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4 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

5 **UT 125**

6
7 In the Matter of

8 QWEST CORPORATION, fka U S WEST
9 Communications, Inc,

10 Application for an Increase in Revenues

QWEST'S RESPONSE BRIEF
SUPPORTING PROPOSAL TO
REBALANCE RATES

11
12 **I. INTRODUCTION**

13 Staff's Opening Brief minimizes the significance of the Court of Appeals' decision
14 reversing the rate design order, Order No. 01-810 (the "Order"). For example, Staff argues that
15 the Order established price caps for non-basic services that were the "last and only opportunity
16 for the Commission to adjust Qwest's price caps for non-basic services" Staff's Opening
17 Brief at 5. However, since the Court of Appeals reversed the Order, that Order cannot have
18 established the final, permanent price caps for Qwest. Rather, the Commission's *final* order in
19 this docket, following this remand proceeding, will establish those price caps. Staff also argues
20 that the court's decision remanded only the payphone service rates. To the contrary, the court
21 remanded *the Order* for further consideration. As a necessary consequence of adjusting Qwest's
22 payphone service rates on remand, the Commission will also need to adjust other rates so that the
23 ultimate goal of a rate design order is met: ensuring that the overall rate design matches Qwest's
24 ordered revenue requirement so that Qwest has the opportunity to earn its authorized return.

25 Staff similarly minimizes the significance of the court's decision when it argues that
26 Qwest's voluntarily lowering its PAL rates in 2003 precludes the Commission from adjusting

1 those rates in this docket and awarding Qwest an offsetting rate increase. The Commission did
2 not analyze Qwest's 2003 filing to ensure that the rates complied with federal requirements.
3 Notwithstanding the fact that Qwest adjusted its PAL rates in 2003, in late 2004 the Court of
4 Appeals remanded the Order to the Commission to analyze Qwest's payphone rates under
5 applicable federal requirements. The Commission must undertake this task in this docket at this
6 time; since the Commission must issue a new order to resolve Qwest's rate design, it must also
7 consider Qwest's other rates in the context of the rate order. Otherwise, the Commission would
8 engage in impermissible single-issue ratemaking.

9 At the same time as it minimizes the significance and impact of the court's decision
10 reversing the Order, Staff overstates the significance of Qwest's election of price cap regulation
11 under ORS 759.410 and the potential impact of granting Qwest's request. Staff argues that if the
12 Commission allows Qwest to raise other rates to offset the lost revenue that results from
13 adjustment of PAL rates in this docket, it would establish a precedent that would allow Qwest to
14 seek a revenue increase every time it lowers a rate for non-basic service pursuant to its authority
15 under ORS 759.410. Staff's argument is based on an incorrect premise. Contrary to Staff's
16 statement, Qwest did not lower its PAL rates by exercising its pricing flexibility under ORS
17 759.410. PAL rates are basic service rates, and Qwest can lower the rates for only non-basic
18 services under ORS 759.410. The circumstances of this case are unique. It is unfair to imply
19 that Qwest will seek an offsetting rate increase every time it exercises pricing flexibility under
20 ORS 759.410. Qwest has never done so and does not intend to do so. Qwest's request to raise
21 the rate for Residential Caller ID is based solely on the fact that the court has remanded the rate
22 case order for reconsideration, and the Commission must make such adjustments in this context.

23 Finally, the Stipulation to Resolve Matters on Appeal entered into by Staff and Qwest in
24 settlement of two appeals that related to the refund and revenue requirement decisions in Phase I
25 of this proceeding has no bearing on the resolution of the issue currently before the Commission.
26 Nothing in that Stipulation may reasonably be construed as a waiver of Qwest's right to seek an

1 increase in specific rates to offset the revenue reduction that results from lowering payphone
2 service rates in this proceeding. Thus, the Commission should reject the reasoning in the
3 Proposed Commission Decision circulated by the Administrative Law Judge on June 7, 2006,
4 that would reject Qwest's proposal by applying a provision of that Stipulation.

5 II. DISCUSSION

6 A. The Court of Appeals Did Not Limit the Commission's Actions on Remand to 7 Consideration of Only Payphone Service Rates

8 Staff first argues that because the Court of Appeals decision addressed only issues
9 relating to payphone services, the Commission is somehow precluded from addressing any other
10 rate in this remand proceeding. The Court of Appeals decision addressed only issues relating to
11 payphone services because those were the only issues any party had raised on appeal of the
12 Commission's rate design orders. That does not mean, however, that the Commission is
13 precluded by the Court of Appeals decision from considering other rate issues on remand.

14 This issue is addressed in Qwest's Opening Brief at 5-7. In sum, the Court of Appeals
15 reversed the Order and remanded it to the Commission for further proceedings. While the court
16 addressed only payphone service issues in its decision, the Commission has legislative power
17 with respect to ratemaking and may consider any issue on remand that was within the scope of
18 the original proceeding. Indeed, since the court reversed the order, the Commission must, on
19 remand, address the entirety of Qwest's rate design so that there may be a valid Commission
20 order establishing Qwest's retail rates. Consideration of rates for services other than payphone
21 services in the context of the remand would be consistent with the court's decision, which
22 expressly recognized the traditional ratemaking context in which the Commission issued the
23 Orders. Certainly, there is nothing in the scope of the court's order that prohibits the
24 Commission from considering the impact on other rates of a decision to lower payphone service
25 rates. Moreover, in addition to the court's remand order, the Commission has broad statutory
26 power to amend its orders "at any time." ORS 756.568.

1 While the Court of Appeals did not order the Commission to adjust other rates to offset
2 the revenue reduction that results from lowering payphone service rates in this proceeding,
3 engaging in such rate rebalancing is a necessary implication of the court's decision. Given the
4 Commission's broad statutory power in the ratemaking context, the Commission should reject
5 Staff's argument that the court's decision does not permit the Commission the latitude to adjust
6 Qwest's other rates.

7 **B. Qwest Did Not Waive Its Right To Seek a Rate Adjustment in This Case**
8 **When it Voluntarily Lowered Payphone Service Rates in 2003**

9 In 2003, in view of developing case law at the FCC and in the federal courts, Qwest
10 believed that the rates the Commission established in the Order for PAL and CustomNet may no
11 longer be in compliance with the federal requirements. In order to pass the benefit of lower rates
12 along to its payphone service customers without the further delay that would be caused by
13 awaiting the result of a Court of Appeals' decision and a subsequent remand proceeding, in
14 February 2003, Qwest proposed to lower its PAL rates, and in July 2003, Qwest proposed to
15 lower its CustomNet rates (see Advice No. 1935, dated Feb. 14, 2003, and Advice No. 1946,
16 dated July 28, 2003, both included in attached Exhibit 1). Those adjustments were expressly
17 made "without prejudice to its position in the pending appeals of this Commission's orders in
18 Docket Nos. UT 125 and DR 26/UC 600." Exhibit 1 at 1, 10. The referenced pending appeal in
19 Docket UT 125 was NPCC's appeal of the Order; thus, Qwest did not intend to prejudice its
20 position in this case by making that rate filing in 2003.

21 Staff argues that by voluntarily lowering its payphone service rates in 2003, Qwest
22 waived its right to the rate relief that Qwest currently seeks. Waiver of a right by a party's
23 conduct must be established by a clear, unequivocal, and decisive act. *Waterway Terminals Co.*
24 *v. P.S. Lord*, 242 Or. 1, 26, 406 P.2d 556 (1965). Given Qwest's express statement that its 2003
25 rate filing was made without prejudice to Qwest's position in the pending appeals, as well as the
26 lack of evidence of any other conduct that establishes a clear and unequivocal waiver of its right

1 to seek an offsetting rate increase, Qwest's 2003 rate filing cannot reasonably be construed as a
2 waiver of the right to seek the rate increase Qwest presently seeks.

