

**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: NPCC's MOTION FOR RECONSIDERTION AND TO
SUPPLEMENT THE RECORD GRANTED IN PART

In this ruling, I grant Northwest Public Communications Corp.'s (NPCC) motion in part, finding the tariffs for Qwest rates for Public Access Line (PAL) and CustomNet/Fraud Protection in place from May 1, 1996, through 2003, necessary for the completion of the first phase of this proceeding. Qwest Corporation (Qwest) is ordered to file all applicable tariffs in its possession. Qwest billing records are not necessary at this time. This request will be reconsidered at the beginning of the second phase of this proceeding, if necessary. Finally, the procedural schedule in this proceeding is suspended until March 5, 2024. The suspension applies to the procedural schedule adopted on November 30, 2024, and does not affect pending motions.

I. Discussion

On January 22, 2024, NPCC filed its request for reconsideration of the January 16, 2024, ruling and to supplement the record in this proceeding. Specifically, NPCC argues that both the tariffs for Qwest rates for PAL and CustomNet/Fraud Protection in place from May 1, 1996, to the present, and the commensurate Qwest billing records are relevant to phase 1 of this proceeding, the scope of which was determined by ALJ John Mellgren in his November 30, 2024, Prehearing Conference Memorandum.¹

In that memorandum, ALJ Mellgren determined that phase 1 will be limited to whether Qwest's rates from 1996-2003 complied with the new services test (NST). If the answer is no, ALJ Mellgren ruled that the Commission must also determine whether the law requires the Commission to issue refunds.² NPCC states that parties and the Commission cannot determine whether charges from 1996 to 2003 were NST compliant without knowledge of what those charges were, both the tariffed version and information on specific billings.

¹ NPCC Request for Reconsideration at 9-13 (Jan. 22, 2024).

² Prehearing Conference Memorandum at 1 (Nov. 30, 2023).

Qwest contends that ALJ Mellgren’s ruling denying NPCC’s request to include this information in the record at this time was correctly decided, and that it is premature to include this information in the record in phase 1 of this proceeding. Qwest does not object to inclusion of the tariffs in the record.³

II. Analysis

I find that NPCC’s request should be granted in part. The Court of Appeals, in remanding this matter back to the Commission, stated that our findings that refunds were not “supported by substantial evidence.”⁴ The court stated that “the PUC has not yet determined whether Qwest’s pre-2003 payphone rates complied with federal law.”⁵ The court further described the deficiency in our prior decisions:

As far as we can tell, the PUC has never (properly) determined whether Qwest’s 1996- 2003 payphone rates were NST-compliant. The record as a whole does not permit a reasonable person to conclude that the PUC “comprehensively resolved” Qwest’s refund liability for potential violations of federal law from that time period, particularly given that the PUC made clear throughout both Phase 1 and Phase 2 that it was pursuing the traditional regulatory method under Oregon law and repeatedly declined NPCC’s invitation to decide whether Qwest’s pay phone rates violated federal law or whether Qwest may be liable for additional refunds for alleged violations of federal law.⁶

Accordingly, the Court of Appeals requires the Commission, irrespective of any party positions, participation or assigned burden, to review issues and make findings regarding whether 1996-2003 rates were NST compliant. The Commission cannot make such a determination without knowing what those rates were. To accomplish this, we can use published tariffs to make the determination on what rates were in effect. Accordingly, these tariffs are necessary if the Commission is going to address the phase 1 issues, consistent with the Court of Appeals direction.

Billing records are not necessary at this time. Unless there is an allegation otherwise, the Commission can reasonably rely on tariffs as evidence that tariffs represented the rates actually charged customers. Accordingly, I do not order Qwest to produce these billing records. If, in a future phase of this proceeding, it becomes necessary to calculate damages owed to individual companies, then such records may be relevant to the proceeding, but they are not at this stage.

The documents in the record in this proceeding, including the applicable tariffs, are old, outside of PUC retention schedules, and as of the date of this memo have not been fully

³ Qwest Response to NPCC’s Request for Reconsideration at 4 (Jan. 30, 2024).

⁴ *Northwest Public Communications Council v. Qwest*, 323 Or App 151, 164 (2022)

⁵ *Id.*

⁶ *Id.* at 167.

located by the Administrative Hearings Division. Accordingly, in order to facilitate the assembly of the record, I order Qwest to identify and file in this docket file all applicable tariffs for Qwest rates for PAL of CustomNet/Fraud Protection in place from May 1, 1996, through 2003.

III. Qwest's Motion Pursuant to ORS to ORS 9.350 to Prove Authority of Counsel

On January 26, 2024, Qwest filed a motion pursuant to ORS 9.350 to prove authority of counsel. In this filing, Qwest alleges various conflicts of interests, violations of professional responsibility, and requests a suspension while these allegations are investigated and resolved.

Without ruling on the substance of this request, I grant a limited suspension of this case until March 5, 2024, for the purpose of compiling and publishing the record, which will take time for our administrative hearings division with the assistance of parties to complete. During this suspension, we will review and resolve the Qwest motion pursuant to ORS 9.350. We will set an amended procedural schedule for phase 1 of this proceeding on or after March 6, 2024. I note that regardless of the resolution of Qwest's motion pursuant to ORS 9.350, the Court of Appeals decision requires the Commission to review and make findings on the legality of Qwest's rates from 1996 through 2003. The directions by the Court of Appeals means that the PUC will conduct and complete the review and make findings even if the only participants in this matter are Staff and the Company.

IV. Ruling

1. NPCC's Motion for Reconsideration Granted in Part. Qwest is ordered to file tariffs for Qwest rates for PAL and CustomNet/Fraud Protection in place from May 1, 1996, through 2003;
2. The procedural schedule is suspended through March 5, 2024;
3. Any reply to Qwest's motion pursuant to ORS 9.350 are due February 12, 2024, at 3:00 PM. Any response to the reply is due February 20, 2024, at 3:00 PM.

Dated this 7th day of February, 2024, at Salem, Oregon.



Chris Allwein
Administrative Law Judge