state,

monitored by all other PUDs and members of the communications industries. O'Connell Dec. ¶ 3.

Ultimately, this test case lasted nearly four years. During that time period, the Court issued multiple rulings. When the Court issued a ruling on substantive issues or matters of case management, counsel for the parties routinely received notice and copies of such rulings from the Court via United States mail, e-mail, or fax. *See* O'Connell Dec. ¶ 6;Valenstein Dec. ¶ 2. For instance, Court personnel mailed to the parties a copy of the January 14, 2010 Order denying a motion for summary judgment. *See* O'Connell Dec. at ¶ 6; Valenstein Dec. ¶ 2.

In October 2010, the Court conducted a three-week bench trial. On March 15, 2011, it issued a Memorandum Decision announcing its intent to rule in favor of the District and inviting the parties to submit proposed findings of fact and conclusions of law. Defendants received a copy of that ruling from the Court via fax. *See* O'Connell Dec. ¶ 6; Valenstein Dec. ¶ 2.

Defendants intended to appeal the Court's adverse ruling once it was reduced to final judgment. O'Connell Dec. ¶¶ 4-5; Valenstein Dec. ¶ 3. They conveyed that intent to Plaintiffs' counsel, on multiple occasions. For example, shortly after receiving the Court's March 15, 2011 Memorandum Decision, CenturyLink's counsel contacted the District's attorney via email (which included each of the Defendant's counsel) and on the telephone. *See* O'Connell Dec. ¶¶ 4-5; Valenstein Dec. ¶ 3. During those exchanges, CenturyLink's counsel indicated that Defendants would appeal from the eventual final judgment. *See* O'Connell Dec. ¶¶ 4-5; Valenstein Dec. ¶ 3. Counsel also discussed whether a bond on appeal would be necessary. Although counsel for the District rejected that offer, he did so only because of an expressed concern about whether it could be considered a gift of public funds. O'Connell Dec. ¶¶ 4-5.

On September 16, 2011, the Court conducted a hearing on the District's proposed findings and conclusions. The Court did not enter final judgment at the hearing. Rather, it took the District's proposed findings and conclusions under advisement. Even though final judgment had not been entered, counsel for Defendants and the District continued to discuss the procedure

for appeal after entry of final judgment. Specifically, counsel for CenturyLink and the District discussed whether Defendants would bypass the Court of Appeals and seek direct review in the Supreme Court; no resolution was reached on that issue. *See id.* ¶ 5.

B. Defendants' Efforts To Obtain Information About Final Judgment.

Defendants believed the Court, consistent with its prior practice during this several-year-long case, would fax or mail its judgment to them. But they took additional steps as well to inquire about the judgment. In October 2011, Heidi Wilder, a paralegal working with counsel for CenturyLink, began placing telephone calls to the Court Administrator's office, inquiring as to the status of the judgment. *See* Wilder Dec. ¶ 3. Ms. Wilder periodically made such calls over the next several weeks. *See id.* ¶ 4. CenturyLink's counsel provided updates of Ms. Wilder's communications with Court personnel to counsel for Comcast and Charter. *See* O'Connell Dec. ¶ 8; Valenstein Dec. ¶ 4.

On November 22, Ms. Wilder spoke to the Court Administrator regarding the status of final judgment. *See* Wilder Dec. ¶ 5. The Court Administrator – who had previously spoken to Ms. Wilder – stated that judgment still had not been entered and that she would inform Ms. Wilder of any developments in the case. *See id.* ¶ 5. In the two weeks after Thanksgiving – the latter being the week before the Court entered the Judgment – Ms. Wilder called the Court Administrator's office at least two additional times. *See id.* ¶ 6. Ms. Wilder spoke with the Court Administrator during one of those calls, and the Court Administrator stated that judgment still had not been entered. *See id.* In her other call, Ms. Wilder left a voicemail message but never received a response. *See id.* As Ms. Wilder's telephone inquiries accumulated, she sensed that such inquiries were exasperating Court staff. *See id.* ¶ 5. Ms. Wilder stopped making telephonic inquires about the judgment only after receiving assurance from the Court Administrator that someone on the Court staff would provide notice of any case developments and also to avoid being a nag. *See id.* ¶ 5.

C. Entry Of Judgment And Subsequent Events.

Unbeknownst to any of the Defendants, on December 12, the Court entered final judgment. Not one of the Defendants received notice or a copy of the order of judgment or the Court's findings and conclusions. *See* O'Connell Dec. ¶ 9; Valenstein Dec. ¶ 5. No one on the Court's staff contacted Ms. Wilder or any of the other Defendants. *See* Wilder Dec. ¶ 6; Valenstein Dec. ¶ 5.

On January 17, 2012, Defendants' counsel learned for the first time that final judgment had been entered on December 12, 2011. *See* O'Connell Dec. ¶ 9; Valenstein Dec. ¶ 6. Defendants received a copy of the judgment, for the first time, at 3:23 p.m. that day. *See* Valenstein Dec. ¶ 6. They immediately contacted the Court to arrange for delivery of a notice of appeal.[1] This motion to vacate swiftly followed.[2]

IV. ARGUMENT

A. Legal Standard.

Under CR 60(b)(1), trial courts have wide discretion to "relieve a party . . . from a final judgment . . . for . . . mistake, inadvertence, surprise, excusable neglect or inequality in obtaining a judgment." Motions to vacate are highly contextual and should be decided on the unique facts of each case. *Morin v. Burris*, 160 Wn.2d 745, 759, 161 P.3d 956 (2007) (explaining that trial courts must carefully consider particular facts of the specific case when ruling on a motion to vacate). Furthermore, CR 60(b)(1) is to be "construed and administered to secure the *just*, speedy, and inexpensive determination of every action." CR 1 (emphasis added).

In applying that discretion, the policy of Washington is to interpret rules and statutes to reach the substance of matters so that substance prevails over form. *Weeks v. Chief of State*

[1] The notice of appeal was e-mailed to the Court at 4:06 p.m. on January 17, less than an hour after Defendants first received the judgment. Valenstein Dec. ¶ 6. In addition to this motion to vacate, Defendants intend to file an appropriate motion for relief with the Court of Appeals to preserve their right to appeal the judgment.

[2] Defendants would have noted this motion for hearing on February 3, the earliest date permissible, but for a conflict with the District's lead counsel's schedule. As an accommodation, Defendants have instead noted it for February 17. *See* O'Connell Dec. ¶ 10.

Patrol, 96 Wn.2d 893, 896, 639 P.2d 732 (1982). The court's exercise of discretion must be made in light of the "comparative and compelling public or private interests of those affected." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971), *abrogation on other grounds recognized in Seattle Times Co. v. Benton Cnty.*, 99 Wn.2d 251, 263, 661 P.2d 964 (1983). In a case such as this, which presents public policy issues of great importance to parties throughout the state – beyond those before this Court – such public interests must be considered as part of the Court's obligation to "'weigh competing interests and maintain an even balance'" as it exercises its "inherent power 'to control the disposition'" of this cause. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d 45 (2000) (quoting *Landis v. N. Am. Co.*, 299 U.S.C. 248, 254-55 (1936)).

When a party moves to vacate a judgment for the purpose of resetting the time period in which to file a notice of appeal – as Defendants seek here – such relief should be granted when there is a showing of "extraordinary circumstances that vacation is necessary to prevent a gross miscarriage of justice." *Pybas v. Paolino*, 73 Wn. App. 393, 394, 868 P.2d 427 (1994). *Pybas* involved a motion to vacate a judgment confirming an arbitration award to allow time to file a motion for trial *de novo*. 73 Wn. App. at 394. Division II explained that the standard for granting such a motion was at least as stringent as the standard for granting a motion to vacate and reenter judgment to reset the time for filing notice of appeal. *Id.* at 400. Although the court concluded in *Pybas* that there was no basis under the facts presented therein to vacate the judgment, it identified several criteria constituting extraordinary circumstances under which vacatur is warranted. *See id.* at 402-03. Those criteria include:

- The failure of the court clerk to give notice of the entry of judgment;
- The lack of prejudice to the opposing party;
- The prompt filing of the motion to vacate after receiving actual notice of the judgment;
- Counsel's diligence in attempting to learn the date of judgment; and

- The expectation that an appeal would be taken.

Id. Each of these criteria is met here. Furthermore, these criteria should be considered in light of the "'comparative and compelling public or private interest of those affected'" by an order of vacatur. *Id.* at 399 (quoting *Carroll*, 79 Wn.2d at 26).

B. Defendants Did Not Receive Notice Of The Judgment As Reasonably Expected.

Defendants' counsel reasonably expected to receive notice of the entry of final judgment because the practice of Court personnel in this case all along had been to provide notice and copies of court rulings on substantive, contested issues or even minor issues. Prior to the entry of final judgment, the Court's rulings were routinely provided to counsel, either via e-mail, mail or fax. *See* O'Connell Dec. ¶ 6; Valenstein Dec. ¶ 2. Significantly, the Court faxed Defendants' counsel a copy of the Court's March 15, 2011 Memorandum Decision, in which the Court announced its initial decision in the case and invited the presentation of proposed findings and conclusions. *See* O'Connell Dec. ¶ 6; Valenstein Dec. ¶ 2. It was therefore reasonable for the Defendants to expect to receive similar notice of the final judgment.

Through this motion, Defendant do not seek to be seen as attempting to impose on the Court, its staff, or the Clerk an obligation to provide notice of court orders. Nor are they attempting to place blame on Court personnel. Court staff and personnel were generous with their time and very helpful during this long, complicated case.

But the practice employed in this case over four years created an expectation that notice would be provided. Indeed, it is difficult to comprehend why notice of the March 15 Memorandum Decision would be provided while notice of the final judgment would not. Deviation from the established practice in this case is puzzling considering the length of the litigation, the amount of judicial resources expended, and because the final judgment resolved the dispute and triggered the very appellate rights herein at issue.

Likewise, the statements of Court staff confirmed an expectation that notice of the entry of judgment would be provided. Specifically, the Court Administrator's assurance that she

would notify Ms. Wilder of any case developments confirmed Defendants' reasonable belief that they would receive actual, timely notice when judgment was entered. *See* Wilder Dec. ¶ 5. That belief was objectively reasonable considering the context: the Court Administrator made that statement *after* Ms. Wilder had made *repeated* telephonic inquires as to the status of the judgment from mid-October through early December. *See id.* ¶¶ 4-6.

On the issue of reasonable reliance, the Supreme Court's opinion in *Morin* is instructive. In concluding that a motion to vacate was *improperly denied*, the Court observed that if a party's representative "acted with diligence," yet neglected to take a certain action as a result on relying on a party's actions or representations, the neglect was "excusable under CR 60." *Morin*, 160 Wn.2d at 759. The Court so held even though the opposing party "had no duty to inform [the defendant's representative] of the details of the litigation." *Id.* Under the circumstances, the defendant was lulled into believing one state of affairs to be true. Thus, *Morin* stands for the proposition that even when a party has no *right* to be informed or notified, if particular circumstances – such as those presented herein – create a reasonable expectation that information or notice will be forthcoming, neglect resulting from those circumstances should be excused.

Even though the situation herein is not wholly analogous to that presented in *Morin*, it is substantially similar. As evidenced by the repeated inquires as to the status of the judgment, Defendants were diligent in attempting to obtain information about the judgment. Ms. Wilder refrained from placing further telephone calls to Court staff only after receiving assurance that notice of any case developments should be provided and that a ruling was not imminent. In light of the Court personnel's pattern of courtesy and helpfulness in routinely providing notice of Court rulings, the reasonableness of Defendants' reliance is significant in this case – significant enough to support a finding of excusable neglect.

