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P.U.C.

August 8, 2023

Mr. Nolan Moser
Chief Administrative Law Judge
Oregon Public Utilities Commission
201 High Street SE, Suite 1000
Salem, OR 97301-3398

By USPS & Email: nolan.moser@puc.oregon.gov

Re: UT 125 on Remand

Dear Mr. Moser:

As you know, my firm and co-counsel Scheef & Stone, LLP represent the Northwest Public Communications Council (NPCC), and its members in the remand from the Oregon Court of Appeals. *NPCC v. Qwest Communications*, 323 Or. App. 151 (2022). In that capacity, below is my clients' brief recitation of the history of this matter. I suggest it provides a way forward so the matter can be justly and finally resolved in accordance with Administrative proceedings in UT 125 et al. that have been ongoing since May of 1996. Even though the case has been pending for some time, there is urgency as 4 of the principals of members of NPCC have died in the last few years.

I am enclosing a draft of a Motion which we anticipate finalizing and then filing with the PUC once the matter is ripe for post-remand continued jurisdiction at the PUC. It contains a more-detailed explanation of the current situation. Fundamentally it argues that based on the recent Oregon Court of Appeals ruling reversing and remanding the denial of NPCC's motion to show cause, Qwest should now be held in contempt for not calculating and paying the refunds of overcharges previously ordered by the PUC and that my clients have been seeking for some time. Qwest should perhaps be allowed an appropriate short time period in which it may fulfill those obligations and to thus purge itself of contempt before more serious sanctions are applied, but that would be up to the ALJ.

There is only one possible resolution that comports with the law of the case and the facts involved: a refund of the wrongfully kept overcharges from 1996 to 2003 as set forth in the original Motion to Show Cause and the attached draft Motion. That resolution and binding Oregon law compel the PUC to immediately order Qwest Communications to do the following within 30-45 days:

1. Calculate the overcharges Qwest imposed on Oregon ratepayers for PAL and CustomNet/Fraud Protection services from May 1, 1996 to July 28, 2003; and

2. Pay the calculated overcharges plus 11.2% compound interest to the applicable customers in the form of cash refunds as previously ordered by the PUC. Order No. 97-171.

While Qwest may have properly billed and collected charges under the “interim rates subject to refund” methodology, it had a duty to initiate and correct any overcharges it made once the rates were set by PUC Order 07-497. NPCC is asking the PUC to enforce the applicable Oregon Statutes and PUC orders which disallow an overcharge *ever* and believes only a refund of the overcharges can achieve that.

We contend these steps are straight forward and will involve a minimum of PUC resources to accomplish, given that the burden falls on Qwest to bring itself into compliance with prior PUC orders as the recent COA opinion indicated by calling for the PUC to impose a “remedy.” Indeed, given the Court of Appeals’ recent opinion, it does not appear that any further litigation is even required here, only that the PUC compel Qwest to obey the PUC’s prior orders in full.

Barring its obedience to the PUC’s directives as outlined above, NPCC believes the PUC should hold Qwest in contempt and suspend Qwest’s right to do business in Oregon until it purges itself of contempt by its obedience to the PUC’s lawful directives. Given that the remaining activities in the case are arithmetic, we believe it may be possible to complete this matter well before the end of 2023.

We look forward to the PUC’s action in concluding this matter in a lawful and expeditious manner, and I would be happy to answer any questions you might have at this stage of the proceeding.

Sincerely,

Frank G. Patrick

Frank G. Patrick
Attorney at Law

A handwritten signature in black ink, appearing to read 'Frank G. Patrick', written over a faint, larger version of the same signature.

RENEWED MOTION

The relevant background of this proceeding is found in the “*Northwest Public Communication Council’s Motions for an Order to Show Cause or, in the Alternative, to Clarify Order No. 07-497*” (herein “Motion to Show Cause”), a copy of which is attached to this Renewed Motion as **Exhibit B**.

REMEDY SOUGHT

The attached Motion to Show Cause, **Exhibit B**, outlines the relief sought in this case by NPCC on behalf of affected Oregon ratepayers and provides appropriate, relevant background facts and legal authority, including citation to applicable and controlling PUC orders. Rather than setting out all of the same background and legal authority in this Renewed Motion, the Motion to Show cause is incorporated herein by reference for all purposes.