3 Staff also states that Qwest's adjustment of PAL rates in 2003 was made by exercising its
4 pricing flexibility under ORS 759.410. Staff then argues that granting relief in this case would
5 establish a precedent that any time Qwest lowers a rate by exercising its pricing flexibility under
6 ORS 759.410, it should be allowed an offsetting rate increase. Staff's argument is based on an
7 incorrect premise, and therefore misstates the precedential impact of a Commission decision in
8 Qwest's favor on the issue before the Commission.

9 Qwest's lowering of PAL rates in 2003 was *not* made by exercising its pricing flexibility
10 under ORS 759.410. That pricing flexibility applies only to non-basic services. ORS
11 759.410(3)-(4). PAL service, however, is specified by Commission rule to be a basic service.
12 OAR 860-032-0190(3)(g). Thus, the entire premise of Staff's second argument is incorrect.
13 Approving Qwest's request to rebalance its rates in this proceeding would not establish a
14 precedent of any kind that would allow Qwest to raise rates any time it exercises its pricing
15 flexibility by lowering the rate of a non-basic service. Qwest does not typically expect to raise
16 another rate when it lowers the rate for a non-basic service pursuant to its pricing authority under
17 ORS 759.410. In fact, Qwest has never asked the Commission for permission to do so. This
18 case is unique, however, because the court has required the Commission to analyze Qwest's
19 payphone service rates in this remand proceeding *despite* the fact that Qwest lowered them more
20 than a year before the Court of Appeals issued its decision.

21 As the court discussed, PAL rates are unique in that, even though they are for an
22 intrastate service, federal requirements apply to their establishment. Those federal requirements
23 necessitate a detailed analysis by the states of the cost basis for the rates they approve.
24 *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or.
25 App. 94, 102-108, 100 P.3d 776 (2004) (Wollheim, J., concurring). Even though Qwest lowered
26 its payphone service rates in 2003, it does not appear that the Commission engaged in the level

1 of review of Qwest's proposed rates that is required by the FCC's payphone orders. Qwest did
2 not submit detailed cost data showing compliance with the federal requirements in connection
3 with those 2003 tariff filings, so the Commission did not have any such data to review.
4 Moreover, the Commission did not issue any order or otherwise indicate that it found that those
5 rates satisfied the applicable requirements. Rather, the Commission simply acknowledged the
6 revised tariff sheets and indicated that they would become effective on specified dates. The
7 Commission acknowledged the revised PAL rates that Qwest filed on February 14, 2003, as
8 supplemented on February 28, 2003, in a letter dated March 19, 2003. Exhibit 1 at 6. The
9 Commission acknowledged the revised Fraud Protection rates that Qwest filed on July 28, 2003,
10 in a letter dated August 25, 2003. *Id.* at 18. Thus, the Commission had neither the data nor the
11 time to conduct the detailed cost inquiry the Court of Appeals has now required it to conduct.

12 When Qwest lowered its rates for payphone services in 2003, the Commission did not
13 conduct the type of cost review required by the FCC's payphone orders and the court's remand
14 order. The Commission must conduct that review in this remand proceeding, as that is required
15 by the court's order. Because this review will be conducted in the context of a remand order in
16 the rate design phase of this rate case, the Commission must rebalance Qwest's rates so that the
17 new rate design order hits the revenue requirement target.¹ By doing so, the Commission will
18 not establish a precedent of any sort that would permit Qwest to raise rates any time it exercises
19 its pricing flexibility under ORS 759.410, both because PAL service is not non-basic and
20 because the rebalancing would be done in the context of this traditional rate case.

21 **C. The Commission Has Authority To Establish a New Price Cap for**
22 **Residential Caller ID Under ORS 759.415(1) Because Its Order Establishing**
23 **Price Caps in This Proceeding Has Been Reversed**

24 Next, Staff argues that the Commission does not have the authority to raise the rate for
25

26 ¹ Qwest seeks to rebalance its rates only on a prospective basis. That is, Qwest does not seek to
recover any revenue it lost between the date it voluntarily lowered payphone service rates in 2003 and the
date an order in this remand proceeding is effective.

1 Residential Caller ID because Qwest is subject to price cap regulation under ORS 759.410, and
2 raising the rate for Residential Caller ID would require the Commission to establish a new price
3 cap for that service. Staff argues that the Commission does not have the authority to establish a
4 new price cap because "the price caps established [in] Order No. 01-810 were the last and only
5 opportunity for the Commission to adjust Qwest's price caps for non-basic services . . ." Staff's
6 Opening Brief at 5. Staff's argument ignores ORS 759.415 and the significance of the court's
7 decision reversing the Order.

8 ORS 759.410 provides that, subject to ORS 759.415, the price for non-basic service in
9 effect on the date a carrier elects price cap regulation is the maximum price for a service. ORS
10 759.415(1) provides an important exception to that provision, that applies to Qwest:

11 In a rate proceeding brought by a telecommunications carrier that elects to
12 be subject to ORS 759.405 and 759.410, or by the Public Utility
13 Commission against an electing telecommunications carrier, prior to
14 January 1, 1999, that is on appeal on September 1, 1999, a final rate for a
15 telecommunications service implemented as a result of the final judgment
16 and order or negotiated settlement shall become the maximum rate for
17 purposes of ORS 759.410.

18 This rate proceeding was brought prior to January 1, 1999 and the Commission's decision
19 in Phase I of this case was on appeal on September 1, 1999. Order No. 00-190 at 1-2. Thus, the
20 price caps for Qwest's services are not the prices in effect when Qwest elected price cap
21 regulation; rather, the price cap for each Qwest non-basic service shall be the "final rate . . .
22 implemented as a result of the final judgment and order . . ." While Order No. 01-810 did
23 establish permanent rates for Qwest's services, the Order was appealed. The Court of Appeals
24 reversed the Order and remanded it to the Commission for further proceedings. Under these
25 circumstances, the Commission will not implement a "final rate" for Qwest's services until the
26 Commission completes this remand proceeding and issues a new order establishing Qwest's rates
which becomes final and non-appealable. This will not happen until (1) the Commission
completes this remand proceeding and issues a new order establishing Qwest's rates, (2) the
Commission disposes of any motions for reconsideration, (3) any appeals of the Commission's

1 order(s) are finally resolved, and (4) any remand proceedings required by such appeals are
2 completed and become final. Only at that time will the Commission have finally established
3 price caps for Qwest's non-basic services in the rate proceeding that was pending when Qwest
4 elected price cap regulation (and which is still pending today).

5 In calling Order No. 01-810 the "last and only opportunity" for the Commission to
6 establish Qwest's price caps, Staff ignores the fact that the Order was reversed by the court. It
7 strains reason to argue that an order that has been reversed and is of no legal effect could
8 possibly be the last opportunity for price caps to be set. The court has required the Commission
9 to reconsider the Order and the final (and non-appealable) result of such reconsideration will
10 establish the price caps for Qwest's non-basic services.

11 Staff argues that if the Commission concludes that the Order did not establish final,
12 unalterable price caps because it was reversed on appeal, that decision would "create a complex
13 set of problems." Staff's Opening Brief at 6. Staff assumes that if the Order did not establish
14 effective price caps, then the effective price caps are the rates that were in effect when Qwest
15 elected price cap regulation. *Id.* The example Staff provides of a "problem" this conclusion
16 would create is that some of those rates may have been below cost. *Id.* Staff, however, finds a
17 problem where there is none. Even though the Order did not establish the final price caps for
18 Qwest's non-basic services because it has been reversed by the court, that does not mean that the
19 rates established by the Order were of no force and effect. ORS 759.205 requires Qwest to
20 charge the rates set forth in its printed rate schedules, and provides that those rates "are the
21 lawful rates until they are changed as provided in this chapter." Thus, the rates in the tariffs that
22 Qwest filed pursuant to the Order are effective and will be effective until they are changed by the
23 Commission in this remand proceeding. Recognizing that the Order has been reversed on the
24 ground that it is unlawful does not affect the lawfulness of the filed rates. ORS 759.415(1)
25 preserves the Commission's authority to establish new price caps in this remand proceeding
26 without calling into question the legality of Qwest's previous rates.