C. There Will Be No Prejudice If The Judgment Is Vacated.

Addressing whether the District will suffer actual prejudice if the motion to vacate is granted, the answer is clear: it will not. There is no suggestion of irreparable harm if Defendants

are able to pursue an appeal. In contrast, if the judgment is not vacated and reentered to allow for the filing of a notice of appeal, the harm to Defendants is manifest. The contrast with Division II's analysis in *Pybas* is compelling. By vacating the judgment there, the court placed the parties in the position as if no arbitration had been held at all. 73 Wn. App. at 403, n.5. Clearly, the District will not lose the benefit of the judgment in its favor, which the Court should immediately re-enter.

In this regard, the public policy favoring finality of judgments (*see Reichelt v. Raymark*, 52 Wn. App. 763, 766 n.2, 764 P.2d 453 (1988) (noting that prejudice is to appellate system)) must be balanced against the judicially recognized "preference for deciding cases on their merits rather than on procedural technicalities." *Buckner, Inc. v. Berkey Irr. Supply*, 89 Wn. App. 906, 914, 951 P.2d 228 (1998). As explained further below in Part IV.G., the issues presented in this case are matters of first impression and implicate wide-reaching public policy. Full appellate review, therefore, is warranted.

D. Defendants Promptly Moved To Vacate After Receiving Actual Notice.

Upon receiving actual notice of the judgment, Defendants acted quickly to secure their right of appeal. Defendants learned of the judgment in the afternoon of January 17, 2012. *See* O'Connell Dec. ¶ 9; Valenstein Dec. ¶ 6. Defendants submitted a notice of appeal within the hour (*see* Valenstein Dec. ¶ 6) and filed this motion three days later on January 20, 2012, only eight days after the period for filing notice for appeal had expired. Defendants have not dithered or delayed.

E. Defendants Were Diligent In Seeking Information About The Judgment.

Defendants were unquestionably diligent in attempting to learn of the date when final judgment had been entered. Again, when no judgment had been entered shortly after the September 16 hearing on the District's proposed findings and conclusions, Ms. Wilder began calling the Court Administrator's office on behalf of CenturyLink for information and continued to do so for several weeks. *See* Wilder Dec. ¶¶ 3-5. In late November, Ms. Wilder was

specifically told by Court staff that judgment had not been entered and that she would be notified by staff of any developments in the case. *See id.* ¶ 5. Even after receiving that assurance, Ms. Wilder placed at least two additional telephone calls, speaking with the Court Administrator on one occasion and leaving a voicemail on the other. *See id.* ¶ 6. That voicemail was never returned. *See id*

In short, Defendants made repeated efforts to learn of the date of judgment. When court staff told Ms. Wilder that she would be notified of any case developments, she reasonably ceased making repeated telephonic inquiries. Defendants' delay in learning of the final judgment was not due to lack of attention or effort on their part.

F. Appeal Comes As No Surprise.

The District has known for nearly nine months that Defendants planned to appeal from the judgment. On March 18, 2011 – three days after the Court announced its ruling in the March 15 Memorandum Decision that was sent to counsel – CenturyLink's counsel contacted the District's attorneys via email to congratulated them on the District's victory while also indicating Defendants' intent to appeal. *See* O'Connell Dec. ¶ 4; Valenstein Dec. ¶ 3. Opposing counsel even had follow-up conversations about whether a bond on appeal would be necessary. *See* O'Connell Dec. ¶ 4; Valenstein Dec. ¶ 3. The parties also discussed whether to proceed in the Supreme Court, or the Court of Appeals. *See* O'Connell Dec. ¶ 5. The District can certainly claim no surprise by Defendants' desire to appeal.

G. Public Policy Issues Strongly Favor Vacatur To Allow For Notice Of Appeal.

Additionally, this case raises significant public policy issues beyond the interests of the parties involved in this proceeding. As the Court is aware, this case is a "test case," and is the first judicial interpretation of the newly amended RCW 54.04.045. That statute, which sought to create a methodology for determining pole attachment rates charged by public utility districts, is being monitored by other attachers and PUDs throughout Washington. *See* O'Connell Dec. ¶ 3. Appellate review of significant trial court decisions is essential in cases that could have a wide

impact on parties throughout the state. In cases of such state-wide significance, vacatur and reentry of the judgment is necessary to ensure the new law receives appellate review.

Moreover, unless this case receives appellate review, other litigation could ensue, including between these same parties or between other public utility districts and communications companies. Indeed, this case may well be quickly back before this Court because under any interpretation of the statute, as the District's costs change from year to year the lawful rate it may charge under RCW 54.04.045 will change. Assuming the District continues to apply its current practices, when the District attempts to bill defendants for 2011 rentals, a new violation of RCW 54.04.045 will occur. Thus, unless public utility districts and the many communications companies that attach to their poles are provided definitive guidance as to the proper interpretation of RCW 54.04.045, the parties will be faced with a variation on this dispute all over again. It would therefore be the most efficient use of judicial resources, as well as in furtherance of the public interest state wide, for the December 12 judgment to be vacated and reentered.

V. CONCLUSION

For the foregoing reasons, the judgment should be vacated and reentered.

Dated this 20th day of January 2012.

STOEL RIVES LLP

T J O'Connell

Timothy J. O'Connell, WSBA No. 15372
tjoconnell@stoel.com

Attorneys for Defendant CenturyTel of Washington, Inc.

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EMS, by TJOC per telephonic authorization 1/20/2012

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	Case No.: 07-2-00484-1 **GR 17 DECLARATION**

Pursuant to the provision of GR 17, I declare as follows:

1. I have received the foregoing Joint Motion of Defendants Centurylink, ComCast and Charter Communications to Vacate and Reenter Final Judgment in PDF via email transmission for filing, at the email address of: penoyar001@comcast.net.
2. I have examined the foregoing document, determined that it consists of thirteen pages, including this Declaration page, and that it is complete and legible.
3. My address is: 504 W. Robert Bush Drive, South Bend, Washington.
4. My phone number is: (360) 875-5321

I declare under penalty of perjury under the laws of the state of Washington that the above is true and correct.

DATED: 1/20/12, at South Bend, Washington.

Julie Dalton

Julie Dalton

FILED

2012 JAN 20 PM 3:37

The Honorable Michael J. Sullivan
Noted for Hearing: February 17, 2012
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 DECLARATION OF HEIDI L. WILDER IN SUPPORT OF JOINT MOTION TO VACATE AND REENTER JUDGMENT

I, Heidi L. Wilder, declare as follows:

I am older than 18 years of age, competent to testify in a court of law, and declare as follows:

1. I am employed as a paralegal with the law firm of Stoel Rives LLP in Seattle, Washington. I have worked as a paralegal since 1999 and have worked in this capacity for Stoel Rives since 2005.

2. As part of my employment, I provided paralegal support to Timothy O'Connell and other Stoel Rives attorneys in connection with the above-captioned case. My work included

STOEL RIVES LLP
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Telephone (206) 624-0900

organizing case materials for and attending trial in this case during October 2010 and preparing the attorneys for the hearing on Plaintiff's proposed findings of fact and conclusions of law held on September 16, 2011.

3. In mid-October 2011, at Mr. O'Connell's request, I placed a telephone call to the office of the Court Administrator for the Pacific County Superior Court to inquire whether the Court had entered a final judgment in this case and, if not, when the Court would enter final judgment. During that call, I spoke with either Marilyn Staricka, Court Administrator, or Angela Gilbert, Assistant Court Administrator. The individual with whom I spoke informed me that the Court had not entered a final judgment and stated that she did not know when the Court would do so.

4. During the next several weeks, I called the Court Administrator's office at least six times to inquire about the status of the judgment. In making those telephone calls, I either left voicemail messages requesting information and a return telephone call or spoke directly to Ms. Staricka or Ms. Gilbert about the status of the judgment.

5. On November 22, 2011, Ms. Staricka called me on the telephone and informed me that she had inquired of the Court as to when a judgment would be entered. According to Ms. Staricka, a judgment likely would not be entered soon because of the Court's criminal trial schedule. Ms. Staricka stated further that she would contact me regarding any developments that occurred in the case. While the court personnel were always polite and courteous, I had the impression that my contacts were exasperating them.

6. In the following weeks, including at least once during the week of December 5, 2011, I placed at least two telephone calls to the Court Administrator's office. On one occasion, I spoke with Ms. Staricka, who said that the court was still in trial and that the judgment had not yet been rendered. I called at least one other time and left a voicemail message inquiring about the status of the judgment. I did not receive a return telephone call or message from either Ms. Staricka or Ms. Gilbert.

7. On January 17, 2012, I spoke to Ms. Gilbert on the telephone regarding the final judgment entered in the case. Ms. Gilbert stated that she could not specifically recall whether she, Ms. Staricka, or anyone else made an attempt to provide notice of the entry of judgment to the parties.

8. I communicated the content of my communications with Ms. Staricka and Ms. Gilbert to the attorneys working on this case.

9. Throughout the case, it had been a common practice for court personnel to notify the parties via fax, email, or U.S. Mail. Based on my conversations and rapport with court personnel, I expected some type of notification regarding the judgment by one of those methods of delivery.

I hereby declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 19th day of January, 2012 at Seattle, Washington.

Heidi L. Wilder

Heidi L. Wilder

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	Case No.: 07-2-00484-1 **GR 17 DECLARATION**

Pursuant to the provision of GR 17, I declare as follows:

1. I have received the foregoing Declaration of Heidi L. Wilder in Support of Defendants' Joint Motion to Vacate and ReEnter Final Judgment in PDF via email transmission for filing, at the email address of: penoyar001@comcast.net.
2. I have examined the foregoing document, determined that it consists of four pages, including this Declaration page, and that it is complete and legible.
3. My address is: 504 W. Robert Bush Drive, South Bend, Washington.
4. My phone number is: (360) 875-5321

I declare under penalty of perjury under the laws of the state of Washington that the above is true and correct.

DATED: 1/20/12 at South Bend, Washington.

Julie Dalton

Julie Dalton

FILED

2012 JAN 20 PM 3:37

The Honorable Michael J. Sullivan
Noted for hearing: February 17, 2012
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	No. 07-2-00484-1 DECLARATION OF JILL VALENSTEIN IN SUPPORT OF DEFENDANTS' JOINT MOTION IN SUPPORT OF MOTION TO VACATE JUDGMENT

I, JILL VALENSTEIN, under penalty of perjury according to the laws of the State of Washington, declare and state as follows:

1. I am a partner with the law firm of Davis Wright Tremaine LLP, counsel of record for Defendants Comcast of Washington IV, Inc. and Falcon Community Ventures d/b/a Charter Communications in the above-captioned matter. I have been actively involved in the pole attachment dispute between these companies and Public Utility District No. 2 since its

outset, including as trial counsel. I make this declaration in support of Defendants' Joint Motion to Vacate Judgment.

2. Throughout this four-year long case, the Court has provided my firm many formal notices, orders and decisions, by electronic mail, facsimile or United States Mail, without anyone from my firm requesting the Court to do so. These include: the May 16, 2008 Notice of Trial Date (by mail); February 26, 2009 Notice of Trial Date (by mail); two orders, dated June 30, 2009, admitting my partner, and I *pro hac vice* (by mail); the November 5, 2009, Notice of Settlement Conference (by e-mail and mail); the January 13, 2010 Notice Striking Trial Date (by e-mail and mail); the January 14, 2010, Memorandum Decision denying Defendants' Motion for Partial Summary Judgment (by mail); the February 19, 2010 Notice of Trial Date (by mail) and, significantly, the March 15, 2011 Memorandum Decision (by fax). In addition, there were many other less formal communications between my firm and court personnel, via e-mail and telephone.

3. Both of my clients intended to appeal the adverse rulings contained in this Court's March 15, 2011, Memorandum Decision, once it was reduced to a Judgment. Plaintiff was aware of this. After the Memorandum Decision was issued, I was involved in e-mail exchanges between co-Defendant CenturyTel's counsel and Plaintiff's counsel regarding the next phase of the case, including appeal, and whether the District would waive an appeal bond.

4. Throughout the process of contacting Court personnel for status reports on the timing of the final judgment, counsel for CenturyTel updated me.

