

**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.

RULING

DISPOSITION: EVIDENTIARY RECORD ESTABLISHED

On November 8, 2023, the Public Utility Commission of Oregon conducted a prehearing conference in this docket. At the prehearing conference, the parties discussed whether a first phase of this remand proceeding could be resolved based on an already existing evidentiary record. On November 30, 2023, I issued a prehearing conference memo establishing a process for the parties to review the administrative record prepared for the Oregon Court of Appeals related to a prior order in this docket and to suggest documents to supplement that record. On November 30, 2023, the Court of Appeals record was filed in this docket.

Northwest Public Communications Council (NPCC), Commission Staff, and Qwest Corporation submitting supplementation requests. NPCC and Qwest filed objections to a subset of those supplementation requests. NPCC also filed a document titled “Contingent Withdrawal of Proposed Record Supplementation.” After reviewing that parties’ filings, I enter this ruling establishing an evidentiary record for the first phase of these remand proceedings.

As an initial matter, I conclude that any filing previously part of the record in UT 125 docket is a part of the evidentiary record for these remand proceedings. Because this docket has extended for such a long period of time, many filings are only available in paper format and must be prepared for digital filing. Further, older documents that were subject to earlier protective orders are now considered to be subject to the modified protective order entered in this docket on October 25, 2023.¹ The parties must, however, ensure they have signed and filed the signatory page for the modified protective order to have continued access to any confidential material in this docket.²

In resolving the parties’ supplementation requests and objections, I applied the Commission’s standards for evidence found at OAR 860-001-0450. These rules contemplate that the Commission will consider relevant evidence that “make[s] the existence of any fact at issue in the proceedings more or less probable that it would be without the evidence” and “if it is of a

¹ Order No. 23-382 (Oct. 25, 2023).

² Documents that may be subject to the modified protective order are listed in bold in the tables below. This designation does not mean that other documents are not also subject to the modified protective order, but rather reflects the information in the parties’ filings.

type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.”³ Relevant evidence “[m]ay be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay.”⁴ Some of the objections received go to the weight of the evidence and not the admissibility of evidence, as discussed further below.

I. Staff’s Supplementation Request

Staff requests to supplement the Court of Appeals record with additional material from the broader UT 125 record. Specifically, staff asks that the following materials be included in the evidentiary record:

Document Name	Date Docketed in UT 125
Direct Testimony of Staff Witness John Reynolds in Support of the Stipulation (attached to supplementation request as Staff Exhibit 1)	October 15, 2007
Staff’s Calculation and Evaluation of Qwest’s Proposed Rates (attached to supplementation request as Confidential Staff Exhibit 2) ⁵	October 15, 2007
Witness Qualification Statement of John Reynolds (attached to supplementation request as Staff Exhibit 3)	October 15, 2007
Stipulation among Commission Staff, Qwest, and NPCC, adopted by the Commission in Order No. 07-497	October 15, 2007

Staff asserts it conferred with Qwest and NPCC and neither communicated any objections to the inclusion of the above material in the record for these remand proceedings. Staff also noted it may seek leave to further supplement the record after reviewing the parties’ arguments later in these proceedings.

After considering Staff’s explanation for its request to supplement the Court of Appeals record with the four documents listed in the table above, I find that the documents meet the criteria for relevant evidence and will supplement the Court of Appeals record in this docket.

II. Qwest’s Supplementation Request

Qwest requests to supplement the Court of Appeals record with additional material from the broader UT 125 record as well as documents from what it asserts is a related proceeding, DR 26/UC 600. Qwest asserts the documents are relevant to the Commission’s “consideration of whether Qwest’s rates complied with the new services test and whether Qwest complied with the

³ OAR 860-001-0450(1)(a)-(b).

⁴ OAR 860-001-0450(1)(c).

⁵ This document is not currently available digitally but will be posted to the docket in accordance with Modified Protective Order No. 23-382 when it is located.

Refund Orders.”⁶ Qwest attached to its filing two exhibits containing copies of the dockets for UT 125 and DR 26/UC 600, with certain entries highlighted that it requests supplement the UT 125 record.