1 **D. The Filed Rate Doctrine Has No Application in This Context**

2 Staff's final argument is that Qwest's effort to raise the rate of Residential Caller ID is an
3 "unlawful attempt to treat Order No. 01-810 as 'interim' in violation of the filed rate doctrine",
4 which Staff describes as codified in ORS 759.205. Staff's Opening Brief at 6-7. Staff also
5 rephrases this argument as being that the rates approved in the Order established the final price
6 caps for non-basic services and Qwest cannot raise those rates above the price caps established in
7 the Order. *Id.* at 7. Staff's final argument appears to be nothing more than a restatement of its
8 previous argument.

9 The filed rate doctrine does not bar the relief that Qwest is seeking. As discussed above,
10 ORS 759.205 requires Qwest to charge the rates set forth in its printed rate schedules, and
11 provides that those rates "are the lawful rates until they are changed as provided in this chapter."
12 Thus, the rates in the tariffs that Qwest filed pursuant to the Order are lawful until they are
13 changed in this proceeding. At that point, the new rates the Commission establishes will be the
14 lawful rates; they will also be the new price caps for non-basic services. Qwest seeks to change
15 the rate for Residential Caller ID prospectively; thus, nothing that Qwest proposes would result
16 in Qwest's charging a rate different from the current, lawful rate.

17 **E. The 1999 Stipulation to End Appeals in Phase I of This Docket Has No**
18 **Application to the Issue Presently Before the Commission**

19 The final issue addressed in this brief is not in response to Staff's Opening Brief. In a
20 Memorandum issued June 7, 2006, following review of the parties' opening briefs, the
21 Administrative Law Judge ("ALJ") identified an issue, not discussed in the opening briefs, that
22 he believed might be dispositive of Qwest's request to rebalance rates, and asked the parties to
23 comment on that issue in their response briefs. The issue raised by the ALJ is whether one
24 provision of a Stipulation that Staff and Qwest entered in 1999 in settling appeals concerning
25 Phase I of this litigation, which established the amounts of Qwest's overall revenue requirement
26 and refund obligation, somehow bars Qwest's request to raise the rate for Residential Caller ID at

1 this stage of the proceeding. The ALJ's Memorandum includes a Proposed Commission
2 Decision (the "Proposed Decision") that is based on the ALJ's initial interpretation of the
3 Stipulation. Qwest thinks that neither party raised the Stipulation in its opening brief for the
4 simple reason that it does not apply to the issue presently before the Commission.

5 The Commission bifurcated this rate case into two phases. Phase I addressed revenue
6 requirement issues. Phase II addressed rate design issues. Order No. 00-190 at 1. The
7 Stipulation was made to settle two appeals that related to the amount of the overall revenue
8 requirement reduction and refund the Commission originally ordered in Phase I of this case;
9 indeed, it was entitled "Stipulation to Resolve Matters on Appeal." One appeal was of
10 Commission Order No. 97-171, which established Qwest's revenue requirement and refund
11 obligation; that appeal was referred to in the Stipulation as the "Rate Case Appeal." The other
12 appeal was of orders the Commission entered in Docket No. UT 80(1), wherein the Commission
13 established the methodology Qwest should use in calculating its refund obligation; that was
14 referred to in the Stipulation as the "Refund Methodology Appeal." Together, the two appeals
15 were referred to as the "Appellate Litigation."

16 The purpose of the Stipulation was to "settle all revenue requirement and refund issues in
17 this docket." U S WEST/175; Inouye/1. The Stipulation resolved the refund issues raised in the
18 Appellate Litigation by specifying the amount that Qwest would refund to customers since the
19 date its rates became interim, May 1, 1996, as \$53 million per year. The Stipulation also
20 specified that the overall revenue reduction the Commission would apply in the rate design phase
21 of this proceeding would be \$63 million per year, based upon test year units.

22 Because it was concerned that some party might appeal a Commission order adopting the
23 Stipulation – CUB had opposed approval of the Stipulation in its entirety and other parties
24 challenged specific aspects of the Stipulation – Qwest originally resisted making any refund until
25 the time for appealing a Commission order had expired or, if someone did appeal such an order,
26 until such appeal were resolved, whichever is later. Post-Hearing Brief of U S WEST

1 Communications, Inc., dated Feb. 11, 2000, at 12-13. Staff was not willing to agree that
2 issuance of the refund should be delayed in the event of an appeal, and insisted that Qwest agree
3 to make the refund as soon as the Commission had approved the Stipulation and disposed of any
4 motion for reconsideration. *Id.*

5 Qwest ultimately agreed to make the refund in the time frame requested by Staff. This
6 agreement is reflected in paragraph 5 of the Stipulation. Thus, in paragraph 5 of the Stipulation,
7 Qwest agreed (a) to refund monies to its customers based on the refund amount agreed to in the
8 Stipulation and (b) to file a proposed rate design based on the revenue requirement agreed to in
9 the Stipulation, within 45 days after the Commission had approved the Stipulation and disposed
10 of any motions requesting rehearing or reconsideration of a Commission order approving the
11 stipulation. Paragraph 5 of the Stipulation also addressed the possibility that existed at that time
12 that (a) a party would appeal a Commission order adopting the Stipulation and (b) such order
13 would be reversed and/or modified on appeal (c) after Qwest made a refund and/or a rate design
14 were ordered. The Stipulation addressed that circumstance in the following language:

15 The parties further recognize that the order adopting the terms of this
16 Stipulation may be reversed and/or modified on appeal. The parties
17 further recognize that U S WEST's obligation to refund monies to
18 customers and to reduce its ongoing rates may be modified on appeal,
19 either by the issuing of a judgment incorporating or requiring different
20 refunds or rate reductions, or by the Court of Appeals refusing to dismiss
21 the Appellate Litigation. In the event that an order implementing the
22 terms of this Stipulation is reversed or modified on appeal, the parties
23 agree that U S WEST will be entitled to a credit for refunds and rate
24 reductions made under Paragraphs 1 and 2 of this Stipulation against any
25 such increased refund and/or rate reduction obligation imposed by a
26 judgment reversing or modifying the order adopting the terms of this
Stipulation or any subsequent order. Notwithstanding anything herein to
the contrary, the parties understand that U S WEST does not waive its
rights, if any, to seek recovery of any overpayments – whether in the form
of surcharges or rate increases – in the event that U S WEST's refund
and/or rate reduction obligation is reduced by a judgment reversing or
modifying the order adopting the terms of this Stipulation or any other
order.

1 The first sentence of paragraph 5 of the Stipulation (not quoted above) states that it
2 addresses an appeal of a Commission order "implementing the terms of this Stipulation," which
3 is defined as an "appeal." Accordingly, the language set forth above addresses only the
4 possibility that "the order adopting the terms of this Stipulation may be reversed and/or modified
5 on appeal." By its terms, paragraph 5 applied only in the event the Commission's order adopting
6 the Stipulation were reversed on appeal; because that event never occurred – indeed, no party
7 appealed the Commission's orders approving the Stipulation – paragraph 5 has no application to
8 the issue currently before the Commission. Paragraph 5 simply does not apply to an appeal of an
9 order in Phase II of this proceeding, since that would not be an order "adopting the terms of [the]
10 Stipulation."