5. My firm did not receive notice or a copy of the December 12, 2011 final judgment nor did anyone from the Court contact me or anyone from my firm that a final judgment had been entered, despite the Court's past practices.

6. I learned for the first time at 2:23 pm Pacific time on January 17, 2012 that a judgment had been entered. I received a copy of the judgment at 3:23 pm. Immediately thereafter, Defendants contacted the Court to arrange for delivery of a notice of appeal.

SIGNED at Washington, D.C. this 20th day of January, 2012.

Jill Valenstein

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	Case No.: 07-2-00484-1 **GR 17 DECLARATION**

Pursuant to the provision of GR 17, I declare as follows:

1. I have received the foregoing Declaration of Jill Valenstein in Support of Defendants' Joint Motion in Support of Motion to Vacate Judgment in PDF via email transmission for filing, at the email address of: penoyar001@comcast.net.
2. I have examined the foregoing document, determined that it consists of four pages, including this Declaration page, and that it is complete and legible.
3. My address is: 504 W. Robert Bush Drive, South Bend, Washington.
4. My phone number is: (360) 875-5321

I declare under penalty of perjury under the laws of the state of Washington that the above is true and correct.

DATED: 1/20/12, at South Bend, Washington.

Julie Dalton

Julie Dalton

FILED

2012 JAN 20 PM 3:37

The Honorable Michael J. Sullivan
Noted for Hearing: February 17, 2012
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 DECLARATION OF TIMOTHY J. O'CONNELL IN SUPPORT OF DEFENDANTS' JOINT MOTION TO VACATE AND REENTER FINAL JUDGMENT

I, Timothy J. O'Connell, declare as follows:

I am older than 18 years of age, competent to testify in a court of law, and declare as follows:

1. I am employed as a partner with the law firm of Stoel Rives LLP in Seattle, Washington. I have been a member of the bar of the State of Washington since 1985.

2. I have been lead counsel for Defendant CenturyTel of Washington, Inc., n/k/a CenturyLink of Washington, Inc. ("CenturyLink") since the commencement of this litigation.

3. This litigation concerned the appropriate formula to be used to set pole attachment rates across the State of Washington pursuant to revisions to the governing law, RCW 54.04.045, that took effect in 2008. This case became the test case for this issue. It was the only case on this issue pending in the state, and it has been monitored by attachers and public utility districts alike because of the wide-reaching impact of any eventual judgment. For example, I am aware of agreements that have been negotiated between districts and attachers preserving the status quo until this case is ultimately resolved.

4. After the Court issued its Memorandum Decision of March 15, 2011, I sent counsel for Public Utility District No. 2 of Pacific County ("District") an e-mail message, congratulating him on winning "this round" and raising issues about the next phase of the case. In a subsequent conversation, the District's counsel and I discussed whether the District would waive the requirement for a supercedeas bond. Counsel for the District ultimately advised me that the District would not agree to do so, but only because the District was concerned that doing so might be perceived as a gift of public funds.

5. We also discussed other aspects of the appellate phase of this case. I discussed with the District's counsel whether the parties would agree to seek to bypass the Court of Appeals and seek direct review in the Supreme Court; it is my recollection that we had that discussion immediately after the September 16, 2011 argument to the Court over the District's proposed Judgment, Findings of Fact and Conclusions of Law, and the attorneys' fees and costs award. Mr. Cohen indicated that he would get back to me on that proposal (or words to that effect). We did not confer further on that issue.

6. Throughout this case, counsel for the parties received many formal notices, orders and decisions from the Court, by regular mail, e-mail and facsimile transmission, without having requested the Court to do so. These include: the May 13, 2008 Order on consolidation; the May 16, 2008 Notice of Trial date; the February 26, 2009 Notice of Trial date; the two Orders of June 30, 2009 admitting attorneys *pro hac vice*; the November 5, 2009 Notice of Settlement

Conference; the January 13, 2010 Notice Striking the Trial Date; the January 14, 2010 Order denying the motion for summary judgment (by mail); the February 19, 2010 Notice of Trial Date; the February 26, 2010 Amended Notice of Trial Date; the March 7, 2010 Second Amended Notice of Trial Date; and the March 15, 2011 Memorandum Decision (by fax). Additionally, we had many less formal communications with court personnel, both by telephone and e-mail.

7. Given the consistent practice of Court personnel to provide notices, orders and decisions, when Heidi Wilder, a paralegal with Stoel Rives who works with me on this matter, informed me that Court personnel had told her that they would update her about developments in the case after her repeated contacts in the October and November 2011 time period, I had no reason to believe they would not do so.

8. Throughout the process of contacting Court personnel to update the status as to the entry of judgment in this case, I updated counsel for do-defendants Comcast and Charter.

9. I first learned of the final judgment dated December 12, 2011 on January 17, 2012. I had not received notice or a copy of the judgment prior to that date. I conferred with counsel for co-defendants, and they informed me that they, too, had not received notice that judgment had been entered before January 17.

10. When I learned of the entry of the final judgment in this case, I immediately started the process of preparing this motion. Because of complications arising from the weather emergency in Puget Sound area that began on January 17, 2012, we were unable to complete this motion and the supporting papers until today, January 20. Under the ordinary operation of the civil rules, we would have noted this motion for February 3, 2012. As a courtesy to opposing counsel, I contacted counsel for the District and he advised me that he had previous

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commitments that would make February 3rd difficult. As an accommodation for him, we have noted this motion for February 17, 2012, a date he indicated he was available.

EXECUTED this 20th day of January 2012 at Seattle, Washington.

Timothy J. O'Connell

STOEL RIVES LLP
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600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	Case No.: 07-2-00484-1 **GR 17 DECLARATION**

Pursuant to the provision of GR 17, I declare as follows:

1. I have received the foregoing Declaration of Timothy J. O'Connell in Support of Defendants' Joint Motion to Vacate and ReEnter Final Judgment in PDF via email transmission for filing, at the email address of: penoyar001@comcast.net.
2. I have examined the foregoing document, determined that it consists of five pages, including this Declaration page, and that it is complete and legible.
3. My address is: 504 W. Robert Bush Drive, South Bend, Washington.
4. My phone number is: (360) 875-5321

I declare under penalty of perjury under the laws of the state of Washington that the above is true and correct.

DATED: 1/20/12, at South Bend, Washington.

Julie Dalton

Julie Dalton

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Appellants, v. PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Respondent.	No. _____ (Pacific County Superior Court No. 07-2-00484-1) APPELLANTS' MOTION FOR EXTENSION OF TIME

I. IDENTITY OF MOVING PARTIES

This motion is brought jointly by appellants (defendants below) CenturyTel of Washington, Inc., now known as CenturyLink ("CenturyLink"); Comcast of Washington IV, Inc. ("Comcast"); and

Falcon Community Ventures I, L.P., d/b/a Charter Communications ("Charter) (collectively, "Appellants").

II. RELIEF REQUESTED

Appellants move this Court to accept as timely their January 18, 2012, notice of appeal from a judgment entered on December 12, 2011 by the Superior Court for Pacific County. *See* Ex. A.[1] This one-week extension is justified by extraordinary circumstances and is necessary to prevent a gross miscarriage of justice, as provided by RAP 18.8(b).

After the trial court's final post-trial hearing on September 16, 2011, Appellants diligently sought information from the court about the status of final judgment, and were *specifically told by trial court personnel that the parties would be notified when judgment was entered.* These representations were consistent with the trial court's practice for four years of providing notice and copies of all substantive rulings not entered in open court. Despite the court's uninterrupted practice, and contrary to its representation, judgment was entered on December 12 with no notice to the Appellants. Appellants first heard of the judgment on January 17, 2012, six days after the time to file a notice of appeal under RAP 5.2(a) had passed. Appellants filed their notice of appeal less than an hour after learning judgment had been entered.

[1] All cited exhibits are attached to the Appendix hereto.

This appeal comes as no surprise to respondent Public Utility District No. 2 of Pacific County ("District"). After the trial court issued its preliminary decision in favor of the District last March, the Appellants made clear to the District, in numerous communications, that they would appeal the decision once it was reduced to final judgment. The District would have done the same had Appellants prevailed at trial. This action is the first legal test of a complex rate-setting formula for attachments to PUD poles adopted by the Legislature in 2008 as amendments to RCW 54.04.045. It is the quintessential test case: it raises issues of substantial public importance, and is being followed by PUDs and attachers statewide in anticipation of a precedential ruling on the statute's meaning.

Under the circumstances, this Court should exercise its discretion under RAP 18.8(b) to accept the notice of appeal. It would be manifestly unjust to deny Appellants an appeal in light of their efforts to ascertain the status of the judgment; the practice and statements of the trial court indicating notice would be provided; Appellants' clear intent to appeal the judgment; and the public importance of the issues raised by this case.

III. FACTS RELEVANT TO MOTION

A. Case Background

This case arose as a dispute over the rates and terms a PUD may impose on third parties, such as cable television and telecommunications

providers, that attach communications wires and other equipment to its poles. Pole attachment rates are regulated by various laws designed to limit the significant leverage pole owners have over attachers that need access to poles. In Washington, joint use of PUD-owned poles is governed by RCW 54.04.045, which requires that all "rates, terms and, conditions made, demanded or received by a [PUD] for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient." RCW 54.04.045(2). The legislature amended the statute in 2008 to provide a specific formula for calculating "just and reasonable" pole attachment rates. The purpose of the amendment was to "ensure greater predictability and consistency in pole attachment rates statewide," in order to promote competition in telecommunications markets and recognize the value of the PUD infrastructure. 2008 Wash. Leg. Serv. c. 197 (S.S.H.B. 2553) § 1 (intent section of amended statute).

In this case, the District sued two cable television companies (Comcast and Charter) and the incumbent local telephone provider (CenturyLink) after a dispute arose over the agreement the District attempted to impose on these communications companies. The dispute centers on the permissibility of the rates included in the new pole attachment agreement the District sought to enforce as of January 1, 2007.

The lawsuit involves significant issues of public importance. Notwithstanding the legislature's desire for "predictability" in pole attachment rates, PUDs and communications attachers have widely divergent interpretations of the rate formula set out in amended RCW 54.04.045(3). Both industries view this as a "test case" of the new statute, and are monitoring it for its potential impact on pole attachment agreements statewide. *See* Ex. B (Decl. of Timothy J. O'Connell) ¶ 3.

B. Proceedings Below

This test case was before the trial court for nearly four years. During that period, whenever the court issued a ruling on substantive issues or matters of case management, it routinely provided the parties notice and copies of the rulings via U.S. mail, e-mail, or fax. *See* Ex. B ¶ 6; Ex. C (Decl. of Jill Valenstein) ¶ 2. For instance, court personnel mailed to the parties a copy of the January 14, 2010 Order denying a motion for summary judgment. *Id.*; Ex. B ¶ 6.

In October 2010, the Court conducted a three-week bench trial. Five months later, on March 15, 2011, it issued a Memorandum Decision announcing its intent to rule in favor of the District and inviting the parties to submit proposed findings of fact and conclusions of law. The trial court faxed a copy of that ruling to Appellants. See *id*; Ex. C ¶ 2.

Appellants intended to appeal the Court's adverse ruling once it was reduced to final judgment. They conveyed that intent to the District on multiple occasions. For example, shortly after receiving the Court's March 15, 2011, Memorandum Decision, CenturyLink's counsel contacted the District's attorney via email (copied to the other Appellants' counsel) and on the telephone. Ex. B ¶¶ 4-5; Ex. C ¶ 3. During those exchanges, CenturyLink's counsel indicated that Appellant would appeal from the eventual final judgment. *Id.*; Ex. B ¶¶ 4-5. Counsel also discussed whether a bond on appeal would be necessary. *Id.*

On September 16, 2011, the Court conducted a hearing on the District's proposed findings and conclusions. The Court did not enter final judgment at the hearing. Rather, it took under advisement the District's proposed findings and conclusions and Appellants' objections. Even though final judgment had not been entered at the hearing, counsel for Appellants and the District discussed the procedure for appeal after entry of judgment, including the possibility of seeking direct review in the Supreme Court. *Id.* ¶ 5.

