

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of

QWEST CORPORATION, fka  
U S WEST COMMUNICATIONS, INC.,

Application for Increase in Revenues.

**PREHEARING CONFERENCE  
MEMORANDUM**

The Oregon Public Utility Commission held a prehearing conference in this docket on November 8, 2023. Qwest Corporation, Commission Staff, and the Northwest Public Communications Council (NPCC) appeared at the pre-hearing conference through their representatives. Richard Gaines, an interested person, was present at the prehearing conference.

In advance of the prehearing conference, Qwest, Commission Staff, and NPCC filed proposed procedural schedules for my consideration. Each party had an opportunity to present additional commentary at the prehearing conference regarding their views on next steps and the procedural schedule for this docket. On November 14, 2023, Qwest filed a follow-up letter requesting the Commission act on certain preliminary matters before this docket continues. That same day, I issued a memorandum regarding Qwest's filing.

After considering the parties' proposed schedules, comments from the parties at the prehearing conference, and Qwest's November 14 letter, I conclude that this matter will be resolved through two distinct phases.

The first phase will consist of legal briefing and oral argument. The second phase will proceed, if necessary, based on the resolution of the first phase of legal briefing. If the second phase is necessary, I will issue additional guidance and requirements at that time.

During the first phase of this remand proceeding, we will answer two questions. First, we will determine whether Qwest's rates from 1996-2003 complied with the new services test (NST).<sup>1</sup> If the answer is no, we must also determine whether the law requires the Commission to issue refunds. During this first phase, we will not answer the question of what amount of refund or what other remedy may be appropriate. If necessary, the second phase of this docket will address those issues after additional development of the evidentiary record.

At the prehearing conference, we discussed the record in this proceeding and how to ensure access to the records in this docket for the parties, the public, and the Commission. The parties indicated that they believed a first phase of this remand proceeding could proceed and be resolved based on the record prepared for the Oregon Court of Appeals proceedings that resulted in the underlying remand

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<sup>1</sup> See 47 U.S.C. § 276(b)(1)(C).

order.<sup>2</sup> We will soon docket the record prepared for the Oregon Court of Appeals for the parties’ review. As part of the adopted procedural schedule, the parties must review the Court of Appeals record and determine whether that record is sufficient to resolve the first phase of this proceeding. The parties must confer with each other, and if they agree that the Oregon Court of Appeals record docketed here is sufficient, they must file a joint stipulation agreeing to the Commission’s review of this matter based on that record. If a party believes the record should be supplemented with additional material from the broader UT 125 record, that party should confer with the other parties to ascertain whether they agree and note the other parties’ positions on the supplementation request in an individual filing. Any such material must be attached and a basis for its inclusion in the record provided. Parties will have the opportunity to respond to any such record supplementation requests if they do not agree to its inclusion in the record.

I establish and adopt the following procedural schedule:

<b>DATE</b>	<b>EVENT</b>
December 7, 2023 at 3:00 p.m.	Joint procedural schedule proposal due (if necessary, as described below)
December 14, 2023 at 3:00 p.m.	Deadline for parties to review Court of Appeals record index and file joint stipulation or individual supplementation request
December 21, 2023 at 3:00 p.m.	Deadline for parties to respond to any notices regarding the sufficiency of the record
February 1, 2024 at 3:00 p.m.	Phase I: NPCC opening brief in support of its motion due
February 29, 2024 at 3:00 p.m.	Phase I: Staff and Intervenor Response Briefs Due
March 28, 2024 at 3:00 p.m.	Phase I: NPCC reply brief

If necessary, oral argument will be scheduled in April or May 2024.

Should any of the dates above not work for any of the parties, they may confer with the other parties and propose a new procedural schedule aligning with the milestones included above. Any adjustments should avoid filing deadlines on Fridays. Such adjustments are intended to accommodate the individual scheduling needs of the parties and not to allow the parties to develop a new process. Should any such minor adjustments be necessary, a joint proposed procedural schedule may be filed by December 7, 2023, at 3:00 p.m. The filing of such a joint proposed procedural schedule will not preclude any party from seeking reasonable, and in advance, schedule adjustments during this proceeding.

At the prehearing conference, Qwest raised potential issues regarding the proper parties in this proceeding or whether attorney ethics rules may impact this docket. Qwest filed a follow-up letter on November 14 expanding on these arguments. Although Qwest asks the Commission to act on such matters before proceeding in this docket, Qwest’s letter is not a formal motion made consistent with

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<sup>2</sup> The Court of Appeals record represents a subset of the entire UT 125 record, which is maintained by the Public Utility Commission of Oregon primarily in paper format. The Court of Appeals record includes three original volumes and a fourth volume of supplemental material the parties agreed would supplement the original record.

our rules. Qwest, or other parties, may file a separate motion articulating arguments and seeking relief consistent with our rules or may raise such arguments in their briefing.

**All filings submitted in this proceeding are due by 3:00 p.m. to provide adequate processing time for the Filing Center.** Filings submitted after 3:00 p.m. will be considered filed on the following business day. Missed filing deadlines without first seeking leave to extend a deadline may result in a filing being rejected and not considered by the Commission in resolving this docket.

Dated this 30th day of November, 2023, at Salem, Oregon.



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John Mellgren  
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

**Hearing:** The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at <https://www.oregon.gov/puc/Pages/default.aspx>. The Commission will hear issues as identified by the parties.

**Right to Attorney:** As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

**Notice to Active Duty Servicemembers:** Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

**Administrative Law Judge:** The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

**Hearing Rights:** You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

**Evidence:** Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

## Notice of Contested Case Rights and Procedures continued

**Record:** The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

**Final Order and Appeal:** After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.