11 Moreover, the only reasonable interpretation of the term "rate reduction" as addressed in
12 paragraph 5 is that it referenced the overall revenue reduction that Qwest agreed to make in the
13 Stipulation, \$63 million per year; that term cannot reasonably be construed to relate to the
14 reduction in the rate for a specific service that may be ordered after an appeal of a Phase II order,
15 which is the situation currently before the Commission. Paragraph 5 provides that in the event
16 an order adopting the terms of the Stipulation is reversed and/or modified on appeal, Qwest's
17 "obligation to refund monies to customers and to reduce its ongoing rates may be modified on
18 appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate
19 reductions." The "obligation . . . to reduce its ongoing rates" referenced in this sentence can
20 reasonably be construed only as the *overall amount of the revenue reduction* agreed to in the
21 Stipulation, because that is the only rate reduction addressed by the Stipulation. Thus, when this
22 sentence identifies the possibility that a judgment in an appeal of an order adopting the
23 Stipulation may require "different . . . rate reductions" or an increase in Qwest's "rate reduction
24 obligation," the only rate reduction possibly referenced is the overall amount of the revenue
25 requirement reduction, *i.e.*, \$63 million per year; that language did not refer to a reduction the
26 Commission might make to a rate for a specific service in the future rate design proceedings.

1 Based on testimony Mr. Inouye submitted in support of the Stipulation, the Proposed
2 Decision suggests that paragraph 5 reflects an additional "concession" by Qwest, in the form of a
3 relinquishment of its right to seek an offsetting rate increase if a rate is reduced in an appeal of a
4 Phase II order.² The Proposed Decision makes much of this "major concession." Indeed, as
5 drafted, the Proposed Decision appears to rely on the fact that Qwest made some "concession" in
6 the Stipulation, that it characterized as "major", more than it relies on any specific language in
7 the Stipulation to support its conclusion that Qwest waived its right to seek the rate rebalancing it
8 currently requests. Neither the terms of the Stipulation nor Qwest's description of one of its
9 terms as a "major concession" supports the conclusion that Qwest waived its right to seek rate
10 rebalancing in the current remand proceeding, for several reasons.

11 First, the only "concession" that Mr. Inouye referenced in his testimony in support of the
12 Stipulation was U S WEST's agreement to make a refund before any appeal was resolved.
13 U S WEST/175; Inouye/10. Mr. Inouye testified:
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15

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17 ² Under Oregon law, interpretation of a contract, such as the Stipulation, is to be based
18 exclusively on the terms of the contract, unless the judge decides that the contract is ambiguous. *Yogman*
19 *v. Parrott*, 325 Or. 358, 361, 937 P.2d 1019 (1997). If a contract is ambiguous, then the judge may
20 consider extrinsic evidence regarding the parties' intentions in interpreting the contract. *Id.* at 363. Qwest
21 submits that the material provisions of the Stipulation are not ambiguous and that the Commission should
22 not consider *any* evidence extrinsic to the Stipulation in interpreting it. The ALJ has indicated that he
23 believes the Commission may consider extrinsic evidence even if the Stipulation is unambiguous, as long
24 as that evidence is already in the UT 125 record from the Phase I proceeding. Ruling issued June 21,
25 2006. Qwest disagrees with this decision, but since the ALJ has already decided that he believes such
26 evidence may be considered, Qwest discusses it in this brief.

27 Qwest thinks that if the Commission is going to consider some extrinsic evidence in interpreting
28 the Stipulation, parties should be free to submit additional evidence of the parties' intentions regardless of
29 whether it is already in the record. In addition, as discussed more fully below, Qwest acknowledges that
30 one or more terms of the Stipulation may be ambiguous. Qwest submits herewith the Declaration of Don
31 K. Mason concerning Qwest's intention and understanding concerning the Stipulation as they pertain to
32 the issue the ALJ raised in the Proposed Decision. Qwest recognizes that the ALJ generally rejected such
33 evidence when he denied Qwest the opportunity to take the deposition of Phil Nyegaard, but Qwest
34 submits this evidence as an offer of proof regarding Qwest's intention in the event the Commission or a
35 reviewing court determines that the Stipulation is ambiguous.

1 U S WEST agreed to make the refund independent of whether another
2 party appeals a Commission order approving the Stipulation . . . This is a
3 significant concession by U S WEST. Generally, the Company would not
4 agree to proceed with a refund until opposing parties' opportunities for
5 appeal have been exhausted.

6 *Id.* The *only* "concession" Mr. Inouye referenced in his testimony related to the timing of the
7 refund and Qwest's agreement to make a refund before any appeal was resolved; it had nothing to
8 do with waiving Qwest's right to rebalance rates in the event of an appeal of a Phase II order.
9 *See also* Order No. 00-190 at 9. This concession *was* significant, because Qwest agreed to
10 refund over \$200 million and took the risk that if an order adopting the Stipulation were appealed
11 and that ultimately resulted in a reduction of Qwest's refund obligation, Qwest may not
12 practically be able to recover what would be excessive refunds from all of its customers.
13 Nothing in Mr. Inouye's testimony supports finding a broader concession or relinquishment of a
14 right by Qwest.

15 Second, the Stipulation cannot reasonably be interpreted as waiving Qwest's right to seek
16 an offsetting rate increase as currently requested because an examination of the terms of
17 paragraph 5 shows that Qwest protected its rights in *either* event that an appeal of a Phase I order
18 resulted in a larger or smaller overall revenue reduction. Paragraph 5 provides that "U S WEST
19 will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this
20 Stipulation against any such increased refund and/or rate reduction obligation imposed by a
21 judgment reversing or modifying the order adopting the terms of this Stipulation or any
22 subsequent order." This language would have fully protected Qwest if an appeal of an order
23 approving the Stipulation had resulted in a larger overall revenue reduction, by making clear that
24 Qwest would get credit against such a larger revenue reduction for revenue reductions that it
25 already implemented in Phase II. Paragraph 5 also provides that "U S WEST does not waive its
26 rights, if any, to seek recovery of any overpayments – whether in the form of surcharges or rate
increases – in the event that U S WEST's refund and/or rate reduction obligation is reduced by a
judgment reversing or modifying the order adopting the terms of this Stipulation or any other

1 order." This sentence preserved Qwest's right to seek rate increases if an appeal of an order
2 approving the Stipulation had resulted in a *lower* overall revenue reduction than Qwest would
3 have implemented in Phase II.

4 Thus, Qwest did not waive its right to protect itself in the event an appeal of an order
5 approving the Stipulation resulted in *either* a greater or lower overall revenue reduction; to the
6 contrary, Qwest expressly reserved such rights so that it would not be harmed by its agreement to
7 make refunds and implement new rates before any appeal of an order approving the Stipulation
8 were resolved. Thus, there is no "asymmetry" in these provisions that reflects Qwest's
9 "deliberately relinquish[ing] the right to seek an offsetting revenue increase" Proposed
10 Decision at 5. Rather, the intent of this paragraph was to preserve Qwest's rights no matter how
11 the *appeal of an order approving the Stipulation* turned out. The Proposed Decision reaches a
12 contrary conclusion only by applying the language of the Stipulation in a context in which it was
13 not intended to apply – to an *appeal of a rate design order* – by reading the term "rate reduction
14 obligation" to refer to a reduction in the rate for a specific service made in Phase II as
15 distinguished from the overall revenue reduction determined in Phase I. This is not how the term
16 was intended to apply.

17 Waiver of a contractual right must be clear and unequivocal. *Bennett v. Farmers'*
18 *Insurance Company of Oregon*, 332 Or. 138, 157, 26 P.2d 785 (2001). Paragraph 5 of the
19 Stipulation contains no language from which the Commission may find a clear and unequivocal
20 intention to waive Qwest's right to seek rate rebalancing in the circumstances currently
21 presented. Such a conclusion would actually be contrary to the fact that paragraph 5 states that
22 "U S WEST does not waive its rights, if any, to seek recovery of any overpayments – whether in
23 the form of surcharges or rate increases – in the event that U S WEST's refund and/or rate
24 reduction obligation is reduced by a judgment reversing or modifying the order adopting the
25 terms of this Stipulation or any other order." Moreover, a clear and unequivocal waiver of
26 Qwest's rights may not be found simply in Qwest's describing as a "major concession" its

1 agreement to make a refund prior to the conclusion of any appeal of an order adopting the
2 Stipulation.