NPCC’s Motion to Show Cause, **Exhibit B**, was denied by the PUC in its Order No. 17-473 issued on November 16, 2017. PUC Order No. 17-473 was reversed by the Oregon Court of Appeals on December 14, 2022 and the case remanded for imposition of an appropriate “remedy.” *See NPCC v. Qwest Corp.*, 323 Or. App. 151 (2022):

Turning to NPCC’s substantive arguments, NPCC argues that the PUC erred in denying its motion [to show cause] because the PUC is required to order Qwest to issue refunds for non-NST-compliant payphone rates between 1996 and 2003 under prior PUC orders in this docket and under state and federal law. NPCC specifically challenges two PUC findings as lacking substantial evidence: (1) that the PUC had previously determined Qwest’s 1997 PAL rates (Advice No. 1668) to be NST-compliant; and (2)

that its 2007 order (Order No. 07-497) had resolved all of Qwest's refund liability from 1996-2003.

• • •

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 that 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's members, by providing some appropriate remedy. Such a remedy may include ordering refunds for overcharges, *see Gearhart II*, 356 Or at 247 (holding that the PUC had implied authority to order PGE to issue refunds to ratepayers for amounts associated with a retired nuclear generating facility), and one way it may do so is by amending its prior order, as NPCC sought in its motion, *see* ORS 756.568 (The PUC "may at any time" amend any PUC order upon notice to the telecommunications utility and an opportunity to be heard.).

NPCC, 323 Or. App. at 163-64 and 168.

Given the Court of Appeals's December 14, 2022 opinion and directions on remand, NPCC now seeks the following remedies, to wit:

1. An express order that determines NST-compliant rates from May 1, 1996 to August 28, 2003 (the "Relevant Time Period")

are the same as the NST-compliant rates from 2007 forward as stipulated in Order No. 07-497;

2. An order compelling Qwest to calculate the overcharges it imposed on affected Oregon ratepayers during the Relevant Time Period, calculated as the difference between the actual "interim rates subject to refund" Qwest charged and the lawful, NST-compliant rates it was allowed to charge during the relevant time period; and
3. An order compelling Qwest to pay the calculated refunds to affected Oregon ratepayers in the full amount of such overcharges plus interest at the rate of 11.2% compounded from May 1, 1996 to present.

Point one above is the only "new" ruling being sought here; points 2 and 3 follow from prior PUC orders. A ruling on point 1 is necessitated because in 07-497, the PUC did not *expressly* set NST-compliant rates for the period 1996 to 2003, but only approved a stipulation on NST-compliant rates from 2007 forward. The Court of Appeals found that "hole" in the record prevented it from ordering a specific remedy related to overcharges made from 1996 to 2003:

But, as our review of the PUC's prior orders in this docket makes clear, the PUC has not yet determined whether Qwest's pre-2003 payphone rates are NST-compliant. Thus, on this record, we cannot say one way or another whether state and federal law require the PUC to issue the requested refunds.

NPCC, 323 Or. App. at 167.

However, that “hole” is necessarily filled by reference to federal law (NST-compliant rates were required from 1996 forward) and the Stipulation found in Order 07-497 setting NST-compliant rates which Qwest had been voluntarily charging since 2003. Since NST-compliant rates were required from 1996 forward, the PUC should find that the Qwest-approved, 2007 NST-compliant rates relate back to 1996 when rates actually being charged were said to be “interim rates subject to refund.” It is undisputed that those interim rates were far higher than the NST-compliant rates Qwest stipulated to in 2007. Best case scenario for Qwest, given inflation, the NST-compliant rates from 1996 to 2003 would likely have been *less than* those stipulated in 2007, setting a lower floor on NST rates and thus mandating a *larger* refund obligation. But for purposes of expeditious resolution of this matter, NPCC is willing to stipulate that the NST-compliant rates established in 2007 (Order No. 07-497) were also applicable to the Relevant Time Period from 1996 to 2003.

Movant therefore asks the PUC to set a schedule under which the requested relief might be expeditiously considered and implemented.

RESPECTFULLY SUBMITTED:

Frank G. Patrick, Attorney for NPCC
OSB 760228

CERTIFICATE OF SERVICE

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

Service was by: ___ Mailing ___ Hand Delivery ___ Email

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