C. Appellants' Efforts To Obtain Information About Status of Judgment

Appellants believed the trial court, consistent with its prior practice during the previous four years, would fax or mail its judgment to them.

But they took additional steps to inquire about the judgment as well. In October 2011, Heidi Wilder, a paralegal working with counsel for CenturyLink, began placing telephone calls to the Court Administrator's office, checking on the status of the judgment. See Ex. D (Decl. of Heidi L. Wilder) ¶ 3. Ms. Wilder made at least six additional such calls over the next several weeks. See *id.* ¶ 4.

On November 22, Ms. Wilder spoke to the Court Administrator regarding the status of final judgment. *Id.* ¶ 5. The Court Administrator stated that judgment still had not been entered, that a judgment was not likely soon because of the Court's criminal schedule and that she would inform Ms. Wilder of any developments in the case. *Id.* At that point, Ms. Wilder believed her contacts were "exasperating" court personnel, even though the contacts continued to be polite and courteous. *Id.* In the two weeks after Thanksgiving – including during the week of December 5, a week before the judgment was entered – Ms. Wilder called the Court Administrator's office at least two additional times. *Id.* ¶ 6. Ms. Wilder spoke with the Court Administrator during one of those calls, and the Court Administrator stated that judgment still had not been entered and the Court was still involved in the criminal trial. *Id.* In her other call, Ms. Wilder left a voicemail message but never received a response. *Id.* CenturyLink's counsel provided updates of Ms. Wilder's communications

with Court personnel to counsel for Comcast and Charter. Ex. B ¶ 8; Ex. C ¶ 4.

D. Entry Of Judgment And Subsequent Events

Unbeknownst to any of the Appellants, on December 12, the trial court entered judgment. None of the Appellants received notice or a copy of the order of judgment or the trial court's findings and conclusions. No one on the court's staff contacted Ms. Wilder or the other Appellants. *See* Ex. B ¶ 9; Ex. C ¶ 5-6; Ex D ¶ 6.

Appellants' counsel learned for the first time on January 17, 2012, that final judgment had been entered on December 12. Ex. B ¶ 9; Ex. C ¶ 6. Appellants received a copy of the judgment, for the first time, at 3:23 p.m. on January 17. Ex. C ¶ 6. Defendants' counsel immediately contacted the trial court to arrange for delivery of a notice of appeal, which was e-mailed to the court (with permission of the Court Administrator's office) at 4:06 p.m., less than an hour after Appellants first received a copy of the judgment. *Id.*[2] This motion followed.[3]

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[2] The trial court clerk formally filed the notice of appeal the following day, January 18, after receiving Appellants' filing fee via overnight mail. Ex. A. The notice was served on the District on January 17.

[3] Appellants have also filed a motion, pursuant to CR 60(b), asking the trial court to vacate and re-enter the judgment. That motion is noted for hearing on February 17.

IV. GROUNDS FOR RELIEF AND ARGUMENT

This Court has discretion to grant extensions of time "in order to serve the ends of justice." RAP 18.8(a). In the case of a notice of appeal, the Court may grant extensions "only in extraordinary circumstances and to prevent a gross miscarriage of justice[.]" RAP 18.8(b).

In interpreting RAP 18.8(b), the Washington Supreme Court has held that the appellate rules "were designed to allow some flexibility in order to avoid harsh results." *Weeks v. Chief of Washington State Patrol*, 96 Wn.2d 893, 895 (1982) (citing Comment to RAP 18.8, and permitting appeal to go forward even though appellant had not filed notice of appeal in trial court within 30 days as required by RAP 5.2, but instead had filed it erroneously with Court of Appeals). The Supreme Court noted that "the trend of the law in this state is to interpret rules and statutes to reach the substance of matters so that it prevails over form." *Id.* at 896 (quoting *First Federal Savings & Loan Ass'n of Walla Walla v. Ekanger*, 22 Wn. App. 938, 944, 593 P.2d 170 (1979)). The Supreme Court agreed that "applying strict form" to deny the appeal "would defeat the purpose of the rules to 'promote justice and facilitate the decision of cases on the merits.'" *Id.* at 896 (quoting RAP 1.2(a)).

Similarly, the Supreme Court has held that relief under RAP 18.8(b) is appropriate where a deadline was missed due to an

"understandable" mistake by a litigant who had exercised "reasonable diligence" in pursuing an appeal. *Scannell v. State*, 128 Wn.2d 829, 834, 912 P.2d 489 (1996) (allowing criminal defendant to proceed with untimely appeal based on his misreading of revised appellate rule).

To be sure, extensions on notice of appeal deadlines are not granted casually. Consistent with RAP 18.8(b)'s recognition of the general "desirability of finality of decisions," extensions have been denied, for example, where a litigant fails to appear at the presentment of judgment and then fails to monitor for entry of judgment, *Beckman v. State*, 102 Wn. App. 687, 695-96, 11 P.3d 313 (2000), or where counsel receives notice of the judgment to be appealed but fails to file a timely notice due to an oversight or "an unusually heavy workload[.]" *Reichelt v. Raymark Industries, Inc.*, 52 Wn. App. 763, 764, 764 P.2d 653 (1988).

But none of the cases denying extensions of time under RAP 18.8(b) involved appellants (like those here) who were left in the dark about when judgment would be entered, despite diligent efforts in regularly contacting the trial court, who were then lulled into awaiting notice from the court on account of affirmative representations from court personnel that notice would in fact be timely provided. Under these unique facts, both elements of RAP 18.8(b) are satisfied.

A. Extraordinary Circumstances Justify an Extension

The facts set forth above demonstrate the extraordinary circumstances leading to Appellants' request for an extension of time.

First, Appellants were in fact unaware that judgment had been entered on December 12. They first learned of the judgment on January 17, and acted immediately to pursue their appeal.

Second, Appellants' counsel reasonably expected to receive notice of the entry of final judgment because the trial court's practice in this case from the start had been to provide notice and copies of court rulings on substantive, contested issues or even minor issues. Indeed, in the four years the case was pending, the trial court deviated from its prior practice ***only*** at the time it entered final judgment. Prior to that, the court's rulings were provided to counsel, either via e-mail, mail or fax – including, in particular, the court's March 15, 2011 Memorandum Decision. Ex. B ¶ 6; Ex. C ¶ 2. It was therefore reasonable for Appellants to expect to receive similar notice of the final judgment.

Third, even though Appellants expected to be notified of the judgment, at least by mail, due to the importance of the case and the intent to appeal, Appellants wanted to keep track of the court's progress. To that end, Appellants were diligent in independently attempting to obtain information about the judgment, as evidenced by the repeated inquires as

to the status of the judgment. *See* Ex. D ¶¶ 3-6. Between mid-October (*i.e.*, the month after the trial court's final post-trial hearing) and the week of December 5 (*i.e.*, the week before the judgment was entered), a paralegal for CenturyLink phoned the trial court no less than seven times. *Id.* The information provided in these calls was shared with all Appellants. Ex. C ¶ 4. These persistent inquiries appeared exasperating to the court staff. Ex. D ¶ 5.

Finally, and most significantly, the trial court responded to these repeated inquiries about the status of the judgment by ***affirmatively representing that Appellants would be notified*** of any developments in the case. *Id.* Indeed, on November 22 – two months after the final post-trial hearing – the trial court advised Appellants that judgment was not likely to be entered soon due to the court's criminal schedule. *Id.* This representation seemed particularly plausible given that ***five*** months had elapsed between the end of the bench trial and the court's Memorandum Decision. Moreover, the statements by trial court staff confirmed Appellants' expectation that the trial court, in compliance with its well established practice, would provide notice when the judgment had been entered. *Id.*

The foregoing facts distinguish this case from any other published decision denying relief under RAP 18.8(b), and amount to extraordinary

circumstances justifying an extension of the deadline to appeal. In *Scannell*, the Supreme Court noted that it "has been lenient in other cases where court rules caused confusion." 128 Wn.2d at 835. The same standard should apply where, as here, "confusion" results from the court's practices and representations. Had trial court staff not affirmatively led Appellants to (reasonably) believe that they would be notified when the judgment was entered, a timely notice of appeal would have been filed.

B. An Extension Would Prevent a Gross Miscarriage of Justice

The extension is further necessary to prevent a "gross miscarriage of justice." RAP 18.8(b). First, for all the reasons stated in the previous section, it would be grossly unfair to deprive Appellants of their right to appeal when the brief delay in learning of the final judgment was not due to lack of attention or effort on their part. Indeed, upon receiving actual notice of the judgment, Appellants acted immediately to secure their appeal, filing a notice of appeal within the hour. Ex. B ¶ 9; Ex. C ¶ 6. This could come as no surprise to the District: it has known for nearly nine months that Appellants planned to appeal from the judgment. Indeed, both sides of this case have discussed possible agreements on various procedural issues that might arise on appeal. *See* Ex B ¶¶ 4, 5; Ex. C ¶ 3.

In addition, the issues presented in this case are matters of first impression that implicate statewide public policy. This "test case" is the first judicial interpretation of the recently amended RCW 54.04.045. That statute, which sought to create a uniform methodology for determining pole attachment rates charged by public utility districts, is being monitored by other attachers and PUDs throughout Washington. Ex. B ¶ 3. Appellate review of the trial court's interpretation of the statute's rate formula is necessary to further the Legislature's express desire to bring "greater predictability and consistency" to this rate-setting process around the state. In sum, this is precisely the sort of case for which full appellate review is particularly warranted.

Appellants recognize that this Court must balance the public importance of this case and the preference for deciding cases on their merits against the "desirability of finality of decisions[.]" RAP 18.8(b). But any "finality" achieved by declining to hear the appeal in this case would be illusory. Absent appellate review, litigation between the same parties (as well as between other attachers and other PUDs) is likely to ensue quickly. This is so because under any interpretation of RCW 54.04.045, as the District's costs change from year to year the lawful rate it may charge also changes. *See* RCW 54.04.045(3)(a), (b). If the District continues to apply its current practices, a new violation of

RCW 54.04.045 will occur when the District attempts to bill Appellants for 2012 rentals. Thus, unless PUDs and the many communications companies that attach to their poles are provided definitive appellate precedent as to the proper interpretation of RCW 54.04.045, the parties will be faced with a variation of this dispute all over again.

The statewide public interest in a definitive interpretation of RCW 54.04.045 is precisely the type of "comparative and compelling public or private interests of those affected" which courts are directed to consider when exercising their discretion. *State ex re. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In *Beckman*, the court noted that prejudice to the respondent is not relevant because the prejudice is to the appellate system itself and the need for finality. Consideration of those same public and private interests in this case dictates that Appellants' motion should be granted. Granting the motion imposes no material prejudice on the District,[4] and will preclude undue consumption of judicial resources that will be required as these parties, and others in these same industries throughout the state, attempt to implement an ambiguous statute.

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[4] *Cf. Pybas v. Paolino*, 73 Wn. App. 393, 403, 869 P.2d 427 (1994) (noting prejudice to responding party that would arise from vacating a judgment depriving the respondent of the benefit of having prevailed in arbitration).

In sum, the notice of appeal on file with this Court should be accepted in light of the circumstances of this case and the interests of justice, based on: (i) Appellants' reasonable diligence in inquiring about the status of the judgment; (ii) the trial court's practice of providing notice and copies of all substantive orders; (iii) the trials court's specific representation that Appellants would be notified when the judgment was entered; (iv) Appellants' clear intent to appeal the decision against them, which was expressed to the respondent long before the judgment was even entered; (v) the strong public interest in the case, and in obtaining a precedential interpretation of a newly amended statute; (vi) the important state policies at issue and (vii) the fact that denying the appeal will likely result in renewed disputes over disagreements and confusion over the interpretation of the statute, causing a significant delay in finality and the expenditure of tremendous resources by this and other trial courts, until an appeal can be heard.