3 The primary and fundamental reason the Proposed Decision is incorrect, however, is that
4 the only event contemplated by paragraph 5 of the Stipulation was an appeal of an order
5 approving the Stipulation, and the impact of such an order on the overall revenue reduction
6 Qwest would be required to make. The express language of paragraph 5 of the Stipulation
7 makes clear that it was intended to apply only in the event that a party appealed a Commission
8 order adopting the Stipulation, which no party did. It was *not* intended to apply in the event of
9 an appeal of a future order in the rate design phase of this proceeding.³ Moreover, it strains the
10 provisions of the Stipulation to apply them to the situation currently before the Commission
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15 ³ As noted above, Qwest submits the Declaration of Don Mason as an offer of proof regarding
16 Qwest's intentions in the event the Commission or a reviewing court determines that the Stipulation is
ambiguous. Mr. Mason testifies that:

- 17 • Qwest understood and intended that paragraph 5 of the Stipulation would apply only in
18 the event an appeal of a Commission order approving the Stipulation affected the refund
19 or overall revenue reduction to be made by Qwest. Qwest did not intend or understand
20 that the Stipulation would apply in the event of an appeal of an order in the rate design
21 phase that required the Commission to lower the rate for a specific service.
- 22 • Qwest understood and intended the term "rate reduction" as used in paragraph 5 of the
23 Stipulation to refer only to a reduction in the overall revenue requirement that the
24 Commission would utilize in the rate design phase of this proceeding (*i.e.*, a revenue
25 reduction in the amount of \$63 million per year). Qwest did not intend or understand that
26 that term to refer to a reduction in the rate for a specific service that might be made in the
original Phase II of this proceeding or any appeal or remand of a Phase II order; and
- Qwest understood and intended the term "or any other order" as used in paragraph 5 of
the Stipulation to broadly encompass any Commission order that related to adoption of
the Stipulation, whether the initial order or any other order amending the initial order or
disposing of a motion for rehearing or reconsideration. Qwest did not intend or
understand that the term "or any other order" should apply to an order issued in the rate
design phase of this proceeding.

1 because Qwest expressly reserved its right not to be prejudiced in the event such an appeal
2 resulted in a different overall revenue reduction.⁴

3 III. CONCLUSION

4 For the foregoing reasons, as well as those set forth in Qwest's Opening Brief, the
5 Commission should conclude that it has the authority to order an increase in other rates to the
6 extent necessary to offset the revenue reduction that will result from approval of lower payphone
7 service rates in this proceeding.

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17 ⁴ The Proposed Decision, at fn. 6, also concludes that the situation posed by NPCC's appeal of the
18 rate design order was contemplated by paragraph 5 of the Stipulation, because it encompasses "any
19 'increased refund and/or rate reduction obligation imposed by a judgment reversing or modifying the
20 order adopting the terms of this Stipulation or *any subsequent order*.'" (Emphasis in original.) To the
21 contrary, the only issue NPCC had raised in this case by that time concerned whether the refund should be
22 made to former customers as well as to current customers. Order No. 00-190 at 6. NPCC conceded that
23 it had not adequately raised its claim that the FCC's payphone orders required an additional or different
24 refund. *Id.* at 15. Even if it had, NPCC undeniably had not yet raised any issues regarding the rate the
25 Commission should establish for payphone services in Phase II. The first time it raised that issue was in
26 testimony it filed in Phase II on April 10, 2001. This is the issue that NPCC ultimately appealed after the
Commission issued its final order and its order denying reconsideration in Phase II. Thus, the issue raised
in NPCC's appeal was not, and could not have been, contemplated in paragraph 5 of the Stipulation.

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In addition, the words "or any subsequent order" in paragraph 5 were intended broadly to encompass any Commission order that related to adoption of the Stipulation, whether the initial order or any other order amending the initial order or disposing of a motion for rehearing or reconsideration. That term did not refer to an order in the rate design phase of this case. To the extent the Commission is considering reaching a different conclusion, Qwest submits that the phrase is ambiguous and offers the Declaration of Don K. Mason, filed herewith, as bearing on the correct interpretation of the Stipulation.

1 DATED: June 23, 2006.

2 PERKINS COIE LLP

3
4 By 
Lawrence H. Reichman, OSB No. 86083

5 and

6 Alex M. Duarte, OSB No. 02045
7 Qwest Corporation
8 421 SW Oak Street, Room 810
Portland, OR 97204

9 Attorneys for Qwest Corporation

1 **CERTIFICATE OF SERVICE**

2 I certify that I have this day served the foregoing document, encaptioned QWEST'S
3 RESPONSE BRIEF SUPPORTING PROPOSAL TO REBALANCE RATES, by causing a copy
4 to be sent via U.S. Mail and electronic mail to:

5 * Robert Manifold
6 Attorney at Law
7 6993 Via Valverde
8 La Jolla, CA 92037

Lon E. Blake
Regulator Director
Advanced Telcom Inc
730 Second Ave. S, Suite 900
Minneapolis, MN 55042

9 Daniel Foley
10 AT&T Nevada
11 General Attorney &
12 Asst. Gen. Counsel
13 645 E Plumb Lane, B132
14 PO Box 11010
15 Reno, NV 89520

* Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia Street, Suite 1800
Portland, OR 97201-6618

16 * Jason Eisdorfer
17 Energy Program Director
18 Citizens' Utility Board of Oregon
19 610 SW Broadway, Suite 308
20 Portland, OR 97205

* Robert Jenks
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205

21 Mark P. Trincherro
22 Davis Wright Tremaine LLP
23 1300 SW Fifth Avenue, Suite 2300
24 Portland, OR 97201-5682

* Jason W. Jones
Assistant Attorney General
Department of Justice
Regulated Utility and
Business Section
1162 Court St., NE
Salem, OR 97301-4096

25 * Karen J. Johnson
26 Corporate Regulatory Attorney
Integra Telecom of Oregon Inc.
1200 Minnesota Center
7760 France Avenue S
Bloomington, MN 55435

Carol Wirsbinski
Senior Vice President
Integra Telecom of Oregon Inc.
1200 Minnesota Center
7760 France Avenue S
Bloomington, MN 55435

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* Brooks Harlow
Miller Nash LLP
601 Union Street, Suite 4400
Seattle, WA 98101-2352

David L. Rice
Miller Nash LLP
601 Union Street, Suite 4400
Seattle, WA 98101-2352

Randy Linderman
Pacific Northwest Payphone
1315 NW 185th Avenue, Suite 215
Beaverton, OR 97006-1947

* Alex M. Duarte
Corporate Counsel
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204


* Michael E. Daughtry
VP Operations & Reg Contact
United Communications Inc.
P.O. Box 1191
Bend, OR 97709-1191

* Dean Randall
Verizon Northwest Inc.
20575 NW Von Neumann Dr.
MC OR030156
Hillsboro, OR 97006

Michel Singer-Nelson
Regulatory Attorney
Worldcom Inc.
707 -17th Street, Suite 4200
Denver, CO 80202

DATED: June 23, 2006.

PERKINS COIE LLP

By 
Lawrence H. Reichman, OSB No. 86083

Attorneys for Qwest Corporation

**Denotes signatory to Protective Order*

Qwest
421 Southwest Oak Street
Suite 870
Portland, Oregon 97204
Phone 503-242-5234
FAX 503-242-5456

Judith A. Pepler
President - Oregon



February 14, 2003

Advice No. 1935

The Honorable Roy Hemmingway, Commission Chair
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing proposes revisions to the Exchange and Network Services tariff. The effective date is March, 17,2003.