Qwest requests to supplement the Court of Appeals record with the following documents from the broader UT 125 record:

Document Name	Date Docketed in UT 125
Transmittal of Shortened Record and Certificate Mailed to Marion County Circuit Court, Jason Jones (AAG), Richard Busch, and Lawrence H. Reichman, Case No. 02C12247. Our Case Number is 02-05.	June 12, 2002
NWPA’s Reply to Responses of Qwest and Staff to its Application	December 12, 2001
Staff’s Final Comments	December 7, 2001
Staff’s Response to NWPA’s Application for Partial Reconsideration	November 28, 2001
Qwest Corporation’s Response to Northwest Payphone Association’s Application for Partial Reconsideration	November 28, 2001
Northwest Payphone Association’s Application for Partial Reconsideration, together with confidential documents located in locked cabinet env. #96(44) ; Filed by Richard J. Busch	November 13, 2001
OPUC Order No. 01-810	September 14, 2001
Northwest Payphone Association Notice of Supplemental Authority (with attached order)	September 6, 2001
Northwest Payphone Association Reply Brief	July 17, 2001
Staff Reply Brief	July 16, 2001
Northwest Payphone Association Reply Brief (confidential information located in locked cabinet env. #96(42))	July 16, 2001
Qwest Post-Hearing Reply brief (confidential information in locked cabinet env. #96(39))	July 16, 2001
Qwest Corporation Post-Hearing Opening Brief together with Exhibits A-I (Confidential Exhibit A in envelope #96(37) in locked cabinet)	June 29, 2001

⁶ Qwest Supplementation Request at 1 (Dec. 14, 2023).

Northwest Payphone Association Opening Brief together with three confidential exhibits; Info for Post-Hrg Brief, NWPA/3/Wood, and NWPA/4/Wood (confidential materials in locked cabinet in envelope #96(35))	June 29, 2001
Staff Opening Brief	June 28, 2001
Transcripts of 5/29-6/1 hearings (Volumes I-V-, 793 pages); confidential portion under separate seal (pps. 51, 102, 191, 193, 194, 663, 673-675, 679-681, 711-174, 726, 752-754, and 763) locked in cabinet, env. #96(33)	June 14, 2001
Qwest's prefiled Rebuttal Testimony of David L. Teitzel (Qwest/222), Aniruddha Banerjee (Qwest/226), Kenneth C. Bailey (Qwest/228), Scott A. McIntyre (Qwest/229), and Robert H. Brigham (Qwest/230)	May 3, 2001
Northwest Payphone Association's prefiled Direct Testimony of Don J. Wood, including (confidential materials in locked envelope #96/31: (NWPA/1) (contains confidential material) (NWPA/2) NWPA/3 (confidential) NWPA/4 (confidential))	April 11, 2001
Staff Prefiled Testimony (Confidential Version, in envelope #96/29) containing confidential exhibits: Lance L. Ball, Staff/1 Lance L. Ball, Staff/2 Cynthia Vanlanduyt, Staff/3 Cynthia Vanlanduyt, Staff/4 Cynthia Vanlanduyt, Staff/5 Cynthia Vanlanduyt, Staff/6 Cynthia Vanlanduyt, Staff/7 (Confidential) Thomas A. Turner , Staff/8 Thomas A. Turner, Staff/9 Thomas A. Turner, Staff/10 Thomas A. Turner, Staff/11 Thomas A. Turner, Staff/12 (Confidential) David L. Sloan , Staff/13 David L. Sloan, Staff/14 David L. Sloan, Staff/15 (Confidential) James R. Stanage , Staff/16 James R. Stanage, Staff/17 James R. Stanage, Staff/18 James R. Stanage, Staff/19 (Confidential)	April 9, 2001
QWEST CORPORATION's Qwest/201/Direct Testimony of David L. Teitzel for Qwest Corporation. Confidential materials in envelope #96(24) in locked cabinet. Qwest/202/Bacis Exchange Pricing Summary (Residence)/pg.1-2; Qwest/203/Bacis Exchange Pricing Summary (Business)/pg.1-11; Qwest/204/Extended Area Service/pg1-2; Qwest/205/Oregon UT 125 Pricing Adjustments Centrex Plus Services;	November 16, 2000