V. CONCLUSION

For the foregoing reasons, the motion should be granted and the Court should accept Appellants' notice of appeal as filed.

DATED this 24th day of January, 2012.

Davis Wright Tremaine LLP

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STOEL RIVES LLP

/per telephone authorization

Timothy J. O'Connell, WSBA No. 15372
tjoconnell@stoel.com

Attorneys for Appellant CenturyTel of Washington, Inc.

CERTIFICATE OF SERVICE

I, Christine Kruger, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on January 24, 2012, I caused a true and correct copy of the foregoing document to be served upon the following counsel of record in the manner indicated:

Donald S. Cohen	( )	Via U.S. Mail
Gordon Thomas Honeywell et al.	( )	Via Facsimile
One Union Square	(X)	Via Messenger
600 University Street, Suite 2100		
Seattle, WA 98101		
James B. Finlay, Esq.	(X)	Via U.S. Mail
P. O. Box 755	( )	Via Facsimile
Long Beach, WA 98631	( )	Via Messenger
Timothy J. O'Connell	( )	Via U.S. Mail
John H. Ridge	( )	Via Facsimile
Stoel Rives LLP	(X)	Via Messenger
600 University Street, Suite 3600		
Seattle, WA 98101		

Executed at Seattle, Washington, this 24th day of January, 2012.

Christine Kruger

APPENDIX

(All documents were filed on the date indicated with the Superior Court for Pacific County)

Exhibit A:	Notice of Appeal (filed 1/18/12) (and attaching Judgment of 12/12/11 and Memorandum Decision of 3/15/11)
Exhibit B:	Declaration of Timothy J. O'Connell (filed 1/20/12)
Exhibit C:	Declaration of Jill Valenstein (filed 1/20/12)
Exhibit D:	Declaration of Heidi L. Wilder (filed 1/20/12)

HONORABLE MICHAEL J. SULLIVAN

2012 FEB -6 PM 12:19

Hearing Date: February 17, 2012 at 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington Corporation,

Plaintiff,

v.

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES, I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS,

Defendants.

NO. 07-2-00484-1

DECLARATION OF DONALD S. COHEN IN OPPOSITION TO DEFENDANTS' MOTION TO VACATE AND REENTER FINAL JUDGMENT

DONALD S. COHEN, declares, under penalty of perjury and in accordance with the laws of the State of Washington, as follows:

1. I am one of the attorneys of record for Plaintiff Public Utility District No. 2 of Pacific County ("Pacific PUD" or "PUD") in the above-captioned matter, am over the age of eighteen (18) years, competent to testify to the matters stated herein, and make this declaration based upon my own personal knowledge in support of Plaintiff Pacific PUD's Opposition to Defendants' Motion to Vacate and Reenter Judgment.

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2. This matter was tried to the Court in October 2010. The Defendants were represented by two large law firms at trial. During the trial, two lawyers from Stoel Rives' Seattle office represented Defendant CenturyTel, while three lawyers from Davis Wright Tremaine's Seattle, Portland, and Washington, D.C. offices represented Defendants Comcast and Charter. Defendants were aware that they lost this case after the Court issued its Memorandum Decision on March 15, 2011.

3. As the prevailing party, Plaintiff Pacific PUD properly notified Defendants of its intent to present a final judgment, along with supporting findings of fact and conclusions of law on the merits and on a request for attorneys' fees and litigation expenses (including a proposed order on attorneys' fees and litigation expenses), to the Court at a hearing on September 16, 2011. All parties (including the Defendants) responded in writing to the District's proposed documents, and appeared through counsel and argued the merits of Plaintiff Pacific PUD's proposed judgment and supporting findings of fact and conclusions of law, and order on fees and expenses, on September 16, 2011.

4. The Court did not sign the Judgment. findings and conclusions. or order at that time, but took the matters presented under advisement. On December 12, 2011, the Court signed and entered all four of the documents Plaintiff had previously noted for presentation on September 16, 2011.

5. There are a variety of ways to monitor the court filings in Pacific County Superior Court. One way to do that is by having a person go to the court and check the file. This can be done through local counsel or through a service, such as Attorneys Information Bureau ("AIB"), which provides document retrieval services at all Superior Courts in Washington. Defendants also used local counsel in South Bend, Washington, located just a few blocks from the Courthouse, to assist in court filings and to host all of the depositions they took of Pacific PUD management, Commissioners, and one former Commissioner. Attached hereto, marked as **Exhibit A**, and incorporated by this reference, is a true and

correct copy of two examples of the first page and the Declaration of Electronically Transmitted Document for Court filings by Defendants in this lawsuit, showing GR 17 certifications by a staff member at the law office of Elizabeth Penoyer, 504 West Robert Bush Drive, in South Bend. Attached hereto, marked as **Exhibit B**, and incorporated by this reference, is a true and correct copy of an example of an Amended Notice of Deposition for one of the six depositions of PUD or former PUD personnel taken by Defendants at the same law office in South Bend.

6. Another means of monitoring court filings in Pacific County Superior Court is electronically available on the internet through the Washington Office of Administrator for the Courts, which publishes indexes and dockets provided by local courts through the Judicial Information Service which can be found at http://dw.courts.wa.gov/. For example, attached hereto, marked **Exhibit C**, and incorporated by this reference, is a true and correct copy of screen shots from this website, walking step-by-step through the process of obtaining information about a particular case, searching by jurisdiction, party name, or cause number.

7. Attached hereto, marked **Exhibit D**, and incorporated by this reference, is a true and correct copy of the Pacific County Superior Court docket available for this case through the Washington Courts website on January 23, 2012. While the case docket does not yet reflect the documents filed late Friday January 20, 2012, it does show matters filed as recently as January 18, 2012.

8. I have no recollection of, at any time after September 2011, having any discussions with Defendants' counsel or their offices about the judgment or their desire to appeal, until January 17, 2012. After not receiving a notice of appeal within the thirty day period, I assumed Defendants must have changed their minds about appealing in light of the risks for the Defendants inherent in an appellate court affirmance, and new legislation proposed in Olympia this legislative session dealing with PUD pole attachment rates.

Therefore, I contacted Defendants regarding payment of the judgments. Attached hereto, marked as **Exhibit E**, and incorporated by this reference, is a true and correct copy of my three January 17, 2012, e-mails with attached letters, and the response from counsel for Defendants Comcast and Charter. I promptly provided a copy of the December 12, 2011 Judgment to counsel upon receiving the request. In addition to the final Judgment, attached hereto, marked **Exhibit F**, and incorporated by this reference, are true and correct copies of the Findings of Fact and Conclusions of Law on the merits, the Findings of Fact and Conclusions of Law Regarding Plaintiff Pacific PUD's Motion for Award of Attorneys' Fees and and Litigation Expenses, and the Order Awarding Attorneys' Fees and Litigation Expenses to Plaintiff, also signed and entered with the Pacific County Clerk of Court on December 12, 2011.

9. On January 18, 2012, I was served with a notice of appeal, 37 days after the filing of the Judgment and beyond the 30-day time period permitted by RAP 5.2(e).

I DECLARE THE FOREGOING TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF UNDER THE PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON.

Dated this 30th day of January, 2012 at Seattle, Washington.

GORDON THOMAS HONEYWELL LLP

DONALD S. COHEN

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HONORABLE MICHAEL J. SULLIVAN
Hearing Date: February 17, 2012 at 10:30 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington Corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES, I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 DECLARATION OF ANGELA GILBERT

I, Angela Gilbert, declare, under penalty of perjury and in accordance with the laws of the State of Washington, as follows:

1. I am the Assistant Court Administrator for the Pacific County Superior Court, am over the age of eighteen (18) years, competent to testify to the matters stated herein, and make this declaration based upon my own personal knowledge.

2. In the course of my work as the Pacific County Superior Court Assistant Court Administrator, I work in an office separate from the Pacific County Superior Court Clerk. I work under the supervision of Court Administrator, Marilyn Staricka. When a Judge writes a memorandum decision or other order, Marilyn or I are involved because

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someone in our office has to type the document for the Court. In this scenario, where we prepare the document in question, we will typically provide copies to counsel for the parties. However, where counsel for the parties submit proposed orders or judgments directly to the Judge for signature, we are not involved. For example, when the Court signs a judgment or order submitted by a party, it goes directly to the Clerk of Court for entry or filing. Marilyn and I are typically not aware of that entry or filing and are not involved in the process.

3. While I recall speaking to a paralegal from Stoel Rives on at least one occasion, I did not tell her that I would notify her when an order or judgment was entered. I would never make such an assurance, because, as I explained above, the Superior Court Administrator's office is not involved when the Judge signs a judgment prepared by one of the parties and provides it to the Court Clerk for entry.

Dated this 27th day of January, 2012 at Raymond, Washington.

Angela S. Gilbert
ANGELA GILBERT

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HONORABLE MICHAEL J. SULLIVAN
Hearing Date: February 17, 2012 at 10:30 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington Corporation, Plaintiff, v. COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES, I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Defendants.	NO. 07-2-00484-1 DECLARATION OF MARILYN STARICKA

I, Marilyn Staricka, declare, under penalty of perjury and in accordance with the laws of the State of Washington, as follows:

1. I am the Court Administrator for the Pacific County Superior Court, am over the age of eighteen (18) years, competent to testify to the matters stated herein, and make this declaration based upon my own personal knowledge.

2. In the course of my work as the Pacific County Superior Court Administrator, I work in an office separate from the Pacific County Superior Court Clerk. I work with one Assistant Court Administrator, Angela Gilbert. When a Judge writes a memorandum decision or other order, Angela or I are involved because someone in my

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office will have to type the document for the Court. In this scenario, where we prepare the document in question, we will typically provide copies to counsel for the parties. However, where counsel for the parties submit proposed orders or judgments directly to the Judge for signature, we are not involved. For example, when the Court signs a judgment or order submitted by a party, it goes directly to the Clerk of Court for entry or filing. Angela and I are typically not aware of that entry or filing and are not involved in the process.

3. I was out of the office on vacation on December 12, 2011, when Judge Sullivan signed and had the clerk enter judgment and related findings and conclusions and orders on this case. While I recall speaking to a paralegal from Stoel Rives on at least one previous occasion, I did not tell her that I would notify her when an order or judgment was entered. I would never make such an assurance, because, as I explained above, the Superior Court Administrator is not involved when the Judge signs a judgment prepared by one of the parties and provides it to the Court Clerk for entry.

Dated this 27 day of January, 2012 at Lk Stevens Washington.

Marilyn Staricka

MARILYN STARICKA

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

COMCAST OF WASHINGTON IV, INC., a Washington corporation; CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and FALCON COMMUNITY VENTURES I, L.P., a California limited partnership, d/b/a CHARTER COMMUNICATIONS, Appellants, v. PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation, Respondent.	No. 42994-2-II SUPPLEMENTAL DECLARATION OF HEIDI L. WILDER

I, Heidi L. Wilder, declare as follows:

I am older than 18 years of age, competent to testify in a court of law, and declare as follows:

1. Between mid-October 2011 and November 22, 2011 I placed multiple telephone calls to the office of the Court Administrator for the Pacific County Superior Court to inquire whether the Court had acted on the proposed findings of fact, conclusion of law, final judgment and

attorneys' fees amount, and, if not, when the Court would do so. I placed at least four calls during that time period.

2. During those calls, I spoke either with either Marilyn Staricka, Court Administrator, or Angela Gilbert, Assistant Court Administrator, about whether the Court had acted on the proposed documents and final judgment or when it might do so. Sometimes I left a voicemail inquiring about the status of the proposed final judgment. In one of the live conversations – and I cannot recall if this was with Ms. Gilbert or Ms. Starika – I believe she said something to the effect that the Court was working on a draft but it was not done.

3. On November 22, 2011, I spoke to Ms. Staricka and asked her again if the Court had acted on the proposed documents and, if not, when it would do so. Ms. Staricka informed me that the Court had not yet done so. She stated further that it was not likely anything would happen soon because of the Court's criminal trial calendar.