The proposed revisions are rate reductions to the following Public Access Line (PAL) elements:

- Basic PAL
- Smart PAL
- Basic PAL Measured
- Message Line
- Smart PAL Message Line
- PAL Message Charge
- PAL Measured Per Minute Charge

The rate reductions have been calculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

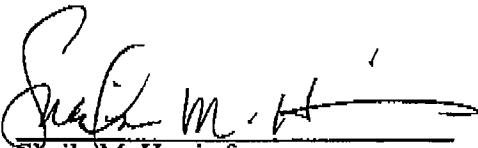
The Honorable Roy Hemmingway, Commission Chair
Oregon Public Utility Commission
Advice No. 1935

Page 2

Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

If you have questions concerning this filing, please contact Sheila Harris on (503)242-5950.

Yours very truly,

By 
Sheila M. Harris for
Judy Pepler President - Oregon
Qwest Communications, Inc.

Attachments

421 Southwest Oak Street
Suite 870
Portland, Oregon 97204
Phone 503-242-5234
FAX 503-242-5456

Judith A. Pepler
President - Oregon



February 28, 2003

Advice No. 1935
Supplement No. 1

The Honorable Roy Hemmingway, Commission Chair
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This supplemental filing proposes further revisions to the Exchange and Network Services tariff. The effective date is March, 17, 2003.

The purpose of this supplemental filing is to reestablish a deaveraged rate structure for Qwest's Public Access Line Service Rates.

The original filing introduced rate reductions that were calculated in accordance with FCC Order No. 02-025. Qwest reviewed the FCC order and its filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

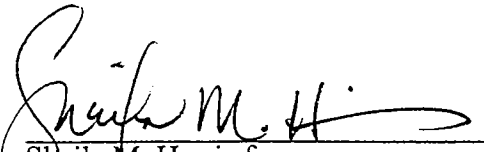
Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

The Honorable Roy Hemmingway, Commission Chair
Oregon Public Utility Commission
Advice No. 1935

Page 2

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By 
Sheila M. Harris for
Judy Pepler President - Oregon
Qwest Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	136	3 rd
5	137	3 rd



Oregon

Theodore R. Kulongoski, Governor

RCU 3/20/03

Public Utility Commission

550 Capitol Street NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

March 19, 2003

JUDITH A PEPPLER
VICE PRESIDENT - OREGON
QWEST CORPORATION
421 SW OAK ST - RM 870
PORTLAND OR 97204

RE: Advice No. 1935

On February 14, 2003, Qwest Corporation filed revised sheets for inclusion in its tariff, PUC OR No. 29. On February 28, 2003, the company filed replacement sheets.

This filing reduces rates to the following Public Access Line (PAL) elements:
Basic PAL; Smart PAL; Basic PAL Measured; Message Line; Smart PAL
Message Line; PAL Message Charge; and PAL Measured Per Minute Charge.

The sheets are acknowledged and became effective with service rendered on and after March 17, 2003:

Section 5, 3rd Revised Sheet 136

Section 5, 3rd Revised Sheet 137

One receipted copy of each sheet is returned for your files.

Phil Nyegaard

Administrator

Telecommunications Division

(503) 378-6436

Fax: (503) 373-7752

qwest1935

Enclosures

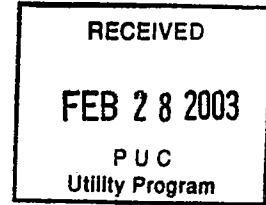
U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29
EXCHANGE AND
NETWORK SERVICES

SECTION 5
 3rd Revised Sheet 136
 Cancels 2nd Revised Sheet 136

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)



C. Rates and Charges

1. Each Basic Public Access Line

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured						
- Two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30	
• Carrier Package[4]	1N8	[2]	10.88 (R)	11.85 (R)	12.63 (R)	(T)

[1] Message usage charge specified, following, applies. (C)

[2] The business access line nonrecurring charge specified in 5.2 applies.

[3] EAS rate increment also applies. See 5.1.1. (D)

[4] Outgoing only service commonly used by Interexchange Carriers. Service includes *CUSTOMNET* Service and local call restrictions. (T)

U S WEST COMMUNICATIONS, INC.

**P.U.C. OREGON NO. 29
EXCHANGE AND
NETWORK SERVICES**

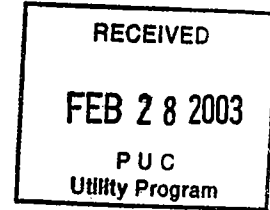
**SECTION 5
3rd Revised Sheet 137
Cancels 2nd Revised Sheet 137**

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

C. Rates and Charges (Cont'd)



		NON- RECURRING	MONTHLY RATE PER RATE GROUP		
	USOC	CHARGE	1	2	3
2. Smart Public Access Line, each					
• Flat					
- Outgoing only, per line[1]	5FO	[2]	\$8.45 (R)	\$9.05 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]	9.50	10.17	10.68
• Message					
- Outgoing only, per line[3]	14C	[2]	8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]	8.61 (R)	8.61 (R)	8.61 (R)

3. Message Usage Charges

• Per message	MESSAGE RATE	\$0.02 (R)	
• Per Minute of Use Placed within the customer's local calling area	PER MINUTE RATE	\$0.01	(N) (N)

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply.

Qwest
421 Southwest Oak Street
Suite 870
Portland, Oregon 97204
Phone 503-242-5234
FAX 503-242-5456

Judith A. Pepler
President - Oregon



July 28, 2003

Advice No. 1946

The Honorable Roy Hemmingway, Commission Chair
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing makes changes to Public Access Line (PAL) Service offerings in the Exchange and Network Services tariff. The effective date is August 28, 2003.

In compliance with FCC Order 02-025 Qwest is submitting the enclosed filing to introduce Public Access Line (PAL)-specific Fraud Protection Service offerings. Customers currently purchasing Qwest CUSTOMNET service offerings will be migrated to the appropriate new Fraud Protection service. Fraud Protection for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing combination.

All Fraud Protection services will be billed at the recurring/monthly rate of \$0.11. The non-recurring charge of \$1.12 will apply when the Fraud Protection features are provided subsequent to the initial installation of the Basic PAL access line. These rates will be in effect across all Qwest Communications tariffs as they relate to Public Access Line Fraud Protection.

Page 2

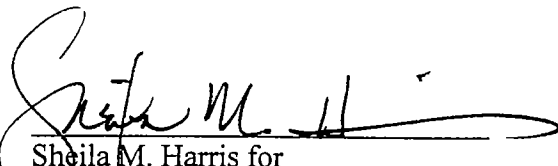
Because Qwest has decided to reduce its PAL rates, the rates have been recalculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

Attachments B and C contain commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By 
Sheila M. Harris for
Judy Pepler President - Oregon
Qwest Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	132	1
5	132.1	0
5	134	1
5	135	1
5	136	4
5	137.1	0

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description

1. Public Access Line (PAL) Service provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network will be provided on a flat, measured, measured with 300 call allowance, message or message with 300 call allowance or Carrier Package (out only) basis. (T)

Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features. This service provides:

- Coin signaling, including coin collect and coin return.
- Company completed and carried local and intraLATA toll messages, both sent paid and non-sent paid.
- Company operator services/systems for all 0-, 0+ and 1+ intraLATA toll calls, and 0+ local calls.
- Routing to the presubscribed carrier for all 0+ and 00- interLATA calls.
- Pay-per-call blocking (e.g. 900 and 976).
- Incoming and outgoing call screening.
- Access to:
 - Directory assistance,
 - 911 emergency code,
 - All interexchange carriers,
 - 800/800-type service and 950 telephone numbers,
 - Company repair service.