<p>Qwest/206/Vertical Features/Services Pricing Summary/pg1-9; Qwest/207/Listing Services; Qwest/208/Intralata Long Distance Services Pricing Summary/pg1-2. Qwest/209 Direct testimony of Scott A. McIntyre for Qwest Corporation/pg1-36; Qwest/210/Private Line Diagram/p.1; Qwest214/Switched Access Network Diagram/p.1; Qwest215/Current Switched Access Price Structure/p.1; Qwest/216/Proposed Switched Access Price Structure/p.1; Confidential materials in envelope #96(25); Qwest/211/Oregon Analog Private Line Proposal/pg1-4; Qwest/212/Oregon Digital Data Proposal/p.1; Qwest/213/Oregon DS1 Service Proposal/p.1; Qwest/217/Oregon Switched Access Proposal/pg1-2; Qwest/218/Direct testimony of Robert H. Brigham for Qwest Corporation/pg. i., ii., iii., & 1-9; Qwest/220/Deaveraged Loop Zones Qwest-Oregon/Appendix A/p. 1; Qwest/221/Executive Summary Residence Access Line Study ID/ pg. 1-7 (pg. 8-14 are confidential); Confidential material in envelope #96(26); Qwest/219/Summary of selected Rate Design Proposals/pg1-84; Qwest/221/G. Nonrecurring Cost Summary (Prescribed)/pg8-14.) Qwest/219/Summary of selected Rate Design Proposals/pg1-84</p>	
<p>QWEST's compliance of order no. 00-190 /Attachments--confidential financial sheets regarding Detailed Calculation of Accumulated Refund placed in env. # 96(22) in locked cabinet</p>	<p>September 14, 2000</p>
<p>OPUC Order No. 00-359</p>	<p>July 11, 2000</p>
<p>U.S. West Response in Opposition to Request for Reconsideration</p>	<p>June 26, 2000</p>
<p>Staff reply in Opposition to Request for Reconsideration</p>	<p>June 26, 2000</p>
<p>NPA Settlement Proposal (confidential version) of Northwest Payphone Association (Confidential in locked cabinet envelope #96(21))</p>	<p>June 21, 2000</p>
<p>Response of WSCTC and NPA to Oppositions to Application for Reconsideration</p>	<p>June 9, 2000</p>

Staff Reply to WSCTC & NPA Application for Reconsideration	June 2, 2000
US West Communications Response in Opposition to Application for Reconsideration of WSCTC and Northwest Payphone	June 1, 2000
Application for Reconsideration and/or Clarification of the Western States Competitive Telecommunications Coalition and Northwest Payphone Association ("Coalition)	May 17, 2000
Telad International Inc. Objection to Any Further Delay in Implementing Refund to Ratepayers	March 16, 2000
Northwest Payphone Association Initial Brief	February 11, 2000
Law Judge Conference Report Supplemental - clarifying the potential effect of adopting the proposed stipulation on UT 80 matters (would vacate Order Nos. 96-183, 96-286, and 97-171 and modify Order No. 96-107) and asking parties to update service list	December 2, 1999

Qwest requests to supplement the Court of Appeals record with the following documents from the DR 26/UC 600 record:

Document Name	Date Docketed in DR 26/UC 600
NPCC's Amended Memorandum in Support of Consolidated Motion to Reconsider and to Stay	April 6, 2010
NPCC et al.'s Reply to Qwest Letter Response to Consolidated Motions to Enforce Orders and to Bifurcate and Partially Abate Procedures	February 1, 2010
Order No. 10-027 signed by Commissioners Lee Beyer, John Savage, and Ray Baum; DISPOSITION: MOTION TO STRIKE FIRST AMENDED COMPLAINT GRANTED IN PART AND DENIED IN PART; MOTION TO ALLOW SECOND AMENDMENT TO THE COMPLAINT DENIED; PLAINTIFFS TO FILE AMENDED COMPLAINT CONSISTENT WITH ORDER.	February 1, 2010
NPCC's Motion to Enforce Orders, together with Motion to Bifurcate and Partially Abate Proceedings, with Memorandum, and Declaration in Support of, with Exhibit List and Exhibits 1 - 11	January 27, 2010
NPCC's Second Amended Complaint and Precautionary Motion to allow Second Amendment to the Compliant	November 16, 2009

Qwest asserts Commission Staff does not object to the inclusion of this material in the record. Qwest asserts NPCC stated it did not object at the time of the conferral but reserved the right to object later.