4. I do not disagree that in my November 22 conversation with Ms. Staricka she did not use the words that she "would notify [me] when an order or judgment was entered." I specifically recall, however, that she said I would be informed about any "case developments."

5. Given the entire reason for my repeated calls to her were to check on the status of the Court's action on the pending judgment, I interpreted Ms. Staricka's statement to mean that, when the Court entered final judgment or took some other action, someone either from the office of the Court Administrator or the office of the Court Clerk would

communicate directly to me or to the attorneys representing the defendants that the Court had taken some action. I interpreted Ms. Staricka's statement to have that meaning based on the past practice of court personnel transmitting copies of orders and rulings to the parties and based on the repeated telephone calls I had placed regarding the status of the proposed final judgment.

I hereby declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 15th day of February 2012 at Seattle, Washington.

Heidi L. Wilder

Heidi L. Wilder

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

COMCAST OF WASHINGTON IV, INC., a Washington corporation, et al.,

Appellants,

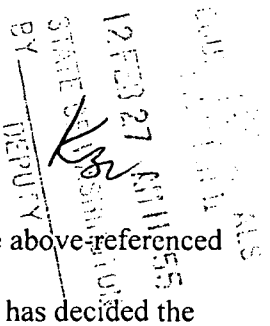
v.

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, a Washington municipal corporation,

Respondent.

No. 42994-2-II

ORDER GRANTING APPELLANTS' MOTION TO ALLOW LATE FILING OF A NOTICE OF APPEAL



APPELLANTS move for permission to file a notice of appeal in the above-referenced matter after the deadline set forth in RAP 5.2. Upon consideration, the court has decided the motion has merit. Accordingly, it is

ORDERED that the Clerk accept for filing the notice of appeal in the above-referenced matter. A perfection notice will follow in due course.

DATED this 27th day of February, 2012.

PANEL: Jj. Worswick, Hunt, Johanson

FOR THE COURT:

ACTING CHIEF JUDGE

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SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY,
a Washington municipal corporation,

Petitioner,

v.

COMCAST OF WASHINGTON IV, INC., a Washington corporation;
CENTURYTEL OF WASHINGTON, INC., a Washington corporation; and
FALCON COMMUNITY VENTURES, I, L.P., a California limited
partnership, d/b/a CHARTER COMMUNICATIONS,

Respondents.

MOTION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

A. IDENTITY OF PETITIONER

Public Utility District No. 2 of Pacific County ("Pacific PUD"), asks this Court to accept review of the decision designated in Part B of this Motion and attached as Appendix 8.

B. DECISION

On February 27, 2012, a three judge panel of Division II issued an Order granting Respondents' Motion for Extension of Time under RAP 18.8, allowing Respondents leave to file a Notice of Appeal outside the strict 30-day time period permitted by RAP 5.2, contrary to the restrictive standards of RAP 18.8(b) and existing precedent in this Court and other Divisions of the Court of Appeals. Appx. 8. If this Court does not permit discretionary review of this decision, Pacific PUD, which won after a full trial on the merits, will lose its opportunity to challenge this error and be forced to undertake an appeal on the merits of what should have been a final judgment. As a matter of law, the facts asserted by Respondents do not show the "extraordinary circumstances" required by RAP 18.8(b) to justify this rarely allowed relief. This Motion is supported by Appendix Items 1-10, including materials submitted to the Court of Appeals, the Court of Appeals Order at issue on this Motion, and the Declaration of Bruce Rifkin, former District Court Executive and Clerk of Court for the United States District Court for the Western District of Washington. (Appx. 10).

C. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err in granting an extension under RAP 18.8(b) where Respondents, who had notice that a judgment would be entered, failed to monitor entry of that judgment based on a casual statement by a court administrator?[1] Yes.

2. Did the Court of Appeals err in permitting Respondents to file a late appeal based on their claimed reliance on a remark by a court administrator who told a paralegal that she would let her know "about any developments," and where, after two more weeks, Respondents completely stopped all efforts to monitor the entry of the final Judgment they wished to appeal for over 5½ weeks? Yes.

3. Should this Court exercise its discretion and grant review where the Court of Appeals committed obvious and probable error in ordering that Respondents would have an extension of time to file an appeal, where: (a) that decision was contrary to the strict limitations of RAP 18.8(b) and this Court's precedent; (b) Respondents lost after a full trial on the merits; and (c) the Court of Appeals' decision deprived Pacific PUD of its final judgment and cannot be challenged through a cross-appeal? Yes.

D. STATEMENT OF THE CASE

The underlying case involved a dispute about the rates, terms, and conditions under which Respondents attach their communications

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[1] The Administrator, Marilyn Staricka, denies making the statement (Appx. 2), but even if she did, this does not rise to the level of "extraordinary circumstances" required by RAP 18.8(b).

equipment to Pacific PUD's electric poles. The three Respondents were represented by two large law firms. Stoel Rives' Seattle office represented CenturyTel, and lawyers from Davis Wright Tremaine's Seattle, Portland and Washington, D.C. offices represented Comcast and Charter. After a several week bench trial in October 2010, the trial court issued its Memorandum Decision in March 2011 in favor of Pacific PUD. Appx. 1 at ¶ 2. At that point, Respondents knew they had lost the case in the trial court.

As the prevailing party, Pacific PUD properly notified Respondents that it would present the trial court with its proposed final Judgment and related findings and conclusions and orders on September 16, 2011. Appx. 1 at ¶ 3. In response to Pacific PUD's proposed Judgment and related documents, Respondents filed briefs proposing revisions, and appeared through counsel to argue the merits of Pacific PUD's proposed Judgment and other documents before the trial court on the noted date: September 16, 2011. Appx. 1 at ¶ 3. The trial court did not sign the proposed Judgment or other documents at the hearing, but took the matters presented under advisement. Appx. 1 at ¶ 4. On December 12, 2011, the trial court signed and entered all four of the documents Pacific PUD had previously noted for presentation on September 16, 2011, including the Judgment. Appx. 1 at Ex. F.

Comcast and Charter, represented by Davis Wright Tremaine, did nothing to monitor the entry of the Judgment other than receive

occasional "updates" from CenturyTel's lead counsel at Stoel Rives. Appx. 5 at ¶ 8; Appx. 6 at ¶ 4. CenturyTel's counsel, in turn, apparently delegated responsibility for monitoring the status of these pending findings and conclusions and the Judgment to his paralegal, Heidi Wilder. Appx. 5 at ¶¶ 7-8; Appx. 4 at ¶ 3.

At no time did any of the three Respondents monitor the trial court filings in person, retain a service provider (such as Attorneys' Information Bureau), or have local counsel check the court file.[2] Furthermore, Respondents never monitored the online docket information for Pacific County Superior Court, which is publicly available through the Washington Office of Administrator of Courts website. Appx. 1 at ¶ 6 and Exs. C and D. Instead, Ms. Wilder, as requested by lead counsel for CenturyTel at Stoel Rives, periodically called the office of the Pacific County Superior Court Administrator beginning in October 2011, and continuing through early December 2011, to check the status of the pending Judgment and other documents.[3] Appx. 4 at ¶ 3.

Ms. Wilder states that in the course of these periodic calls, she had a phone conversation with Court Administrator Marilyn Staricka on November 22, 2011, and that Ms. Staricka told her that "a judgment

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[2] For example, during the lawsuit Respondents used a local South Bend attorney, Elizabeth Penoyar, who assisted Respondents with various filings and provided them with space in her office for Pacific County depositions. Appx. 1 at ¶ 5 and Exs. A and B. Respondents apparently did not ask Ms. Penoyar to monitor the Pacific County Court file periodically.

[3] It appears Ms. Wilder called the Pacific County Superior Court staff about once a week beginning in October 2011 and she continued those efforts through some time in early December 2011. Appx. 4 at ¶¶ 3-6.

would not likely be entered soon because of the Court's criminal trial schedule." Appx. 4 at ¶ 5. According to Ms. Wilder, Ms. Staricka also said she would contact Ms. Wilder "regarding any developments that occurred in the case."[4] *Id.*

Ms. Wilder, however, did **not** rely on Ms. Staricka's alleged November 22, 2011, statement, because **after** that conversation Ms. Wilder says she continued making her weekly calls to the Court Administrator in late November and early December of 2011. Appx. 4 ¶ 6. Ms. Wilder says she spoke with court staff the week after Ms. Staricka's remark, and court staff again confirmed by phone that no judgment had yet been entered. *Id.* Ms. Wilder called again and left a message for the Court Administrator the following week (in early December 2011), but did not receive a return call. *Id.*

The following week, on December 12, 2011, the final Judgment in this case was signed by the Court and entered by the Clerk. Appx. 2. As Ms. Staricka explains, she was out of the office on vacation on December 12, 2011. Appx. 2. There was no additional follow up by Ms. Wilder or any other representative of any of the three Respondents to ascertain the status of this matter for the next 5½ weeks.[5]

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[4] Ms. Wilder's recollection is disputed by Ms. Staricka, who states that she did not (and would not) tell a party that she would notify them of the entry of judgments or orders that the parties may have drafted and presented because her office is not involved in that process and she would not even be aware of the entry of these items. Appx. 2. Her Assistant Court Administrator, Angela Gilbert, concurs, noting that she did not tell any of the parties that she would notify them of the entry of any judgment or order. Appx. 3. Even if Ms. Staricka had made the alleged statement it would not excuse Respondents from their obligation to monitor entry of the judgment.

[5] Ms. Wilder says she stopped calling because she "had the impression" that her contacts "were exasperating them." Appx. 4 ¶ 5. Nothing in the record, however,

After the Judgment was entered and no timely notice of appeal was filed within the required 30-day period, Pacific PUD's counsel contacted Respondents on January 17, 2012, about payment of the Judgment. Appx. 1 at ¶ 8 and Ex. E. Respondents' counsel then asked for a copy of the Judgment, which was promptly provided. *Id.* Respondents filed a Notice of Appeal on January 18, 2012. In addition to a Rule 60(b) Motion to Vacate[6] filed with the trial court on January 20, 2012, Respondents filed a Motion for Extension of Time with Division II of the Court of Appeals on January 24, 2012. Appx. 1 at ¶ 9. The trial court denied Respondents' Motion to Vacate on February 17, 2012. Appx. 8.

In seeking relief from the Court of Appeals under RAP 18.8(b), Respondents asserted that when Ms. Staricka said that she would let them know of any developments in the case, this led them to believe they had no further obligation to monitor the entry of Judgment, so they quit checking and did nothing for nearly six weeks. When they finally learned that the final Judgment had been entered almost a month-and-a-half earlier, Respondents claimed that they had been misled and that this was the type of extraordinary circumstance that should justify relief under RAP 18.8(b), essentially asserting that their neglect was "excusable."

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indicates that anyone at Pacific County Superior Court ever told Ms. Wilder she was a "nag" or "bothering" court staff, or otherwise attempted to discourage Ms. Wilder from continuing her periodic calls to follow up on the entry of Judgment.

[6] That Motion sought to vacate and then re-enter the December 12, 2011 Judgment to a later date, solely to permit Respondents to file a timely appeal.

Respondents' neglect was not excusable. Permitting this late appeal constituted obvious and probable error and significantly departed from the accepted and usual course of proceedings – this is precisely the situation where this Court should grant discretionary review under RAP 13.5. If this Court does not do so, Pacific PUD will not be able to obtain review of this error through a cross-appeal and will be forced to undertake briefing on the merits.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should grant discretionary review of the Court of Appeals' Order Granting Appellants' Motion to Allow Late Filing of a Notice of Appeal, because this situation satisfies the requirements for discretionary review under RAP 13.5 (1), (2), and (3). Rule 18.8(b) clearly sets forth the strict standard required to justify an extension of time to file a notice of appeal:

> The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal .... The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section....