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29

SECTION 5

EXCHANGE AND

Original Sheet 132.1

NETWORK SERVICES

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description (Cont'd)

2. Fraud Protection Service for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing as described below.

- Incoming Fraud Protection, or Billed Number Screening (BNS), prohibits collect and/or third number billed calls from being charged to Incoming Fraud Protected numbers. Callers attempting to place a collect or third number billed call using an Incoming Fraud Protected number for billing will be advised by an operator that such billing is unauthorized and the call will not be completed until other payment or billing arrangements are made.
- Outgoing Fraud Protection restricts outgoing toll calls to only collect, third number billed and calling card.
- Incoming & Outgoing Fraud Protection is a combination of the two aforementioned Fraud Protection Services.

Fraud Protection Service is subject to the availability of facilities with Basic PAL Service. Operator assisted, collect and/or third number billed calls originating from locations that do not have screening capabilities may not be capable of being intercepted and denied and will be billed, e.g., International calls and calls that do not go through the Billing Validation Authority database. Provision of Fraud Protection does not alleviate customer responsibility for completed toll calls. Rates and Charges for this service are set forth in 5.5.7.C.4., following.

(N)

(N)

Advice No. 1946

Issued by U S WEST Communications, Inc.

By J. A. Peppler

Effective: August 28, 2003

Title President - Oregon Exhibit 1

OR2003-040

Page 13 of 18

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29
EXCHANGE AND
NETWORK SERVICES

SECTION 5
~~Original~~ 1st Revised Sheet 134
Cancels Original Sheet 134

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

5. All other conditions of service not specifically mentioned herein will be governed by exchange access service including, but not limited to, directory listings, touch-tone calling service, and limits of liability.
6. In the event it becomes apparent that a PSP pay telephone is attached to a line not authorized for such use, the Company reserves the right to disconnect that customer's service. However, should the customer so request, the Company will install a PAL at the rates and charges specified herein.
- ~~7. CUSTOMNET Service, specified in 10.4.1, is available to Basic PAL customers. (D)~~
87. Each Basic PAL will be equipped with call screening capabilities. Call screening as referenced here allows participating operator service companies to perform data base verification to determine if third party billed or collect calls are authorized for the billed number requested by the call originator. Call screening does not block calls from completing in the Company's network. (T)
98. The Company shall not be liable for any incidental or consequential damages, including but not limited to loss, damage, expense or charges arising from the Company's provisioning of call screening. (T)
109. The Company does not guarantee nor warrant that call screening will block collect and third party billed calls. The customer shall indemnify and hold the Company harmless from any and all losses, claims, demands, suits or other actions, or any liability, whether suffered, made, instituted or asserted by the customer or by any other party or person, for any loss, damage or charges caused or claimed to have been caused by the failure of call screening to prevent collect third party billed or other similar charges from the customer's account. (T)
110. The Company will provide written verification of call screening upon the request of the customer. There is no monthly or nonrecurring charge for call screening. (T)

Advice No. ~~1724~~1946

Issued by U S WEST Communications, Inc. Effective: ~~December 16, 1998~~ August 28, 2003

By ~~L. D. Huss~~ J. A. Pepler

Title ~~Vice President~~ - Oregon **Exhibit 1**

OR2003-040

Page 14 of 18

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29
EXCHANGE AND
NETWORK SERVICES

SECTION 5
~~Original~~ 1st Revised Sheet 135
Cancels Original Sheet 135

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

121. The Company is not liable for shortages of coins deposited and/or collected from the pay telephones used on PAL Service. (T)
132. The Company is not liable for end-user fraud associated with failure of the customer's pay telephones to perform correctly. (T)
143. Message rates apply to all applicable local and EAS calls. No message rate is assessed for long distance calling. (T)
154. Loop Diversity and/or Avoidance (T)
- a. Loop Diversity and/or Avoidance defined in the Private Line Transport Services Tariff are available with Basic Public Access Lines.
- b. Customers subscribing to Loop Diversity must also subscribe to additional facilities for the diverse route.
165. The following terms and conditions are specific to Smart PAL Service: (T)
- a. Separate lines are used for each pay telephone instrument installed. Off premises extensions are not permitted.
- ~~b. Until other carriers can provide sent paid InterLATA coin service, all direct dialed InterLATA and International (1+, 10XXX+1, and 011+) calls will be forwarded to AT&T for coin rating and completion. (D)~~
- eb. The customer must insure that the telephone sets used with Smart PAL Service are capable of rating sent-paid local calls and are compatible with, and cause no harm to the Company's network. (T)

Advice No. 17241946

Issued by U S WEST Communications, Inc. Effective: ~~December 16, 1998~~ August 28, 2003

By ~~L. D. Huss~~ J. A. Pepler

Title ~~Vice President~~ - Oregon Exhibit 1

OR2003-040

Page 15 of 18

U S WEST COMMUNICATIONS, INC.

**P.U.C. OREGON NO. 29
EXCHANGE AND
NETWORK SERVICES**

SECTION 5
3rd 4th Revised Sheet 136
Cancels 2nd 3rd Revised Sheet 136

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)

C. Rates and Charges

1. Each Basic Public Access Line

	USOC	NON- RECURRING CHARGE	MONTHLY RATE 1	PER RATE GROUP 2	PER RATE GROUP 3
• Measured					
- Two-way, per line[1]	17Q	[2]	\$ 7.98	\$ 7.98	\$ 7.98
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98
• Measured with 300 Call Allowance					
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35
• Message					
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98
• Message with 300 Call Allowance					
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82
• Flat					
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30
• Carrier Package[4]	1N8	[2]	10.88 8.99 (R)	11.85 9.96 (R)	12.63 10.74 (R)

- [1] Message usage charge specified, following, applies.
- [2] The business access line nonrecurring charge specified in 5.2 applies.
- [3] EAS rate increment also applies. See 5.1.1.
- [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions Fraud Protection Service.

(C)

Advice No. ~~1935~~1946

Issued by U S WEST Communications, Inc. Effective: ~~March 17, 2003~~ August 28, 2003

By J. A. Pepler

Title President - Oregon Exhibit 1

OR2003-040

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29

SECTION 5

EXCHANGE AND
NETWORK SERVICES

Original Sheet 137.1

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

C. Rates and Charges (Cont'd)

4. Fraud Protection features will be provided at the following rates and charges:

	<u>USOC</u>	<u>NONRECURRING CHARGE</u>	<u>MONTHLY RATE</u>
<u>• Fraud Protection</u>			
- Incoming, per line	PSES1	-	-
- Outgoing, per line	PSESO	\$1.12	\$0.11
- Incoming and Outgoing, per line	PSESP	1.12	0.11

(N)

(N)

Advice No. 1946

Issued by U S WEST Communications, Inc.

Effective: August 28, 2003

By J. A. Pepler

Title President - Oregon

Exhibit 1

OR2003-040



Oregon

Theodore R. Kulongoski, Governor

RCW 0 8/27/03

Public Utility Commission

550 Capitol Street NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

August 25, 2003

JUDITH A PEPPLER
VICE PRESIDENT - OREGON
QWEST CORPORATION
421 SW OAK ST - RM 870
PORTLAND OR 97204

RE: Advice No. 1946

On July 28, 2003, Qwest Corporation filed revised sheets for inclusion in its tariff, PUC OR No. 29.

This filing makes changes to Public Access Line (PAL) Service offerings.

The sheets are acknowledged and will become effective with service rendered on and after August 28, 2003:

Section 5, 1st Revised Sheet 132
Section 5, Original Sheet 132.1
Section 5, 1st Revised Sheet 134
Section 5, 1st Revised Sheet 135
Section 5, 4th Revised Sheet 136
Section 5, Original Sheet 137.1

One receipted copy of each sheet is returned for your files.

Phil Nyegaard
Administrator
Telecommunications Division
(503) 378-6436
Fax: (503) 373-7752

qwest1946

Enclosures

1
2
3
4 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

5 **UT 125**

6
7 In the Matter of

DECLARATION OF DON K. MASON

8 QWEST CORPORATION, fka U S WEST
9 Communications, Inc,

10 Application for an Increase in Revenues

11
12 I, Don K. Mason, being first duly sworn, do depose and say:

13 1. I am the Regulatory Director-Oregon for Qwest Corporation ("Qwest"). I have
14 held this position since 1994, including in 1998-2000 for Qwest's predecessor, U S WEST
15 Communications, Inc. ("U S WEST").