NPCC filed objections to Qwest's supplementation request on December 20, 2023. NPCC argues that the "documents Qwest seeks to inject into this proceeding are not relevant to any issues to be decided following remand from the Oregon Court of Appeals."⁷ NPCC asserts all documents that "predate 2007 (the date of the NST rate stipulation; see Order 07-497) are irrelevant."⁸ NPCC further argues that documents related to refunds in 2000 are also irrelevant to these remand proceedings, asserting that Qwest is attempting to relitigate issues that were previously resolved or stipulated to. NPCC also argues that because Qwest does not possess all the documents it requested to supplement the Court of Appeals record, Qwest cannot know that they are relevant. NPCC also seeks leave to review any documents allowed to supplement the record and make additional supplement requests to rebut them. NPCC's objections do not address the DR 26/UC 600 docket documents.

After considering Qwest's explanation for its request to supplement the Court of Appeals record with the UT 125 documents listed in the table above, I find that the documents meet the criteria for relevant evidence and will supplement the Court of Appeals record in this docket. Further, because no party explicitly objected to the inclusion of the documents from the DR 26/UC 600 docket, I find that the documents meet the criteria for relevant evidence will take official notice of those documents for the purposes of these proceedings.⁹ Because the DR 26/UC 600 documents are available on the Commission's website, they will not be docketed on the UT 125 docket.

The relevant evidence standard is a low bar to meet, and Qwest has satisfied its obligation to explain their relevance to these proceedings when utilized in argument. I will not prejudge issues that the parties may brief later on the limited supplementation briefing here. NPCC's objections go more towards the weight to be afforded the evidence and not their ability to supplement the Court of Appeals record. NPCC is free to argue why such evidence is not relevant or why certain documents should be afforded lesser weight by the Commission in its briefing later in these proceedings.

III. NPCC's Supplementation Request

NPCC requests to supplement the Court of Appeals record with Qwest's "billing record for CustomNet and PAL services during the relevant time period so the first question in phase one can be answered."¹⁰ NPCC notes it "has asked Qwest to produce these records multiple times informally, but Qwest has refused to do so."¹¹

⁷ NPCC Objection to Qwest Supplementation Request at 1 (Dec. 20, 2023).

⁸ *Id.* at 2.

⁹ OAR 860-001-0460.

¹⁰ NPCC Supplementation Request at 2 (Dec. 14, 2023).

¹¹ *Id.*

Qwest objections to NPCC's request, noting it is duplicative of a request it made earlier in these proceedings and that the production of these billing records is not necessary for the first phase of these proceedings.

NPCC filed a contingent withdrawal in part of its supplementation request if Qwest were to stipulate to certain facts regarding Qwest's billing rates from 1996-2003.

I conclude that NPCC's request for Qwest to produce records would be more appropriate for the second phase of these proceedings when discovery would be allowed to develop a broader evidentiary record. Such record development is not necessary to answer the first phase questions, which will proceed based upon an already developed record. That noted, such a request may be relevant in a second phase and should the Commission determine a second phase is necessary, Qwest should be prepared to produce these records.

IV. Conclusion


Staff and Qwest's record supplementation requests are granted, and those documents will supplement the existing Court of Appeals record or be officially noticed, as described above. NPCC's record supplementation request is denied, with leave to pursue such documents in the second phase of these proceedings.

Note that the Administrative Hearings Division is working diligently to sort through the extensive documents available in paper format from the UT 125 record that will supplement the Court of Appeals record and digitize them for the parties' use. This process is further complicated by the fact that many of those documents are designated as confidential and must be protected from public disclosure under the terms of the modified protective order. As such and given competing demands on AHD staff time, it will take additional time to complete this process, and I cannot give an estimate as to when that process will be complete.

Although NPCC filed its opening brief on January 12, 2024, I am aware that the delay in providing these documents to the parties may require adjustments to the procedural schedule. The parties should confer and propose a new procedural schedule soon after all the documents described in this ruling are provided to the parties. The parties should assume they are excused from filing their briefs if the documents have not been provided by their briefing deadline. Status updates can be obtained at reasonable intervals by contacting Ellie Knoll (ellie.knoll@puc.oregon.gov).

The parties are advised that should they want access to any of the confidential materials in this docket, they will need to sign the modified protective order as soon as possible.

Dated this 16th day of January, 2024, at Salem, Oregon.



Christopher Allwein
On Behalf of
John Mellgren
Administrative Law Judge