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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UT 125/PHASE II
RATE DESIGN

In the Matter of the Application of QWEST CORPORATION for an Increase in Revenues.

MOTION TO SET PROCEDURAL CONFERENCE TO ESTABLISH ISSUES AND PROCEDURES ON REMAND

INTRODUCTION

The Northwest Public Communications Council (“NPCC”) (f/k/a Northwest Payphone Association or NWPA) moves the Commission for an order or memorandum scheduling a procedural conference. The reason for this motion is that the Commission’s final order in this docket was reversed and remanded for further proceedings in November 2004. Since that time, no action has been taken by the parties or the Commission to comply with the order and judgment on remand. At the procedural conference, the NPCC suggests the following matters be addressed:

1. Identification of issues on remand;
2. Determination of whether further evidence needs to be submitted and whether additional evidentiary hearings are necessary;
3. Identification of the parties on remand; and
4. Establishment of an appropriate procedural schedule.

Until the Commission determines the positions of the parties regarding remand, it is difficult to predict what type of procedural schedule is appropriate. The best way to make this

1 determination is to convene the scheduling conference to determine the parties' positions and
2 appropriate procedural requirements.

3 **ARGUMENT**

4 On September 14, 2001, the Commission entered its final order on Phase II, Rate
5 Design, in this docket. Order No. 01-810. A portion of that order dealt with rates for public
6 access lines ("PAL") and CustomNet services. The only parties that participated actively
7 regarding those issues were the NPCC, Qwest, and Staff. On January 8, 2002, the Commission
8 entered its Order On Reconsideration which denied the NPCC's application for reconsideration
9 regarding PAL and CustomNet rates. Order No. 02-009. The NPCC appealed those orders to
10 the Circuit Court for Marion County, which affirmed, and then to the Oregon Court of Appeals.
11 The only parties that participated on the appeal were the NPCC, Qwest, and Staff. On November
12 10, 2004, the Oregon Court of Appeals reversed the PUC's orders opinion stated that, "The PUC
13 must reconsider its order in light of the New Services Order and other relevant FCC orders".
14 *Northwest Public Comm's Council v. PUC*, 196 Or. App. 94, 100, 100 P.3d 776, 779 (2004).

15 Neither Qwest nor the PUC sought further appeal of the November 10, 2004
16 decision. Accordingly, the decision of the Oregon Court of Appeals became final and
17 unappealable by operation of law. Pursuant to the opinion of the Oregon Court of Appeals, the
18 Marion County Circuit Court entered a judgment on March 17, 2005 that provided:

19 THIS MATTER IS HEREBY REMANDED to the Oregon Public Utility
20 Commission for reconsideration consistent with the opinion of the Oregon Court
21 of Appeals filed on November 10, 2004.

22 Exhibit B. Since this matter was remanded by the Oregon courts to this Commission for
23 reconsideration more than a year ago, the Commission has taken no action of record.¹ The
24

25 _____
26 ¹ This is not to say that the staff and parties have not been active on the matter behind the scenes.
Such presumptive efforts have not, however, lead to the required order on remand as the court
directed.

1 decision of the Court of Appeals requires PUC action (“the PUC **must** reconsider”) 196 Or. App.
2 at 100, 100 P.3d at 779 (emphasis added).

3
4 Although the Court of Appeals and Circuit Court specified no time frame for the
5 PUC’s reconsideration, the PUC must act within a reasonable time. The NPCC respectfully
6 submits that it is time for the PUC to start the process that is necessary to comply with the
7 court’s directives to reconsider the portions of the Final Order and Order On Reconsideration
8 that were reversed. The process could be as simple as a stipulation or briefing by the parties or
9 could require further evidentiary proceedings. The appropriate process can be determined when
10 the parties identify their issues.

11 NPCC believes it is premature to request a specific hearing or briefing schedule at
12 this time. Rather, the most efficient approach is to schedule a procedural conference. As would
13 be typical in a pre-hearing conference, the parties should come to the conference prepared to
14 identify and discuss the issues to be addressed on remand. Once the issues are on the table, the
15 parties can discuss (and hopefully agree on) an appropriate procedural schedule, which may or
16 may not require the submission of further evidence.

17 Additionally, the NPCC suggests that interested parties who do not attend the
18 scheduling conference be required to seek intervention in this docket on remand to remain on the
19 party list. This is essential, because Phase II of this docket had numerous parties interested in a
20 panoply of issues that were unrelated to the relatively narrow issues that are likely to be
21 addressed on remand. Many of those parties no longer exist (*e.g.*, MCI) or do not have current
22 contact information on file. Most of the parties in Phase II of this docket had no interest in PAL
23 or CustomNet issues and likely will have no interest in the outcome on remand, depending on the
24 scope of the issues list that is developed.

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CONCLUSION

For the foregoing reasons, NPCC seeks an order or memorandum scheduling a procedural conference in the near future and requiring interested parties to attend and be prepared to discuss the following:

1. Identification of issues on remand;
2. Determination of whether further evidence needs to be submitted and whether additional evidentiary hearings are necessary;
3. Identification of the parties on remand or setting deadline for intervention on remand; and
4. Establishment of an appropriate procedural schedule.

Respectfully submitted this 9th day of February, 2006.

MILLER NASH LLP



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February 9, 2006

VIA ELECTRONIC MAIL & FEDERAL EXPRESS

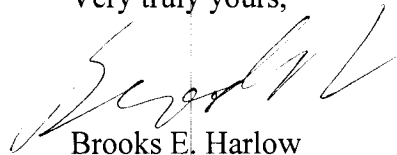
Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street NE, #215
Salem, Oregon 97308-2148

Subject: UT 125/Phase II

Dear Filing Center:

Enclosed, for filing are an original and one copy of the Motion To Set Procedural Conference To Establish Issues And Procedures On Remand on behalf of the Northwest Public Communications Council in the above-referenced docket.

Very truly yours,



Brooks E. Harlow

cc w/enc: Jason W. Jones
Phil Nyegaard

**Service List for
OPUC Docket No. UT-125**

I hereby certify that a true and correct copy of the Motion To Set Procedural Conference To Establish Issues And Procedures On Remand has been electronically mailed and also sent by United States first class mail, postage prepaid in sealed envelopes to the following:

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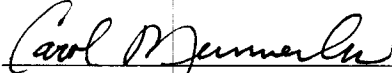
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DATED this 9th day of February 2006 at Seattle, Washington.



Carol Munnerlyn, Secretary