In *Shumway v. Payne*, 136 Wn.2d 383, 394-395, 964 P.2d 349 (1998), this Court reiterated the strict interpretation required of RAP 18(b), in contrast to the liberal standard applicable to the other Rules of Appellate Procedures:

> RAP 1.2(a) generally requires a liberal interpretation of the rules on appeal, and RAP 1.2(c) permits an appellate court to waive the provisions of any court rule "in order

> to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c)." RAP 18.8(b) is a specific exception to the rule of liberality.

In this case, Division II's Order has allowed a litigant to obtain an extension of time by asserting that there was reliance on a casual remark by a court administrator (that the administrator disputes making). Whether the casual remark was made (or not), this does not meet the clear and definite standard set forth in RAP 18.8(b), in this Court's decision in *Shumway*, and in other decisions of this Court. It is not only probable error, but obvious error so departing from the usual course of proceedings that it presents circumstances where this Court should exercise its discretion and grant review. Failing to do so leaves Pacific PUD with the loss of its final judgment and no remedy, because it cannot raise this matter in a cross-appeal. *Villegas v. McBride*, 112 Wn. App. 689, 693 n. 3, 50 P.3d 678 (2002) (refusing to permit party to obtain review of ruling on motion to court of appeals in a cross-appeal because the issue had already been decided by the court of appeals and the "only recourse was to seek discretionary review of this order by the Supreme Court under RAP 13.5.")[7]

It is not the duty of court staff to notify litigants of case developments, and Respondents cannot avoid their responsibilities or the strict requirements of RAP 18.8(b) by relying on the passing remark of a court employee.

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[7] This Court's review of this issue is *de novo*. *State v. Kindsvogel*, 149 Wn.2d 477, 480, 69 P.3d 870 (2003) (interpretation of court rules and application of the rules to a specific set of facts is a question of law this Court reviews *de novo*).

1. The Court of Appeals Committed Probable and Obvious Error in Granting an Extension Under RAP 18.8(b), Because this Case Did Not Present Extraordinary Circumstances.

As discussed above, RAP 18.8(b) "severely restricts" an appellate court's authority to extend the time to file a notice of appeal. *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988); *accord Shumway*, 136 Wn.2d 383. As a result of the significant restrictions imposed by the Rule, Washington courts have seldom held that a case satisfied RAP 18.8(b)'s conditions, which require that the moving party demonstrate "extraordinary circumstances" and a "gross miscarriage of justice." RAP 18.8(b).[8]

Until the Division II decision at issue here, the courts had uniformly, in accord with the standards imposed by RAP 18.8(b), strictly applied this extraordinary remedy. In *Reichelt*, the appellants, filed their notice of appeal ten days late and then sought an extension of time because one of the "two trial attorneys left the firm during the 30 days following entry of the judgment and the firm's appellate attorney had an unusually heavy workload." *Reichelt*, 52 Wn. App. at 764. The court explained that "extraordinary circumstances" are "circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's

[8] In civil cases, the impact of RAP 18.8(b) is not balanced, as in criminal cases, against the defendant's constitutional right to an appeal. *State v. Kells*, 134 Wn.2d 309, 314, 949 P.2d 818 (1998).

control." *Id.* at 765. After review of the record, the court held that the appellants had not demonstrated such diligence. *Id.* at 766.

In so holding, the *Reichelt* court observed that "[t]his rigorous test has rarely been satisfied in reported case law since the effective date of the Rules of Appellate Procedure on July 1, 1976," and that "[i]n each of those cases, the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged." *Id.* at 765 (emphasis added) (citing *Weeks v. Chief of State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982) (notice timely filed in wrong court); *State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978) (notice timely filed without filing fee); *Structurals N.W., Ltd. v. Fifth & Park Place, Inc.*, 33 Wn. App. 710, 714, 658 P.2d 679 (1983) (notice filed within 30 days of stipulated "amended" judgment).

In situations where the notice of appeal was filed late (outside the 30-day window), this Court and the Courts of Appeal have not been lenient. Despite the significant issues that may have been involved, in every case, save one, where an extension under RAP 18.8(b) was requested for an appeal filed late, it has been denied. *See, e.g., Schaefco Inc. v. Columbia River Gorge Comm'n,*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993) (finding that time limit for filing notice of appeal not extended by earlier untimely motion for reconsideration, no sufficient excuse for failure to file a timely notice of appeal, and no sound reason to abandon the preference for finality even where appeal

"raises many important issues"); *Bostwick v. Ballard Marine Inc.*, 127 Wn. App. 762, 775-76, 112 P .3d 571 (2005) (finding no extraordinary circumstances where trial court did not notify party that it had entered an order and party lacked diligence in failing to monitor entry of order on pending motion); *Beckman v. DSHS*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000) (finding no extraordinary circumstances where State missed the deadline for appealing a $17 million judgment because State was "obligated to monitor the actual entry of the judgments").

The Task Force Comment to RAP 18.8(b), cited by this Court in *Weeks*, explains, "This paragraph represents only a **slight** departure from the old rigid 30-day rule," designed to accommodate "those **limited** cases where extraordinary circumstances prevent the filing of a timely document." (Emphasis added). The Task Force expected that appellate courts would "**almost always** hold that the desirability of finality of decisions outweighs the right of an individual party to obtain an extension. Thus, the court will **rarely** grant the extension permitted by this paragraph." *Id.* (emphasis added). This Court and the Courts of Appeal have interpreted RAP 18.8(b) and the Task Force Comment to justify "some flexibility" in cases where the notice of appeal is timely filed mistakenly in the wrong court or without a filing fee, but it has not extended this relief to a party that neglected to monitor the entry of judgment and missed the filing deadline entirely. Such an approach would expand RAP 18.8(b) far beyond the Rule's intended reach.

On the sole occasion where this Court granted an extension under RAP 18.8(b) when the notice of appeal was filed after the deadline, the circumstances do not in any manner resemble the facts in this case. In *Scannell v. State*, 128 Wn.2d 829, 912 P.2d 489 (1996), this Court found that a *pro se* litigant was misled by a change to the appellate rules that took effect just three months before the superior court entered the order that the litigant sought to appeal. The new rules included an internal inconsistency as to the applicable time period for filing the appeal that created, in this Court's words, "a trap for the unwary," leading an "unsophisticated *pro se* litigant to believe that RAP 15.2(a) has some kind of delaying effect on the 30-day notice of appeal deadline, even though no such language exists in the current version." *Id.* This Court then held that these "extraordinary circumstances" satisfied the "rigorous test" articulated by RAP 18.8(b). *Id.* at 834 (quoting *Reichelt*, 52 Wn. App. at 765).

Clearly the circumstances in *Scannell* are far different from this case.[9] Neither Respondents nor their attorneys are "unsophisticated." More importantly, they were not "confused" by any changes to the Rules of Appellate Procedure, and certainly not by any errors in the Rules. At best, they apparently claim that they were "misled" by a casual statement attributed to a court administrator (which

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[9] Even in *Scannell*, recognizing the unique facts presented and the constraints RAP 18.8(b) imposes upon late appeals, this Court cautioned that other future misinterpretations of the new court rules would not be treated with similar leniency. *Scannell*, 128 Wn.2d at 834-35.

Ms. Staricka disputes) and, therefore, decided they did not need to continue to monitor the entry of final Judgment. Leaving aside the credibility of this assertion, a number of cases, *Beckman v. State Dep't of Soc. & Health Services*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000), *Puget Sound Medical Supply v. Washington State Dep't of Soc. & Health Services*, 156 Wn. App. 364, 234 P.3d 246 (2010), and *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 112 P.3d 571 (2005), establish that Respondents' error is not "excusable" as was the error by the *pro se* litigant in *Scannell*.

2. Respondents' Conduct Was Negligent, and the Neglect Was Not "Excusable" in this Context.

It has long been the rule that there is no requirement to notify a party of entry of a judgment. In *Cohen v. Stingl*, 51 Wn.2d 866, 322 P.2d 873 (1958), this Court faced a similar situation where a proposed judgment was submitted in open court but the losing party asserted it never received notice of entry of the judgment and claimed excusable neglect. Seven months later, the trial court vacated and re-entered the judgment to permit a late notice of appeal. In dismissing the untimely appeal and reinstating the judgment this court held: "The original judgment was regularly entered. It was *submitted* in open court and no notice of *entry* of the judgment is required." *Id.* at 868 (emphasis in original).

Accordingly, Division II has also long held that a party is "obligated to monitor the actual entry of judgment" after it receives

"notice of presentation of the proposed judgments." *Beckman*, 102 Wn. App. at 695. There is no dispute that Respondents received "notice" of the proposed judgment; Respondents briefed the proposed findings and conclusions, orders, and form of Judgment, and appeared at the hearing through counsel and provided oral argument to the trial court on the proposed Judgment and related documents.[10] Where Respondents failed was in not monitoring entry of the proposed Judgment through the Superior Court online docket, or through local counsel or Attorneys' Information Bureau, and then deciding in early December 2011 to stop communicating with court staff and doing nothing further to monitor entry of the proposed Judgment.

Washington Court Rules do not require any party, the Clerk, or the Court to notify the parties when judgment is entered. Even in the Federal courts where the civil rules require that the clerk notify all parties of entry of judgment, the failure of the clerk to do so cannot serve as a basis to extend the time for filing a notice of appeal. Fed. R. Civ. P. 77(d); *Pybas v. Paolino,* 73 Wn. App. 393, 401-02, 869 P.2d 427 (1994), citing *Kramer v. American Postal Workers Union, AFL-CIO,* 556 F.2d 929 (9th Cir.1977) (mere failure of court to notify appellant that judgment has been entered was insufficient to permit

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[10] Similarly, in *Beckman*, Division II denied an extension of time under RAP 18.8(b) where the State filed its notice of appeal from a $17 million judgment ten days after the deadline. The State argued that the plaintiff's failure to notify it of the entry of judgment amounted to "extraordinary circumstances." *Beckman*, 102 Wn. App. at 695. The Court held that it did not, stating, "Plaintiff's counsel gave the State notice of presentation of the proposed judgments. This was all Plaintiff's counsel was required to do; the State was then obligated to monitor the actual entry of the judgments." *Id.*

vacation and reentry of judgment to preserve right of appeal; granting of motion was an abuse of discretion). *See also* Appx. 10.

Respondents argued to the Court of Appeals and to the trial court that they were excused from their obligation to monitor the entry of the final Judgment when Court Administrator Marilyn Staricka said she would let them know of any developments in the case. There is no precedent existing in Washington to support this novel interpretation of RAP 18.8(b). This is not an obligation of court staff. Appx. 10.

Washington courts have long held that the mistake of a litigant's lawyer or an erroneous legal conclusion does not constitute "extraordinary circumstances" required by RAP 18.8(b) to extend the time for filing a notice necessary to obtain review. *Shumway,* 136 Wn.2d at 396-97(erroneous legal advice about whether appeal needed to be filed); *Reichelt,* 52 Wn. App. at 766 (lawyer made a mistake and missed filing deadline); *Beckman*, 102 Wn. App. at 695-96 (attorney negligence in not having calendar system in place or a lack of reasonable diligence in not filing a timely notice of appeal does constitute the extraordinary circumstances required by RAP 18.8(b)).

Here, as in *Shumway* and *Reichelt* and *Beckman,* mistakes by Respondents' legal representatives in deciding they did not need to monitor entry of the final judgment does not meet the standards of RAP 18.8(b). While the courts have not addressed the exact situation presented here, in similar circumstances where a party claimed it was

misled by a third party or even by a judge, the courts have uniformly found that this is not excusable neglect.

In *Puget Sound Medical Supply v. Washington State Dep't of Soc. & Health Services*, 156 Wn. App. 364, 234 P.3d 246 (2010), Division II considered the request of a medical supply company who attempted to excuse its late appeal of the Board of Appeals decision based on the Administrative Law Judge having entered an order earlier than he told the parties to expect. The court concluded:

> [E]ven though the ALJ stated that he 'did not anticipate mailing his decision before January 2008,' PSM **should not have relied on this statement**. In light of the need for 'a responsive system which mandates compliance with judicial summons,' we hold that PSM's reasons relating to the statutorily-imposed deadline are not grounds for 'excusable neglect.'