16 2. I was one of the lead negotiators for U S WEST in connection with settlement
17 negotiations among U S WEST, Commission Staff, and other parties in 1998-1999 to resolve the
18 revenue requirement and refund issues in Phase I of this proceeding. Those negotiations resulted
19 in an agreement between Staff and U S WEST to resolve all issues relating to the refund to be
20 made by U S WEST and the revenue requirement the Commission would apply in the rate design
21 phase, Phase II, of this proceeding. That agreement is entitled "Stipulation to Resolve Matters
22 on Appeal" (the "Stipulation"). I signed the Stipulation on behalf of U S WEST.

23 3. The Stipulation was intended to resolve all issues that were on appeal at the time
24 the Stipulation was made. The specific cases that were then on appeal are identified and defined
25 in the Stipulation, and are collectively referred to therein as the Appellate Litigation.

1 4. The Stipulation resolved the refund issues raised in the Appellate Litigation by
2 specifying the amount that Qwest would refund to customers since the date its rates became
3 interim, May 1, 1996, as \$53 million per year. The Stipulation also specified that the revenue
4 reduction the Commission would apply in the rate design phase of this proceeding would be \$63
5 million per year, based upon test year units.

6 5. Because Qwest was concerned that some party might appeal a Commission order
7 adopting the Stipulation, Qwest originally proposed that it would not make any refund until the
8 time for appealing a Commission order had expired or, if someone did appeal such an order, until
9 such appeal were resolved, whichever is later. Staff was not willing to agree that the issuance of
10 refunds should be delayed in the event of such an appeal, and insisted that Qwest agree to make
11 refunds as soon as the Commission had approved the Stipulation and disposed of any motion for
12 reconsideration.

13 6. Qwest ultimately agreed to make refunds in the time frame requested by Staff.
14 This agreement is reflected in paragraph 5 of the Stipulation. This agreement regarding the
15 timing of the refund is the only "concession" that Mr. Inouye referenced in his testimony in
16 support of the Stipulation.

17 7. Paragraph 5 of the Stipulation also addresses the potential circumstance in which
18 (a) a party appeals a Commission order adopting the Stipulation and (b) such order were reversed
19 and/or modified on appeal. The Stipulation addresses that circumstance in the following
20 language:

21 The parties further recognize that the order adopting the terms of this
22 Stipulation may be reversed and/or modified on appeal. The parties
23 further recognize that U S WEST's obligation to refund monies to
24 customers and to reduce its ongoing rates may be modified on appeal,
25 either by the issuing of a judgment incorporating or requiring different
26 refunds or rate reductions, or by the Court of Appeals refusing to dismiss
the Appellate Litigation. In the event that an order implementing the
terms of this Stipulation is reversed or modified on appeal, the parties
agree that U S WEST will be entitled to a credit for refunds and rate
reductions made under Paragraphs 1 and 2 of this Stipulation against any

1 such increased refund and/or rate reduction obligation imposed by a
2 judgment reversing or modifying the order adopting the terms of this
3 Stipulation or any subsequent order. Notwithstanding anything herein to
4 the contrary, the parties understand that U S WEST does not waive its
5 rights, if any, to seek recovery of any overpayments – whether in the form
6 of surcharges or rate increases – in the event that U S WEST’s refund
and/or rate reduction obligation is reduced by a judgment reversing or
modifying the order adopting the terms of this Stipulation or any other
order.

7 8. Qwest's intent and understanding in agreeing to the language in paragraph 5 set
8 forth above was that it would apply only in the event an appeal of a Commission order approving
9 the Stipulation affected the refund or overall revenue reduction to be made by Qwest. Qwest did
10 not intend or understand that the Stipulation would apply in the event an appeal of an order in
11 Phase II, the rate design phase, required the Commission to lower the rate for a specific service.

12 9. Qwest understood and intended the term "rate reduction" as used in paragraph 5
13 of the Stipulation to refer only to a reduction in the overall revenue requirement that the
14 Commission would utilize in the rate design phase of this proceeding (*i.e.*, a revenue reduction in
15 the amount of \$63 million per year). Qwest did not intend or understand that term to refer to a
16 reduction in the rate for a specific service that might be made in the original Phase II of this
17 proceeding or any appeal or remand of a Phase II order.

18 10. Qwest understood and intended the term "or any other order" as used in paragraph
19 5 of the Stipulation to broadly encompass any Commission order that related to adoption of the
20 Stipulation, whether the initial order or any other order amending the initial order or disposing of
21 a motion for rehearing or reconsideration. Qwest did not intend or understand that the term "or
22 any other order" should apply to an order issued in the rate design phase of this proceeding.

23 *I hereby declare that the above statement is true to the best of my knowledge and belief,*
24 *and that I understand it is made for use as evidence in court and is subject to penalty for perjury.*

1 DATED this 22nd day of June, 2006 at Portland, Oregon.

2 

3 _____
4 Don K. Mason

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1 **CERTIFICATE OF SERVICE**

2 I certify that I have this day served the foregoing document, encaptioned
3 DECLARATION OF DON K. MASON, by causing a copy to be sent via U.S. Mail and
4 electronic mail to:

5 * Robert Manifold
6 Attorney at Law
7 6993 Via Valverde
8 La Jolla, CA 92037

Lon E. Blake
Regulator Director
Advanced Telcom Inc
730 Second Ave. S, Suite 900
Minneapolis, MN 55042

9 Daniel Foley
10 AT&T Nevada
11 General Attorney &
12 Asst. Gen. Counsel
13 645 E Plumb Lane, B132
14 PO Box 11010
15 Reno, NV 89520

* Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia Street, Suite 1800
Portland, OR 97201-6618

16 * Jason Eisdorfer
17 Energy Program Director
18 Citizens' Utility Board of Oregon
19 610 SW Broadway, Suite 308
20 Portland, OR 97205

* Robert Jenks
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205

21 Mark P. Trinchero
22 Davis Wright Tremaine LLP
23 1300 SW Fifth Avenue, Suite 2300
24 Portland, OR 97201-5682

* Jason W. Jones
Assistant Attorney General
Department of Justice
Regulated Utility and
Business Section
1162 Court St., NE
Salem, OR 97301-4096

25 * Karen J. Johnson
26 Corporate Regulatory Attorney
Integra Telecom of Oregon Inc.
1200 Minnesota Center
7760 France Avenue S
Bloomington, MN 55435

Carol Wirsbinski
Senior Vice President
Integra Telecom of Oregon Inc.
1200 Minnesota Center
7760 France Avenue S
Bloomington, MN 55435

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* Brooks Harlow
Miller Nash LLP
601 Union Street, Suite 4400
Seattle, WA 98101-2352

David L. Rice
Miller Nash LLP
601 Union Street, Suite 4400
Seattle, WA 98101-2352

Randy Linderman
Pacific Northwest Payphone
1315 NW 185th Avenue, Suite 215
Beaverton, OR 97006-1947

* Alex M. Duarte
Corporate Counsel
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204

* Michael E. Daughtry
VP Operations & Reg Contact
United Communications Inc.
P.O. Box 1191
Bend, OR 97709-1191

* Dean Randall
Verizon Northwest Inc.
20575 NW Von Neumann Dr.
MC OR030156
Hillsboro, OR 97006

Michel Singer-Nelson
Regulatory Attorney
Worldcom Inc.
707 -17th Street, Suite 4200
Denver, CO 80202

DATED: June 23, 2006.

PERKINS COIE LLP

By 
Lawrence H. Reichman, OSB No. 86083

Attorneys for Qwest Corporation

**Denotes signatory to Protective Order*