

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UT 125**

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

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

THE NORTHWEST PUBLIC §
COMMUNICATIONS COUNCIL, §
Complainant, §
vs. §
QWEST CORPORATION, §
Defendant. §

NPCC’s PROPOSAL FOR PROCEEDING

In accordance with Your Honor’s Memorandum dated October 18, 2023, Northwest Public Communications Council (NPCC) provides this proposal containing its suggestions for how this post-remand action should proceed.

In order to frame the future, NPCC refers to the Court of Appeals’ opinion from 2022 in which that Court pointed out two “duties” the PUC is required to fulfill going forward:

1. The duty to protect ratepayers from “unjust and unreasonable exactions” by conducting a “proper inquiry” into Qwest overcharges in accordance with ORS 756.040(1), and
2. The duty of “providing some appropriate remedy” for any such overcharges in accordance with ORS 759.185(4).¹

The Court of Appeals maybe could have been clearer on what future proceedings in this docket should look like, but it would have been difficult to do so:

Under the applicable regulatory scheme, the PUC does not have discretion to simply ignore NPCC’s allegations that Qwest’s pre-2003 payphone rates violate section 276. And, if after proper inquiry, the PUC finds Qwest’s pre-2003 payphone rates exceeded that allowed by federal law and amount to ‘unjust and unreasonable exactions,’ the PUC has a duty to protect ratepayers, including NPCC members, by providing some appropriate remedy which may include ordering refunds for overcharges (citing *Gearhart v. PUC*, 356 Or. 216 (2014) and ORS 756.040(1) and 756.062(2)).

¹ Importantly, the Court of Appeals recognized this matter for what it is: a regulatory enforcement action at the PUC and not a civil action for money damages in court. Qwest would have Your Honor treat this as a civil action in which NPCC members bear some “burden of proof” to show the overcharges. In fact, the burden of proof is on Qwest to show it has not overcharged its customers and it must do so by producing its billing records to the PUC for analysis. NPCC members are merely the complaining victims of Qwest’s theft of their money, and the PUC bears the statutory burden or duty to remedy that illegal conduct.

NPCC v. Qwest Corporation, 323 Or.App. 151, 168 (2022).

One other point: the Court of Appeals was not asked in the appeal to determine whether the record showed a refund obligation, so it misspoke in dicta when it said that the record did not reveal that obligation. In fact, the record clearly reveals that obligation because all 1996-2007 rates charged by Qwest were determined to be “interim rates subject to refund with 11.2% interest per annum.” Order 96-107. *See also* Order 96-183, which established the refund protocol. Order 07-497 then established final NST rates which replaced the “interim” rates Qwest had charged beginning in 1996.

Thus, the record unequivocally reveals that refunds are required for the time period when Qwest was charging “interim rates subject to refund.” The only missing data at this point is the dollar amount of refunds owing to each Qwest customer, which can be readily calculated once Qwest produces its billing records.

With these directives in mind, there are only two efforts necessary to conclude this docket. The PUC must conduct the inquiry into alleged overcharges by determining whether Qwest’s post-1996 rates were in

excess of NST-compliant rates established in PUC Order 07-497. This will be a relatively simple exercise given that we already know that rates post-1996 exceeded NST rates (Qwest has admitted it; see **Attachment A** and PUC Order 07-497), and the only work needed now is to calculate the exact *amount* of overcharges per customer. This can be done from Qwest’s billing records (which Qwest’s counsel told NPCC’s counsel in February 2023 are “readily available”).

Once the exact amounts of overcharges are known, the PUC must then provide a remedy, which in this case the PUC agrees will involve ordering refunds of the overcharges with interest. This step involves only basic arithmetic.

The schedule below provides ample time for the remaining activities necessary to fulfill the Court’s ruling and bring the parties into compliance with Oregon law.

Schedule

Deadline

Event

November 30, 2023

Qwest will produce an analysis and all backup records showing all charges it imposed on Oregon ratepayers from May 1, 1996 to the present related to all services

identified in attached **Attachment A**. The records will be in electronic format. Qwest's analysis should be in spreadsheet format showing charges made by month and by customer for all subject services.

December 15, 2023

NPCC and PUC will verify and report on Qwest's 11/30/23 analysis as to its accuracy and completeness and will compare the actual charges Qwest charged to the NST charges Qwest was lawfully allowed to charge for the subject services during the relevant time frame.

December 30, 2023

NPCC and PUC will report to the ALJ on its evaluation of Qwest's 11/30/23 analysis for accuracy and completeness. *December 30, 2023 If necessary, Qwest will be ordered to produce additional records so that its analysis can be made accurate and complete.*

January 15, 2024

The ALJ will issue orders directing Qwest to pay refunds to NPCC, on behalf of NPCC members, calculated as the difference between actual charges imposed and NST charges allowed, plus interest from 1996 to the date payment is made at 11.2% compounded monthly. Qwest should be ordered to pay the refunds and interest to NPCC in 45 days or less from the date of the order.

March 1, 2024

Provided the 45-day payment is made, NPCC will dismiss the action at the PUC within ten days after the funds are confirmed by the receiving bank.²

RESPECTFULLY SUBMITTED:

/s/ Frank G. Patrick

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² The only slight issue NPCC has with the PUC's proposed schedule is that it is too long. The PUC proposes that this process should be done in two phases over the course of many months, with the "phase 1" portion not determined before the end of May, 2024, and "phase 2" happening thereafter for an indeterminate length of time. This is far more time than is reasonably required to undertake the very simple remaining procedures in this case. NPCC thus proposes a much shorter time frame. *Note:* over the course of this decades-long matter, five NPCC principals have died of old age without ever seeing justice. The remaining principals are also well up in age, and they deserve to see the case brought to completion during their lifetimes, if possible. In this circumstance, further unnecessary delays are unconscionable.

CERTIFICATE OF SERVICE

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

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