Id. at 375 (emphasis added) (citing *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979)).[11]

In another situation, the defendant did not monitor entry of a sanctions order and after the obtaining summary judgment dismissal of the entire case the plaintiff appealed. Defendant did not cross-appeal and later discovered the sanction order and filed a motion to

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[11] Although in *Puget Sound Medical Supply* the issue was whether a party's reliance on the ALJ's "affirmative representation" constituted "excusable neglect" under CR 60(b) instead of "extraordinary circumstances" under RAP 18.8(b), the Court's holding applies with equal force under RAP 18.8(b). Courts interpreting RAP 18.8(b) routinely cite cases interpreting CR 60(b), and vice versa. *See, e.g., Pybas v. Paolino*, 73 Wn. App. 393, 401, 869 P.2d 427 (1994) (citing *Reichelt*, 52 Wn. App. 763); *Beckman*, 102 Wn. App. at 694 (citing *Pybas*, 73 Wn. App. at 401). Moreover, if a party's claimed reliance on the affirmative representation of court personnel does not constitute "excusable neglect" under CR 60(b), as the trial court determined here, it certainly does not amount to "excusable error" under the test articulated in *Reichelt* and applied in *Scannel* to determine if "extraordinary circumstances" justify an extension of time under the much stricter constraints of RAP 18.8(b).

extend time under RAP 18.8(b) arguing that it missed the time for a cross-appeal because it had relied on King County Local Rule 7(b)(4)(C), which directs the moving party to provide the trial court with stamped envelopes pre-addressed to opposing counsel. *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 775, 112 P.3d 571 (2005). The defendant asserted the local rule led it to believe that the trial court would provide the defendant with copies of the orders upon entry and claimed this amounted to "extraordinary circumstances" justifying an extension of time to file a notice of its cross appeal of an order imposing costs arising from a discovery dispute. *Id.*

Like the Respondents here, the defendant in *Bostwick* evidently inferred from the rule that the court would notify a party that an order was entered. The Court of Appeals rejected that interpretation, stating that "nothing in the rule requires the court to notify a party that an order has been entered." *Id.* It observed that the defendant "failed to make any inquiry as to the status of pending orders." *Id.* at 776.

Despite the defendant asserting it was misled by the local rule, in accord with the well-established law that a party with notice of a pending judgment has a duty to monitor entry of that judgment as established by *Cohen* and *Beckman,* the *Bostwick* court held that the defendant's "lack of diligence in monitoring entry of an order on a pending motion: did not amount to "extraordinary circumstances." *Bostwick*, 127 Wn. App. at 775 (quoting *Beckman*, 102 Wn. App. at 695).

Even if Respondents' counsel believed the Court Administrator would send them a copy of the final judgment upon entry, there is nothing that requires court staff to notify Respondents of the entry of judgment or that excuses Respondents from further monitoring entry of the judgment. Appx. 10. Even if Respondents inferred from the court staff practices and alleged representations that the court would notify them of developments, their confusion does not amount to "extraordinary circumstances" under *Bostwick,* and *Beckman.*[12]

3. The Real Life Impact of the Court of Appeals' Departure from the Accepted and Usual Course of Judicial Proceedings Further Illustrates Why Review Is Appropriate Under RAP 13(b)(3).

While court staff have a public service role, and part of that involves responding to inquiries from the public, litigants and counsel, this role does not extend to obligating court staff to perform tasks not required by court rules or applicable law. Appx. 10 (Rifkin Dec.)[13] The responsibility for monitoring filing and entry of orders or judgments and

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[12] Respondents also asserted below that this is a "test case" raising issues of substantial public importance and that there is no prejudice to Pacific PUD. However, these factors may not properly be considered in determining whether to grant relief under RAP 18.8(b). *Shaefco,* , 121 Wn.2d at 368 (holding it is improper to consider the importance of the issues the appellant wishes to raise in the context of an untimely appeal); *Reichelt,* 52 Wn. App. at 766 (granting an extension under "RAP 18.8(b) does not turn on prejudice to the responding party" because the prejudice is "to the appellate system and to litigants generally, who are entitled to an end to their day in court.") Furthermore, if this matter was as important as Respondents argued, that is even more reason they should have diligently monitored entry of judgment.

[13] As explained in RAP 13.5 (c), the procedure for and form of a motion for discretionary review "is as provided in Title 17." RAP 17.3 (b)(8) provides that "the appendix may include ... other material which would assist the court in determining whether the motion should be granted." Accordingly, Respondents have provided a Declaration from Bruce Rifkin, the retired District Court Executive and Clerk of Court for the United States District Court for the Western District of Washington. *See also Dioxin/Organochlorine Center v. Dep't of Ecology,* 119 Wn.2d 761, 769-70, 837 P.2d 1007 (1992) (it was proper to submit and have the Court consider an affidavit for the limited purpose of helping the Court decide whether to accept direct review).

associated deadlines lies with counsel, not the court clerk or court administrative staff. *Id.* This results in consistency and fairness for all involved parties.

Court clerks and court administrators serve an important role in maintaining an accurate record of pleadings and acts by the Court, and in efficiently managing the business of the court consistent with applicable court rules. Appx. 10. Litigants should be monitoring the court's actions through the official records maintained by court staff. *Id.* When court staff try to be helpful, this does not impose additional duties and obligations upon court administrative staff to monitor case activity for counsel. Allowing a litigant to point to a comment by court staff to avoid the adverse impact of stringent filing deadlines imposes a significant adverse impact on court staff and can lead to court staff declining to engage in providing assistance beyond that required by law and conflicting recollections of what was said, or not said. *Id.*

F. CONCLUSION

Allowing litigants to overcome appellate filing deadlines based on a remark by court staff will impose additional burdens and problems on an already overburdened court system that faces ongoing and serious cuts in funding and resources. The rigorous test that Washington courts consistently employ under RAP 18.8(b) presents a formidable obstacle to a party seeking an extension of time to file a notice of appeal. Where an appeal is untimely, the test is nearly insurmountable and the courts have shown little patience with any

argument for an extension of time. Because Division II ignored the plain language of RAP 18.8(b) and this Court's precedent, Pacific PUD asks this Court to grant its Motion for Discretionary Review and address whether the Court of Appeals committed obvious or probable error in allowing Respondents to file a late notice of appeal from the trial court's post-trial Judgment despite the absence of facts establishing "extraordinary circumstances" and "gross miscarriage of justice" required by RAP 18.8(b). This is a significant departure from the accepted course of judicial proceedings and Respondents' only avenue for relief is through discretionary review by this Court as allowed by RAP 13.5.

Respectfully submitted this 13th day of March, 2012.

GORDON THOMAS HONEYWELL LLP

By Stephanie Bloomfield
Donald S. Cohen, WSBA No. 12480
Stephanie Bloomfield, WSBA No. 24251

LAW OFFICE OF JAMES B. FINLAY

By Stephanie Bloomfield for
James B. Finlay, WSBA No. 03430

Attorneys for Petitioner Pacific PUD

CERTIFICATE OF SERVICE

I, Gina A. Mitchell, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on March 13, 2012, I caused a true and correct copy of the foregoing document to be served upon the following counsel of record in the manner indicated:

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Long Beach, WA 98631
Via U.S. Mail

Signed this 13th day of March, 2012 at Tacoma, Washington.

Gina A. Mitchell, Legal Assistant
Gordon Thomas Honeywell LLP

APPENDIX

1. Declaration of Donald S. Cohen Opposing Defendants' Motion to Vacate and Reenter Judgment with Exhibits A-F:
   - Ex. A Exemplar GR 17 Declarations Prepared by Local Counsel for Appellants' Pacific County filings.
   - Ex. B Amended Deposition Notice for Deposition held at offices of Appellants' local counsel
   - Ex. C Screen shots from http://dw.courts.wa.gov/ explaining use and showing docket information available for Pacific County cases.
   - Ex. D Pacific County Superior Court docket from http://dw.courts.wa.gov/ on January 23, 2012.
   - Ex. E January 17, 2012 correspondence with Appellants' counsel re payment of the judgments
   - Ex. F December 12, 2011 Pacific County pleadings:
     - Findings of Fact and Conclusions of Law in Support of the Judgment;
     - Findings of Fact and Conclusions of Law Regarding Plaintiff Pacific PUD's Motion for Award of Attorneys' Fees and Litigation Expenses; and
     - Judgment re Attorneys' Fees and Litigation Expenses.
2. Declaration of Marilyn Staricka
3. Declaration of Angela Gilbert
4. Declaration of Heidi L. Wilder
5. Declaration of Timothy J. O'Connell
6. Declaration of Jill Valenstein
7. Reply Declaration of Heidi L. Wilder
8. Pacific County Sup. Court Order Denying Motion to Vacate
9. Division II Order Granting Extension of Time
10. Declaration of Bruce Rifkin

THE SUPREME COURT OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 2 OF PACIFIC COUNTY, Petitioner, v. COMCAST OF WASHINGTON, INC., et al., Respondents.	NO. 87126-4 **ORDER** C/A No. 42994-2-II

Department II of the Court, composed of Chief Justice Madsen and Justices Chambers, Fairhurst, Stephens and González, considered this matter at its June 5, 2012, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion for Discretionary Review is denied. The Respondents' motions to strike are denied.

DATED at Olympia, Washington this 5th day of June, 2012.

For the Court

Madsen, C.J.

CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2012 JUN -5 P 3:46
BY RONALD R. CARPENTER
CLERK

637/166

EIH

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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August 22, 2013

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CASE #: 70625-0-I
PUD Utility Dist. No. 2 of Pacific Cty, Respondent v. Comcast of WA, Inc., et al., Appellants

Pacific County No. 07-2-00484-1

Counsel:

The above case has been transferred to Division I of the Court of Appeals.

All matters in connection with the above cause should be addressed to the Court Administrator/Clerk of the Court of Appeals, Division I, One Union Square Building, 600 University Street, Seattle, Washington 98101.

Counsel are requested to please note the Court of Appeals number in all future references to this case.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

ssd

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
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February 4, 2014

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CASE #: 70625-0-I
PUD Utility Dist. No. 2 of Pacific Cty, Respondent v. Comcast of WA, Inc., et al., Appellants

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on February 3, 2014, regarding appellant and respondent's joint motion to extend time for oral argument:

"After consultation with the panel, the motion is granted. Each side shall have 20 minutes oral argument."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

ssd

OFFICE RECEPTIONIST, CLERK

To: Lomax, Leslie D.
Cc: Ferguson, Hunter O.; O'Connell, Timothy J.; dcohen@gth-law.com; ericstahl@dwt.com; jillvalenstein@dwt.com; johnmcgrory@dwt.com
Subject: RE: Supreme Court No. 91386-2 Public Utility District v. Comcast of Washington et al. - Centurylink's Reply to the District's Cross-Petition for Review

Importance: High

Rec'd 5/26/15. PLEASE NOTE: the attachments exceed our 25 page email policy. Therefore, only the cover page through page 20 of the reply has been printed. You will need to send in a hard copy of any and all attachments and we will combine them into one once we have received them. Thank you.

From: Lomax, Leslie D. [mailto:leslie.lomax@stoel.com]
Sent: Tuesday, May 26, 2015 3:27 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Ferguson, Hunter O.; O'Connell, Timothy J.; dcohen@gth-law.com; ericstahl@dwt.com; jillvalenstein@dwt.com; johnmcgrory@dwt.com
Subject: Supreme Court No. 91386-2 Public Utility District v. Comcast of Washington et al. - Centurylink's Reply to the District's Cross-Petition for Review

Attached is Centurylink's Reply to the District's Cross-Petition for Review.

Leslie D. Lomax | Practice Assistant to
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and Hunter O. Ferguson
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