

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UT 125
DR 26/UC 600**

In the Matter of §
QWEST CORPORATION fka §
US WEST COMMUNICATIONS, INC. §

**NORTHWEST PUBLIC COMMUNICATIONS COUNCIL'S
OBJECTION TO QWEST'S REQUEST TO
SUPPLEMENT RECORD**

Northwest Public Communications Council (NPCC) hereby objects to *Qwest Corporation's Request to Supplement Record* (the Request) filed on December 14, 2023. Qwest's Request should be denied.

Issues Remaining

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. That is, the Court of Appeals narrowed the issues to be decided here to only two:

1. The PUC is supposed to determine NST rates applicable during the time period 1996 to 2003, and if Qwest was overcharging its ratepayers, then

2. The PUC is ordered to impose an appropriate remedy for the overcharges.¹

Nowhere in the Court of Appeals' 2022 decision is the PUC or any of the other parties instructed or allowed to re-litigate any issues in the case, so all of Qwest's records identified in its Request to supplement that predate 2007 (the date of the NST rate stipulation; see Order 07-497) are irrelevant. Issues litigated in 2001, for instance, and especially the briefing and arguments of the parties related thereto, could not possibly be germane to the two remaining issues in the case identified above.

Documents Actually Relevant

The only records from the 1996 to 2003 time period that are relevant to the remaining issues in the case are Qwest's billing records, which will show the rates/amounts Qwest was charging ratepayers during that time period, which in turn allows the parties to determine whether Qwest's actual charges were or were not NST-compliant. *See*

¹ ALJ Hon. John Mellgren logically split this proceeding into two phases exactly commensurate with these two issues.

Issue 1 above and *NPCC's Proposed Record Supplementation*. Thus, Qwest's billing records do double duty in both phase one and phase two of the proceeding.

Prior Refunds Are Not Relevant

Further, the refunds in 2000 have literally *nothing* to do with NST overcharges. Those refunds were based on the PUC's determination that Qwest was making too much profit on all of its ratepayers and those refunds addressed *that* violation. Nothing in the 2000 refunds was germane to our current, remaining issues concerning NST overcharges.

By reaching back into hallowed antiquity, Qwest apparently believes it can complicate or relitigate the issue of ***NST rates*** that were stipulated in amount in 07-497. Those 2007 approved rates were meant to replace the "interim rates subject to refund" that Qwest had been allowed to charge beginning in 1996. That is, because those NST rates were not yet determined in Oregon in 1996, the PUC allowed Qwest to charge "interim rates subject to refund with interest," knowing that once

NST rates were finally determined, NST rates would be used to calculate refunds of any overcharges.

Issues to be Addressed; an Example

Even though in 1996 no one knew the NST rate for Qwest’s services, one of which was CustomNet (fraud protection), Qwest was allowed to charge (and did charge) “interim rates subject to refund with interest” in the amount of \$2.00 per line per month for that service. In 1996, we did not know X, the lawful NST rate, because it had not yet been set, so there could be no calculation of overcharges at that time:

$$\$2.00/\text{line}/\text{month} - X = \textit{overcharge/undercharge??}$$

However, once “X” was determined by stipulation in 2007, we now can calculate the overcharge. It’s just third-grade arithmetic:

ACTUAL CHARGE	NST	OVERCHARGE
\$2.00/line/month	\$0.11/line/month	\$1.89/line/month

See NST rate schedule approved in 07-497, which contains the actual charges being made for all of Qwest’s services and their corresponding NST-compliant rates.

The PUC Agrees With NPCC

Your Honor will also note that the only records the PUC deems germane to issue/phase one were all on file around 2007, the date of the 07-497 Stipulation. Regarding applicability of those NST rates, the PUC says:

Staff Exhibit 1 describes the requirements of the NST as set out in 47 U.S.C. § 276(b)(1)(C) as well as providing details of how Staff evaluates rates compliance with the NST. ***Though Staff Exhibit 1 looked at rates from 2006 forward, the description of NST requirements and discussion of appropriate inputs and considerations for evaluating compliance with the NST are equally applicable to Qwest's 1996-2003 rates.***

See *Staff Request to Supplement Record*, p. 1 (emphasis added). “Equally applicable.” No need to look at other refunds or other records that were not used to determine NST rates in 2007, all of which are already in the record.

Delay is the Name of Qwest's Game

It is crystal clear that all Qwest is attempting to do here is muddy up the record with superfluous, irrelevant pleadings and other

documents, which will then spawn endless, tedious, irrelevant arguments and briefing, in order to drag this proceeding out for as long as humanly possible—because 27 years is apparently not enough. While we certainly understand Qwest’s inclination to delay its day of financial reckoning forever, Your Honor should not countenance such tactical interference in getting the two remaining issues put to bed in a timely and efficient manner.

Before Qwest’s proposed supplementation is allowed, Qwest should be required to make an offer of proof to show how the information it seeks to supplement is relevant to the two remaining issues in the case, and if it cannot do so, Qwest’s request to supplement should be denied. Indeed, it appears that Qwest does not even have a copy of the records it identified, so its arguments concerning relevance cannot be made; it must only be guessing but the ratepayers should not have to be prescient. *See Qwest’s Request*, p. 1 (emphasis added):

The highlighted documents are ***not available*** on the Commission’s website as the Commission was not utilizing electronic filing at that time, ***nor has***

Qwest been able to obtain them. Thus, Qwest is *not able to attach these documents to this request* as stated in the Prehearing Conference Memorandum. Qwest respectfully requests that the commission *make these documents available* to the parties for use in this proceeding.

How Qwest can suggest that documents it does not even have in its possession are germane to the remaining issues here is never explained.

Prayer

Unless and until Qwest shows how its requested supplemental documents are relevant to the remaining limited proceedings in this case, its Request should be denied.

Should the ALJ allow Qwest's proposed supplementation, NPCC asks for leave to review the actual documents in that supplementation to determine whether other documents from the record are needed for purposes of rebuttal and record completeness, and for leave to designate any further documents accordingly.

RESPECTFULLY SUBMITTED:

/s/ Frank G. Patrick

OSB 760228

Attorney for NPCC

I hereby certify that I electronically Filed and Served a copy of the foregoing RESPONSE as follows:

Service was by email to the addresses below on December 20, 2023:

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