



DEPARTMENT OF JUSTICE
BUSINESS SERVICES DIVISION

November 7, 2023

via E-mail

Public Utility Commission of Oregon
Attn: Filing Center
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Salem, OR 97308-1088
PUC.FilingCenter@puc.oregon.gov

Re: UT 125– Staff’s Comments on Qwest’s Proposed Procedural Schedule

Staff of the Public Utility Commission of Oregon (Staff) provide the following comments on the scoping and scheduling proposal by Qwest in Docket No. UT 125. Staff agrees with Qwest’s position that the Commission must revisit NPCC’s Motion prior to addressing the issue of remedies. In *Northwest Public Communications Council v. Qwest Corporation*, the Court held in relevant part:

We conclude that the PUC's prior orders in this docket neither require nor preclude the requested refunds and that, on this record, we cannot say whether state and federal law require the PUC to order the requested refunds. However, because we conclude that the PUC relied on factual findings that are not supported by substantial evidence, we reverse Order No. 17-473 and remand to the PUC for reconsideration.¹

Staff believes that a phased approach is optimal, focusing first on establishing a basis for a Commission decision supported by substantial evidence on the record and allow the Commission to affirm or amend its Order No. 17-473 in light of the Court of Appeals ruling and additional facts. After the Commission’s decision in Phase I, a second phase would allow for the implementation of the Commission’s decision, as appropriate.

Staff is concerned that Qwest’s procedural schedule may not provide a sufficient process to develop a factually robust record and calls on parties to be mindful of the need for a well-supported commission decision. After individual discussions with the parties, Staff believes that a procedural schedule that requires either Qwest or NPCC to provide support for their position first, would also require a ruling by the ALJ on who bears the burden in a motion to show cause. Staff finds this to be unnecessary, additional process which is tangential to the issue at hand and would cause undue delay. As an alternative approach, Staff suggests having all parties provide

¹ 323 Or. App. 151, 163-64, 527 P.3d 30 (2022).

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simultaneous filings supporting their positions on Commission Order 17-473, in light of the Court of Appeals decision, and allowing all parties to file simultaneous responses.

Sincerely,

/s/ Natascha Smith _____

Natascha Smith,
Assistant Attorney General
Business Activities Section